

**ALFI**

**European Long Term Investment Funds (ELTIF)**

***FAQs Issue 1***

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## Important

This document was prepared by ALFI's ELTIF working group. The working group comprises representatives of asset managers, banks, management companies, securities service firms, audit firms, law firms, and other investment fund specialists in the Luxembourg investment fund market.

This document contains the working group's answers to questions about the practical application of the ELTIF Regulation. The answers are not necessarily definitive and they might not be suitable for every circumstance. **This document is not meant to be an industry standard or a guide to best practice** but it represents the view from a group of market participants. These FAQs have not been validated by any regulator. It does not diminish the ELTIF's or the ELTIF manager's responsibility to comply with the [EU Regulation 2015/760](#) and the related RTS or with any other rules or regulations impacting on the ELTIF, ESMA's related guidelines and technical advice papers and any other European or national law or regulation. This document must not be relied upon as advice and is provided without any warranty of any kind and neither ALFI nor its members who contributed to this document accept any liability whatsoever for any action taken in reliance upon it.

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The titles used in this document are references to the relevant recitals, chapters, sections and articles of the EU Regulation 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds and associated ESMA guidelines and consultation papers.

ALFI's members are welcome to submit a question to the working group, which will review it and consider whether to include it in a future copy of this document. Please send your questions to [info@alfi.lu](mailto:info@alfi.lu). We will acknowledge receipt of each question but we regret that we may be unable to reply individually to each one.

## A. Legal forms

### 1. Which vehicles can qualify as an ELTIF in Luxembourg?

All vehicles that qualify as an alternative investment fund (AIF) under the AIFM law can qualify as ELTIF, provided they fulfil the requirements established by the ELTIF Regulation.

Likewise, if an AIF's legal form allows the creation of multiple compartments, a compartment of such AIF may qualify as ELTIF and apply for authorisation as such. In the event that only one or several (but not all) compartments of an umbrella vehicle qualify as ELTIF, the designation 'ELTIF' must be clearly restricted to those compartments which qualify and have been approved as ELTIF.

### 2. Which legal forms may Luxembourg ELTIFs take?

An ELTIF may have any legal form available to an AIF.

The legal forms available in Luxembourg for AIFs include (without limitation):

- Corporations (SICAV or SICAF in various legal forms, Soparfis);
- Mutual funds (FCP);
- Partnerships (SCS, SCSp, SCA).

Such list is not exhaustive and future legal forms that qualify as AIF may also become eligible to obtain authorisation as an ELTIF.

### 3. Can or must an ELTIF be a Luxembourg product regulated investment vehicle to be able to qualify as ELTIF?

No. Every Luxembourg AIF that fulfils the criteria laid down by the ELTIF Regulation can qualify and apply for authorisation as an ELTIF in Luxembourg. The authorisation as ELTIF is independent from the regulatory regime that may be applicable to an AIF. For instance, a Luxembourg SIF may obtain authorisation as an ELTIF if it fulfils all criteria of the ELTIF Regulation. In such event, both authorisations (as SIF and as ELTIF) will go side by side.

In the event that an ELTIF should be subject to two sets of rules (e.g. SIF law or Part II of the Luxembourg law on undertakings for collective investment and the ELTIF Regulation) any provisions of the Luxembourg national regime that should be incompatible with the requirements of the ELTIF Regulation shall not be applied.

An AIF that is not product-regulated by one of the Luxembourg investment fund or sectorial laws may also apply for authorisation as ELTIF if it fulfils all requirements laid down in the ELTIF Regulation. The qualification as a product-regulated investment fund or other regulated regime is not a pre-condition for the authorisation as ELTIF.

### Further comments

Legal and regulatory changes as regards new vehicles that qualify as an AIF need to be considered as and when they become relevant.

## B. Securities issued

### 4. Can ELTIFs issue only equity (shares or units) or may they also issue debt securities (bonds/notes) to investors?

To the extent the legal form of an ELTIF allows the issuance of debt instruments, ELTIFs should be allowed to issue debt instruments (such as notes or bonds) to investors. For instance, a Luxembourg AIF in the form of a *société anonyme* (a public limited company) which, by its legal form is enabled to issue debt securities to investors, cannot be deprived from the possibility to obtain the ELTIF label because the securities it issues are debt instruments rather than equity. It goes without saying that this only applies if the relevant AIF fulfils all requirements of the ELTIF Regulation.

To allow an ELTIF to issue debt instruments, certain conditions shall however be fulfilled, in particular:

- The possibility to issue debt instruments must be explicitly permitted in the constitutive documents or prospectus of the ELTIF;
- The conditions and procedures of the issuance of debt instruments shall be set forth in the terms and conditions relating to such debt instruments (e.g. notes) which are either included in or appended to the prospectus;
- The debt instruments generate (exclusively) a variable return that is linked to the return of the ELTIF (no fixed-interest return element shall be granted to investors);
- To the extent an ELTIF issues both equity and debt instruments, special consideration must be given to equal treatment between debt and equity investors;
- The maturity of the debt instruments must be aligned with the life time of the ELTIF;
- Transparency and reporting requirements as more particularly set out in Chapter 5 Section 1 'Annual report, disclosure to investors and reporting to competent authorities' of the AIFM Regulation must be taken into consideration.

## C. Eligible assets/Investment strategy

### 5. In accordance with Article 10 ELTIF Regulation, an ELTIF is permitted to invest into 'real assets'. What does 'real assets' mean in the context of the ELTIF Regulation?

According to Article 2 point (6) of the ELTIF Regulation "real assets means an asset that has value due to its 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 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 Union objective of smart, sustainable and inclusive growth".

The above definition shall be understood as to cover both tangible and intangible assets:

**Tangible assets** may include (without limitation):

- Vessels;
- Equipment;
- Machinery;
- Aircrafts;
- Rolling stock;
- Immovable property;
- Infrastructure assets which may e.g. include the following:
  - Public building infrastructure such as schools, hospitals or prisons;
  - Social infrastructure such as social housing;
  - Transport infrastructure such as roads, mass transit systems or airports;
  - Energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems;
  - Communication infrastructure such as networks;
  - Waste management infrastructure such as recycling or collection systems.

**Intangible Assets** may include (without limitation):

- Research and development investments; or
- Intellectual property.

In return, certain assets should be excluded as they normally do not yield a predictable cash flow, e.g. assets such as works of art, manuscripts, wine stocks or jewellery.

#### Further comments:

The definition in Article 2 point (6) of the ELTIF Regulation could give rise to certain questions. It might be understood as requiring that every real asset shall have a 'value due to its substance'. ALFI takes the view though that the examples given in the definition demonstrate that not every 'real asset' necessarily needs to have a physical substance, since investments in research or development are explicitly referred to in the ELTIF Regulation as being allowed 'real asset investments'. The 'real assets' investment bucket therefore in our view does not necessarily require that investments are materialised in a physical, tangible substance.

**6. ELTIFs shall invest at least 70% of their assets into “long-term investments”. How shall the term “long-term” be defined?**

There is not clear definition of what long-term assets are. Typically, long-term investments are investments made into assets that have a need for “patient capital” and that cannot be liquidated upon the occurrence of sudden liquidity needs. The precise nature of each “long-term investment” will however vary and there cannot be any one-size-fits-all definition of long-term assets.

The long-term nature will need to be assessed in light of each specific asset.

**Further comments:**

Some indication on what long-term could mean can be found in the Commission’s staff working document (ref. SWD (2013) 230 final), where the Commission stated that “the definition of what constitutes a long-term asset is very broad, in general comprising all assets classes that generate steady cash returns over periods ranging from 10 to up to 50 years”. This is no firm definition though, since not all long-term assets generate necessarily steady returns and not all have a maturity of 10 years or longer. Certain long-term investments such as for instance investments in SME debt or equity have no maturity at all. Also, certain long-term investments would typically be liquidated or exited after 5 or 6 years rather than 10 to 50 years. The Commission’s proposal (ref. COM (2013) 462) itself recognises the possibility that “the mere fact that an asset is not traded on a regulated market [will] qualify it as a long-term asset”.

**7. According to Article 13 of the ELTIF Regulation the investment rules are defined by reference to the “capital” of the ELTIF (e.g. “an ELTIF shall invest no more than 10% of its capital in ...”). On which basis shall these investment rules be calculated?**

**a) Treatment of funds raised from investors via debt instruments**

The investment rules and diversification requirements indicate as a basis for calculation the ‘capital’ of an ELTIF. Article 2 of the ELTIF Regulation defines capital as “the aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses which are directly or indirectly borne by investors”.

ALFI takes the view that the term ‘capital’ in the context of the investment rules shall be understood as including all funds raised from investors under the conditions stated above, i.e. all commitments and contributions be they made in the form of equity or debt instruments.

**b) Treatment of borrowing**

As a principle, ALFI takes the view that capital borrowed in compliance with the borrowing restrictions of the ELTIF Regulation should be taken into account when calculating the investment rules. This means that where an ELTIF borrows the maximum allowed amount of 30% the investment rules (e.g. 10% diversification requirement) would be calculated based on 130% (100% commitments and contributions + 30% borrowing, i.e. on gross assets). Indeed, the ELTIF Regulation explicitly allows borrowing for investment purposes.

Certain aspects that shall be observed in this respect:

- According to article 16 of the ELTIF Regulation any borrowing shall serve the purpose of investing in 'eligible investment assets' (except in loans), meaning that such borrowed amounts may not be used to invest in e.g. liquid (UCITS-eligible) assets or to constitute a liquidity reserve. As a consequence, the entire borrowed amount (100% thereof) shall be invested exclusively in ELTIF eligible investment assets;
- By adding the borrowed amounts to the basis of calculation the proportion of eligible investment assets and other (liquid, i.e. UCITS-eligible) assets shall not be affected. This means that the requirement to invest at least 70% into ELTIF eligible investments (long-term) assets shall apply with respect to a calculation basis of 130 (commitments/contributions + borrowing) instead of 100 (commitments/contributions only);
- Investment limits do not apply during the ramp up period (see article 17 (1) of the ELTIF Regulation).

The approach described here above to calculate the investment rules should be ideally disclosed in the prospectus or the offering documentation of the ELTIF.

#### Further comments:

ALFI takes the view that one should include any borrowed money into the basis of calculation of the diversification limits. This would seem to concur with recital 29 of the ELTIF Regulation stating that borrowing is considered as an 'additional means to raise capital' to enhance the investment return.

The purpose of the diversification requirements is to ensure an adequate spreading of risks based on the total investment sums. Since the rule relates to portfolio diversification it should refer to the entire value (net of fees charges and expenses) of the invested portfolio, including, as the case may be, borrowings.

**NB: For the avoidance of any doubt, this does not mean that the 70% long-term investment requirement shall be calculated in the same manner.** Indeed, as far as borrowing is concerned the Regulation states clearly that the entire borrowed amount shall be used for eligible investment assets only. As a consequence the 70% long-term investments and 30% liquid (UCITS-type) investment should be calculated out of the raised capital (100% of commitments) and the 30% borrowing may optionally come on top but may not reduce the part of the commitments that shall be invested in long-term assets.

#### 8. Where an ELTIF is also a product-regulated Luxembourg AIF, how will the ELTIF diversification requirements apply in respect of other diversification requirements applicable under the relevant Luxembourg product-regulation?

As results from the ELTIF Regulation, only AIFs that fulfil all requirements of the European regulation will be able to obtain authorisation as an ELTIF. As a consequence, the ELTIF diversification requirements will always apply. To the extent that national product diversification requirements exist and should they be incompatible with the ELTIF diversification requirements (e.g. because they are less restrictive), such incompatible national provisions would remain unapplied.

#### Further comments:

Currently there exists no Luxembourg AIF product regulation imposing more stringent diversification requirements than the ELTIF Regulation.



## D. Borrowing

### 9. May an ELTIF borrow cash and if so, which restrictions shall apply?

Borrowing can be an integral part of an ELTIF's investment strategy, provided that such borrowing is used for the purpose of investing in eligible investment assets under the conditions set out under Article 16 of the Regulation:

1. "An ELTIF may borrow cash provided that such borrowing fulfils all of the following conditions:
  - a) It represents no more than 30 % of the value of the capital of the ELTIF;
  - b) It serves the purpose of investing in eligible investment assets, except for loans referred to in point (c) of Article 10, provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned;
  - c) It is contracted in the same currency as the assets to be acquired with the borrowed cash;
  - d) It has a maturity no longer than the life of the ELTIF;
  - e) It encumbers assets that represent no more than 30 % of the value of the capital of the ELTIF.
  
2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether or not it intends to borrow cash as part of its investment strategy".

#### Further comments:

The intention behind the ELTIF Regulation is helpfully illustrated throughout the recitals, in respect of borrowing by recital 29 ELTIF Regulation:

"In order to allow managers of ELTIFs to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to 30 % of the value of the capital of the ELTIF. That should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should borrow only in the currency in which the manager of the ELTIF expects to acquire the asset. In order to address concerns related to shadow banking activities, the cash borrowed by the ELTIF should not be used for granting loans to qualifying portfolio undertakings."

### 10. What are the limits to borrowing activities by an ELTIF?

Borrowing shall not exceed 30% of the capital of the ELTIF, such capital being defined in the ELTIF Regulation as "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".

#### Further comments:

ALFI takes the view that the calculation of the 30% borrowing limit shall be made at the time of the relevant financing agreement, meaning that a subsequent decrease in value shall not affect the financing agreement. Since the borrowed capital is – as is explicitly required by the ELTIF Regulation – necessarily linked to the financing of a (long-term) eligible investment asset, any subsequent adjustment (e.g. in case of a decrease of the ELTIF's NAV) is de facto excluded. Indeed article 19 of the ELTIF Regulation

only foresees a monitoring and – in case of passive breach – an adjustment obligation for ELTIF investments, not also for the borrowing limitations.

### 11. What is the maximum maturity of an ELTIF's borrowing?

As provided for under the ELTIF Regulation, the maturity of the debt financing should not exceed the life span of the ELTIF.

In case a credit should be granted on a roll-over basis, the maturity of such facility should be considered as 'shorter than the ELTIF's end of life' provided one roll-over period ends the date of end of life of the ELTIF. For example, if an ELTIF has an end of life of 11 years and the credit roll over periods are 5 years each, the first and second periods (ending after 5 and 10 years respectively) would be considered as ending before the end of life of the ELTIF.

#### Further comments:

Situations may occur where a bank grants a credit under a roll-over model, i.e. where a credit is granted for, say, 5 years with an option of 5-year-renewal every five years.

Under the AIFMD, credit roll-over should be considered as leverage within the meaning of AIFMD. In such case, the credit line does have a – generally short – contractually agreed maturity but is systematically rolled-over (save in the case of breach of covenants). ALFI takes the view that such credit-roll-over should not be per se excluded under the ELTIF Regulation. Indeed, each renewal for another roll-over period can be opposed to and hence, allows the ELTIF to step out of the arrangement at a point in time which precedes its defined end of life.

### 12. Is borrowing for purposes of bridge financing allowed?

The ELTIF Regulation does not explicitly mention other types of borrowing such as capital call bridge financing.

ALFI takes the view that it should be considered that capital call bridge financing should be allowed provided this is (i) disclosed to the investors, (ii) properly addressed by the liquidity management policy of the ELTIF and (iii) does not create any additional risk for the ELTIF or its investors.

#### Further comments:

In the absence of any explicit provision in the ELTIF Regulation one may refer to Article 6 (4) of the AIFM Regulation, which sets out that "AIFMs shall exclude borrowing arrangements entered into if these are temporary in nature and are fully covered by contractual capital commitments from investors in the AIF". Temporary borrowing arrangements that are entirely covered by investor commitments shall not be considered as leverage (i.e. borrowing for investment purposes), capital calls for bridge financing is indeed market practice and a necessary mechanism to allow a sound management of long-term investment fund structures. As a consequence, absent any specific provision in the Regulation and based on general AIFMD principles, ALFI considers that capital call bridge financing shall be allowed.

### 13. What guarantees may be provided to lenders of an ELTIF?

The financing granted by an external lender (e.g. bank) may be secured by the relevant financed asset, as is usually the case.

An ELTIF should however be allowed to provide as guarantee assets other than those financed by a specific lending arrangement. Indeed the ELTIF Regulation generally allows an ELTIF to 'encumber assets' (without restriction) provided such guarantees do not exceed 30% of the capital. Based on such wording ALFI takes the view that (although this may be rare in practice) an ELTIF would be legally permitted to grant a security on asset A to a lender having financed the acquisition of asset B.

In the case of a closed-ended ELTIF, it can also be foreseen that an ELTIF provides uncalled commitments as collateral to a lender, provided that investors are duly informed in advance and that the triggering of such collateral shall not increase the liability of the said investors.

#### Further comments:

Although it would be rare for a borrower to grant a guarantee on an asset different from the one being financed, such situation could possibly occur in the case of asset refinancing. Allowing the financed asset and the guarantying asset to be different might for instance enable an ELTIF to obtain better conditions when refinancing underperforming assets by providing guarantees on performing assets.

ALFI takes the view that it is the AIFM's duty to ensure and document in writing that the guarantee limit of 30% is observed. The AIFM may decide to request a valuation report from an external valuer to confirm the value of the security(-ies) granted.

### 14. In which currency may an ELTIF borrow?

According to the text of the ELTIF Regulation the currency of the borrowing shall be the same currency in which the financed asset is expected to be acquired.

In ALFI's view this provision aims at avoiding currency risk to the detriment of the investors.

### 15. Can an ELTIF use borrowed cash to make loan investments?

Borrowing may only be used to finance eligible investment assets and may not be used to grant a loan to a qualifying portfolio undertaking.

However, such provision should in ALFI's view not preclude the ELTIF from subscribing to debt instruments issued by an asset or by intermediary holding vehicles.

**16. According to Article 16 (1) b) of the ELTIF Regulation, borrowing may not be used in situations where the ELTIF holds sufficient cash or cash equivalents in order to perform a given investment. What does such ‘no cash condition’ mean?**

Cash or cash equivalents are to be understood as defined under Directive 2009/65 (UCITS IV Directive). Such restriction shall not apply to other liquid investments eligible under UCITS IV Directive.

In ALFI’s view, the application of this rule should be appreciated at a given moment, depending on the circumstances the ELTIF is in at that moment. Indeed, ALFI takes the view that an ELTIF may use borrowing while holding cash or cash equivalents provided such cash or cash equivalents are intended to be used for the purpose of (i) carrying out another investment (ii) liquidity management, or (iii) distribution to investors as per the distribution policy provided for under the relevant legal documentation.

**Further comments:**

ALFI understands this rule as aiming at avoiding that an ELTIF misuses the cash it would borrow and in particular borrow cash while it has sufficient investor money received from capital calls or subscriptions. This should in ALFI’s view however not affect the cash an ELTIF can hold as part of its liquidity management policy, its distribution policy or its investment strategy.

Indeed ALFI believes it would make little sense that every ELTIF which holds 30% of UCITS-eligible (i.e. liquid) assets under article 9 (1) (b) of the ELTIF Regulation be prevented from borrowing. This would in particular be the case if an ELTIF were to allow redemptions.

## **E. Tax**

### **17. What tax treatment will apply to ELTIFs?**

This depends on the regulatory regime that will be applicable to the AIF, which was set up as an ELTIF. There is currently no special tax treatment available for ELTIFs.

### **18. Will ELTIFs be able to benefit from double tax treaties?**

This depends on the regulatory regime that will be applicable to the AIF, which was set up as an ELTIF.

## F. Commitment versus upfront payment

### 19. May ELTIFs offer subscriptions to retail investors where commitments are paid in several capital calls?

The ELTIF Regulation itself contains no restriction regarding the way in which retail investors may pay their investments. As a consequence, although this is not very likely in practice (see comment below), both upfront payment and contributions in several capital calls would be allowed by the text of the ELTIF Regulation.

#### Further comments:

At first sight, considering the illiquid nature of the target investments of an ELTIF, a commitment structure appears to be the more likely funding model for ELTIFs, since such structure avoids having long term cash holdings in the fund with a diluting impact on the performance.

It is however rather unlikely that ELTIF initiators would decide to offer retail investors investments via capital commitments, in particular where retail investors would commit a comparably low investment amount. The implementation of a capital call structure is costly and burdensome and bears the risk that investors might not be able to meet capital calls. Indeed retail investors may face challenges in ensuring capital availability over a long period of time. Such risk is higher for retail investors than for institutional investors, which makes this scenario rather unlikely.

Therefore, in practice, it is very likely that ELTIF sponsors favour an upfront payment model when offering ELTIF shares/units to retail investors.

### 20. Can an upfront payment model and a commitment payment model be implemented in the same ELTIF?

The ELTIF Regulation does not provide for any explicit permission or prohibition to combine commitment and upfront payment investors in one structure.

There are however aspects that shed serious doubt on the legal, accounting and operational feasibility of such combined structure.

A practical solution might be to create different sub-funds with respectively upfront and commitment funding which may invest on a pooled, or co-management basis.

## G. Marketing to retail investors

### 21. When ELTIFs are marketed to retail investors, what marketing requirements shall apply?

When ELTIFs are marketed to retail investors the requirements of the ELTIF Regulation and those under MiFID shall apply cumulatively. ELTIFs contain certain specific requirements when being marketed to retail investors. It is possible to market or distribute ELTIFs by the following means:

#### a. Traditional route:

ELTIF has appointed an AIFM which registers the fund in other EU jurisdictions and distributors would be appointed or investors solicited directly by the AIFM. In this context, where ELTIFs are marketed to retail investors, the following requirements apply:

##### **Direct distribution by AIFM**

- Managers must provide appropriate investment advice to the retail investor;
- Managers must be authorised to provide services referred to in points (a) and (b)(i) of Art 6(4) of AIFMD and under MiFID;
- Managers must also ensure that the retail investor with a portfolio that does not exceed EUR 500,000 shall not invest an aggregate amount exceeding 10% of its instrument portfolio in ELTIFs. Such assessment shall be based on the information provided by the retail investor;
- When the ELTIF is distributed directly by the AIFM, such AIFM shall conduct a special suitability assessment according to the provisions of Article 28 (1) of the ELTIF Regulation;
- ELTIFs must have a KID and provide it to the investor;
- Article 27 of the ELTIF Regulation requires that for each ELTIF that is intended to be marketed to retail investors, a specific internal process be implemented to assess the investment strategy and the life of an ELTIF before it is marketed to retail investors;
- If the end of life exceeds 10 years, a written alert shall be issued that ELTIF may not be suitable for retail investors.

##### **Distribution delegated to distributors**

- Distributors must provide appropriate investment advice to the retail investor;
- Distributors must also ensure that the retail investor with a portfolio that does not exceed EUR 500,000 shall not invest an aggregate amount exceeding 10% of its instrument portfolio in ELTIFs;
- When the ELTIF is marketed by a distributor, ELTIF being a financial instrument under MiFID II, the MiFID II requirements for distribution, as contained in Article 25 (2) will apply to the distributor. These MiFID II rules will apply to the distributor from January 2017 (please note that a Commission proposal exists that would like to extend this to January 2018). In the meantime MiFID I rules will apply;
- ELTIFs must have a KID and provide it to the distributor;
- Article 27 of the ELTIF Regulation requires that for each ELTIF that is intended to be marketed to retail investors, a specific internal process be implemented to assess the investment strategy and the life of an ELTIF before it is marketed to retail investors;
- If the end of life exceeds 10 years, a written alert shall be issued that ELTIF may not be suitable for retail investors.

**b. Listing:**

ELTIF appoints an AIFM which chooses an offering route similar to UK Investment Trusts where the ELTIF would be listed on a main exchange and all transactions in the ELTIF would be done through the stock exchange.

For the requirements applicable when the ELTIF is listed, please refer to Question 24 following on listing.

**c. Traditional route and listing:**

ELTIF appoints an AIFM and ELTIF is both listed on exchange and also registered in other EU jurisdictions. In this event, the above applies respectively to each of these routes.

**Further comments:**

Many distribution requirements of the ELTIF Regulation are (to some extent) inspired by similar provisions under MiFID. To facilitate the reader's oversight over the respective requirements we copy the relevant extracts of the MiFID framework set out below, for the purpose of comparison.

Art. 28 (1)(b) is inspired by MiFID Art. 25 para 2. (assessment of suitability and appropriateness)

"...When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his ability to **bear losses**, and his investment objectives including his risk tolerance so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(11), the overall bundled package is suitable..."

Art. 27 is inspired by MiFID II Art 16 para. 3: (definition of a target market)

"... An investment firm which manufactures financial instruments for sale to clients shall maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients.

The product approval process shall specify an identified target market of end clients within the relevant category of clients for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.

An investment firm shall also regularly review financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

An investment firm which manufactures financial instruments shall make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument. ..."



Art. 27 is inspired by MiFID II Art 24 para. 2: (definition of a target market) "...Investment firms which manufacture financial instruments for sale to clients shall ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments is compatible with the identified target market, and the investment firm takes reasonable steps to ensure that the financial instrument is distributed to the identified target market..."

### Warning:

The ELTIF Regulation specifies in recital (41) "when marketing an ELTIF to retail investors, it should be mandatory to publish a key information document in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council". The application for the PRIIPs Regulation has been delayed until 1 January 2018. There is currently no legal requirement to produce a PRIIPS KID for ELTIFs prior to this date. Luxembourg law foresees the possibility to produce a UCITS KIID like document for alternative investment funds.

### **22. Article 30 (3) of the ELTIF Regulation provides that a retail investor having a financial instruments portfolio of less than EUR 500,000 shall invest no more than 10% of its financial instruments portfolio in ELTIFs and shall further invest no less than EUR 10,000 in one or more ELTIFs. How does this apply in practice?**

The provision applies only to retail investors with a financial instruments portfolio that does not exceed EUR 500,000 (cash and financial instruments with a value of 1 to including EUR 500,000). Investors other than retail investors (e.g. small professional investors) do not have to fulfil this provision even if they remain below the EUR 500,000 threshold. Also, retail investors having a financial instruments portfolio exceeding EUR 500,000 will not be captured by this provision, they could hence invest more than 10% of their portfolio or could invest less than EUR 10,000 in ELTIFs (subject of course to the suitability assessment and other retail investor investment safeguards).

### Further comments:

The objective of Article 30 (3) ELTIF Regulation is to make the distinction between high net worth individuals ('HNWI') and common retail investors by requiring a minimum of investment and a maximum of exposure to such funds.

### **23. Retail investors are granted a withdrawal right during 2 weeks after their subscription in units or shares. How does this withdrawal right apply in practice?**

In an upfront payment model the provision seems clear and will grant a two weeks withdrawal right from the date of subscription. In the unlikely event that an ELTIF should allow retail investors to invest via a commitment model, share or units will be issued progressively over a long period of time, upon the issuance of each new capital call. ALFI considers that in such event, where the cash collection follows the commitment process, the retail investor withdrawal right should be valid only for the initial investment (i.e. not after each subsequent drawdown). As a consequence, the retail investor should have two (2) weeks to withdraw its commitment into the ELTIF after its commitment and initial capital contribution to the ELTIF. After this delay the retail investor shall be bound by its commitment and hence liable to the capital calls initiated by the ELTIF.

## H. Listing

### 24. Listing venue: Where can an ELTIF be listed?

An ELTIF can be listed on any eligible stock exchange or multilateral trading facility (“MTF”). In Luxembourg for example the Luxembourg Stock Exchange or the Euro MTF would be adequate venues to organise secondary trading for ELTIFs. There is no geographic restriction in the ELTIF Regulation. As a consequence ELTIFs may in principle be listed on any stock exchange without geographic restriction<sup>1</sup>.

#### Further comments:

Art. 19 (Secondary Market) of the ELTIF Regulation states that the “rules or instruments of incorporation of an ELTIF shall not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or a multilateral trading facility’ nor shall they ‘prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF”.

### 25. Will ELTIFs be treated in Luxembourg under the relevant stock exchange rules applicable to investment fund listings or under those applicable to share or bond listing?

In a majority of cases the applicable rules to the listing of ELTIFs on either the Luxembourg Stock Exchange or the Euro MTF will be the rules applying to investment funds listing. Depending on the legal form and other characteristics of the relevant ELTIF it could however in some cases fall under the listing rules applicable to bonds or shares listing. In case of doubt it is advisable to contact the Luxembourg Stock Exchange, if the ELTIF is listed thereon, for clarification.

### 26. What rules will apply to the listings of ELTIFs?

The general rules for securities of the relevant type on the relevant market will apply. The application of the Prospective Directive needs to be borne in mind. Also, as for any listed security ELTIFs will need a clearing agent before being able to apply for listing on a stock exchange or MTF.

In Luxembourg the available clearing agents are Clearstream and Euroclear. Difficulties may arise if ELTIFs with a commitment structure wish to obtain a listing since such commitment structure may imply challenges for the clearing agent. This should be checked beforehand with the relevant clearing agent.

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<sup>1</sup> Subject to any restrictions resulting from applicable rules related to public offering or registration requirements.

## 27. Will any specific tests apply when retail investors wish to purchase ELTIFs on a secondary market?

In ALFI's view no tests or safeguards shall apply where an ELTIF is traded on a secondary market. This means that the specific retail investor tests established by the ELTIF Regulation (suitability, thresholds etc.) shall not apply when a retail investor purchases ELTIF securities on a secondary market.

In practice any secondary market trading is realised via financial intermediaries (brokers) which are subject to certain requirements. In particular, since ELTIFs will not be qualified as non-complex "execution-only" financial instruments, MiFID II requirements for retail investor activities will apply. Furthermore, in practice ELTIF managers may also wish to create certain thresholds on a voluntary basis (for instance by allowing only block trades of e.g. EUR 10,000 or a minimum trading amount) however this is not required by the ELTIF Regulation.

### Further comments:

The ELTIF Regulation does not foresee any restrictions or tests for secondary market trading including to retail investors. Article 19 prohibits any restrictions to secondary market trading or to the free transferability of ELTIF shares or units. In ALFI's view this does however not prohibit voluntary block trade or minimum trade restrictions by the ELTIF manager if these are deemed necessary in the interest of the ELTIF and its investors.

[**NB:** Unless and until the SIF/ SICAR/RAIF laws are amended, it should be noted that the above does not affect any non-ELTIF-related eligibility requirements for investors (such as e.g. currently the "well-informed investor" requirements in Art. 2 of the SIF, SICAR and RAIF laws). Where an investor acquires shares of an ELTIF-SIF or ELTIF-SICAR on the secondary market the investor eligibility of the acquirer would be verified ex post and should the relevant requirements not be fulfilled, the SIF or SICAR would be entitled to exercise the remedies provided for such event in its documentation].

## I. Authorisation/Supervision/Procedure

### 28. Authorisation of ELTIF and ELTIF managers – which authorisations are required and who grants the authorisations?

#### Authorisation of ELTIFs

An AIF may only be marketed and labelled as a “European long-term investment fund” or “ELTIF” when it has been authorised by the competent authority in the ELTIF’s home country in accordance with the ELTIF Regulation. To obtain authorisation as an ELTIF, an application has to be made to the competent authority in the ELTIF’s home country (which for AIFs established in Luxembourg is the CSSF, see further below). An authorisation as an ELTIF is valid for all EU Member States.

#### Approval of ELTIF managers

The legal entity managing an ELTIF must, in accordance with the ELTIF Regulation, be approved to do so by the competent authority in the ELTIF’s home country. An entity which intends to manage a Luxembourg ELTIF shall apply to CSSF for its approval, independently from whether such entity is a Luxembourg or a non-Luxembourg AIFM.

In addition, since the ELTIF per definition is an AIF (alternative investment fund) in accordance with the AIFMD, the manager of the ELTIF must be approved as an AIFM (alternative investment fund manager) in accordance with the AIFMD. The approval of the ELTIF manager as an AIFM is not governed by the ELTIF Regulation, but by the AIFMD (which in Luxembourg is implemented into Luxembourg law by the law of 12 July 2013 on alternative investment fund managers). Hence, where an ELTIF manager is a non-Luxembourg entity, the competent authority to grant an AIFM licence would be the competent authority of its home country, whilst the competent authority to grant the authorisation as ELTIF manager would be that of the home country of the ELTIF.

If the legal structure of an ELTIF allows internal management, and should the ELTIF not appoint an external AIFM, then the ELTIF itself must apply for approval as an AIFM under AIFMD. CSSF would then grant authorisation to that ELTIF as (i) ELTIF and (ii) as AIFM and (iii) as ELTIF manager.

### 29. Who can apply for authorisation to set up an ELTIF and authorisation to manage an ELTIF, respectively?

#### Authorisation of ELTIFs

According to the ELTIF Regulation, only ‘EU AIFs’ are eligible to apply for and to be granted authorisation as an ELTIF. The term ‘EU AIF’ is defined in the AIFMD. An ‘AIF’ is a non-UCITS fund which raises capital from a number of investors, with the aim of investing it in accordance with a defined investment policy for the benefit of those investors. The fact that only EU AIFs are eligible to apply for and to be granted authorisation as ELTIFs means, in accordance with the AIFMD, that the investment fund must be authorised or registered in a Member State of EU under its national laws, or, if it is not authorised or registered in a Member State of EU, has its registered office and/or head office in a Member State.

### **Approval of ELTIF managers**

According to the ELTIF Regulation (except where an ELTIF is internally managed), only 'EU AIFMs' may apply to the relevant competent authority for approval to manage an ELTIF. An 'EU AIFM' is, in accordance with the AIFMD, a legal person (commonly called a 'management company') which has its registered office in an EU Member State and whose regular business is managing one or more AIFs. To act as an ELTIF manager an AIFM must be fully authorised as an AIFM, not only registered.

### **30. According to article 3(2) of the ELTIF Regulation, only EU AIFs shall be eligible to apply for and to be granted authorisation as an ELTIF. Does this mean that the EU AIF must be set up and existing at the time the application for authorisation as an ELTIF is submitted to the local competent authority?**

No, in ALFI's view this provision does not contain a time restriction but only a qualitative and geographic restriction. Indeed in our view the purpose of this provision is to ensure that only (existing or to-be-created) 'EU AIFs' may be granted authorisations as ELTIFs. If the AIF to be authorised as an ELTIF is not yet set-up at the time of the application, the application for authorisation as an ELTIF may, in ALFI's view, be submitted by the relevant AIFM, or, if the AIFM is yet to be set-up itself, by the initiator of the ELTIF.

### **31. According to article 5(2) of the ELTIF Regulation, only an EU AIFM authorised under AIFMD may apply to the competent authorities of the ELTIF for approval to manage an ELTIF. Does this mean that the EU AIFM must be an approved EU AIFM at the time the application to manage an ELTIF is submitted to the local competent authority?**

No, similar to what is stated above in relation to ELTIFs, in ALFI's view this provision only contains a qualitative and geographic restriction, no timing constraint. The purpose of this provision is to ensure that only 'EU AIFMs' are authorised to manage ELTIFs.

ALFI believes that an entity applying to be authorised as an EU AIFM and which intends to manage an ELTIF may submit the application to manage the ELTIF before it has been approved as an AIFM. Indeed, the application to be authorised as an EU AIFM and the application for authorisation to manage an ELTIF may, in ALFI's view, be made at the same time. However, the authorisation to manage an ELTIF can only be granted at the same time or after the entity has been approved as an EU AIFM.

### **Further comments:**

For the avoidance of doubt it should be noted that a parallel submission of the requests for authorisation as AIF (if applicable), ELTIF, AIFM and ELTIF manager shall not shorten the respective legal instruction periods granted for each of the requested authorisations to the relevant authorities. I.e., the total permitted instruction period for granting authorisation as AIFM (3 months, with an extension possibility as per AIFMD) could not be shortened by the fact that an entity has at the same time submitted a request for authorisation as an ELTIF manager (with a permitted instruction period for ELTIF approval of 2 months).

### 32. In case the AIF is structured as an umbrella fund with several compartments (sub-funds), can a single compartment of the AIF apply for authorisation as an ELTIF?

Reference is made to **Question 1** above.

Indeed, it is explicitly stated in article 1(1) of the ELTIF Regulation: “This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (EU AIFs) or compartments of EU AIFs that are marketed in the Union as European long-term investment funds (ELTIFs).”

### 33. How long will the approval process of an application for authorisation to set-up an ELTIF and to manage an ELTIF take?

According to the ELTIF Regulation, applicants shall be informed within two (2) months from the date of submission of a complete application whether authorisation as an ELTIF, including approval for the EU AIFM to manage the ELTIF, has been granted.

For internally managed EU AIFs, the EU AIF shall be informed within three months from the date of submission of a complete application whether authorisation as an ELTIF has been granted.

#### Further comments:

See comment to **Question 32** above

### 34. Under which conditions are authorisations granted?

#### Authorisations of ELTIFs

According to article 6(1) of the ELTIF Regulation, an EU AIF shall be authorised as an ELTIF only where its competent authority:

- Is satisfied that the EU AIF is able to meet all the requirements of the ELTIF Regulation;
- Has approved the application of an EU AIFM authorised in accordance with the AIFMD to manage the ELTIF, the fund rules or instruments of incorporation, and the choice of the depositary.

If the CSSF refuses to grant an EU AIF authorisation as an ELTIF, CSSF shall, in accordance with the ELTIF Regulation, communicate the reason for its refusal to the EU AIF.

#### Approval of ELTIF managers

According to article 6(3) of the ELTIF Regulation, the competent authority of the ELTIF may refuse to approve the application of an EU AIFM to manage an ELTIF only where the EU AIFM:

- Does not comply with the ELTIF Regulation;
- Does not comply with the AIFMD;
- Is not authorised by its competent authority to manage AIFs that follow investment strategies of the type covered by the ELTIF Regulation;
- Or has not provided the documentation referred to in Article 5(2) of the ELTIF Regulation, or any clarification or information requested thereunder.

Before refusing to approve an application, the competent authority of the ELTIF shall consult the competent authority of the EU AIFM.

### **Internally managed ELTIFs**

In case an internally managed EU AIF applies for authorisation as an ELTIF and as an AIFM in accordance with article 5(5) of the ELTIF Regulation, CSSF shall authorise the EU AIF only where it is satisfied that the EU AIF complies with both the requirements of the ELTIF Regulation and of the AIFMD regarding the authorisation of an EU AIFM.

### **35. Which is the competent authority for applications?**

#### **ELTIFs**

The CSSF is the competent authority for AIFs established in Luxembourg.

#### **ELTIF managers**

EU AIFMs shall apply for approval to manage an ELTIF to the competent authority in the ELTIF's home country. Hence, in case of a Luxembourg ELTIF, the competent authority for such applications is CSSF regardless of whether the ELTIF manager is a Luxembourg or non-Luxembourg entity.

### **36. In case the CSSF is the competent authority, what is the authorisation procedure and what has to be part of the application?**

The application for authorisation of a new ELTIF (regardless of it being an existing AIF or an AIF to be established) and of the approval to manage an ELTIF shall include an application questionnaire which is available on the CSSF's website, <http://www.cssf.lu>.

#### **Applications of ELTIFs**

The process for authorisation of a new ELTIF is initiated by the applicant submitting the CSSF application questionnaire together with the following information, in accordance with article 5(1) of the ELTIF Regulation:

- The fund rules or instruments of incorporation;
- Information on the identity of the proposed manager of the ELTIF and its current and previous fund management experience and history;
- Information on the identity of the depositary;
- A description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors.

Any subsequent modification made to these documents shall immediately be notified to the CSSF. The application questionnaire together with the relevant documents shall be submitted to the CSSF electronically as outlined on CSSF's website.

#### **Application of ELTIF managers**

In case of an existing (Luxembourg or non-Luxembourg) AIFM which applies for authorisation to manage a Luxembourg ELTIF which is to be set up (regardless of it being an existing AIF or an AIF to be established), the AIFM may submit to the CSSF its application to manage the ELTIF in the same file as the application to set up the ELTIF. The application to manage the ELTIF shall, in case the AIFM is established in Luxembourg, refer to the documentation included in the AIFM application submitted to the CSSF by the AIFM.



In addition, and in accordance with the ELTIF Regulation, an application for approval to manage an ELTIF shall include the following:

- The written agreement with the depositary (which, in ALFI's view, may be a draft in its final form) – in case the ELTIF is to be marketed to retail investors, the depositary agreement must take into account the special features outlined in Article 29 of the ELTIF Regulation (e.g. in relation to the depositary's liability and re-use of assets);
- Information on delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF;
- Information about the investment strategies, the risk profile and other characteristics of AIFs that the EU AIFM is authorised to manage.

Any subsequent modifications made to these documents shall immediately be notified to the CSSF.

**If an AIFM is not yet established or if an existing AIFM is not authorised to manage AIFs with investment strategies such as the relevant ELTIFs**, the AIFM must also apply for an authorisation as an AIFM or for an extended AIFM licence, as relevant. Such application shall follow the procedure for authorisation or amendment of the AIFM authorisation (please refer to the CSSF's website <http://www.cssf.lu/en/supervision/ivm/aifm/agreement>). In such case, the application for authorisation to manage the ELTIF and the application in relation to the AIFM licence shall refer to each other.

In case the legal form of the AIF permits internal management and the AIF's governing body chooses not to appoint an external AIFM, the internally managed AIF shall, according to the ELTIF Regulation, apply simultaneously for authorisation as an ELTIF under the ELTIF Regulation and as an AIFM under the AIFMD. In addition to what is stated in article 7 of AIFMD, the application for authorisation as an internally managed ELTIF shall include the following:

- The fund rules or instruments of incorporation;
- A description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors.

The AIFM application must follow the process for AIFM authorisations (please refer to CSSF's website: <http://www.cssf.lu/en/supervision/ivm/aifm/agreement>).

### Further comments:

The ELTIF Regulation does not explicitly require the submission of the prospectus as part of the filing. However, according to article 24 of the ELTIF Regulation, an ELTIF shall send its prospectus to the competent authorities of the ELTIF. In practice ALFI recommends to include the prospectus in the application file requesting authorisation as an ELTIF.

In ALFI's view, if the units or shares of the ELTIF shall be marketed to retail investors, a draft KID in accordance with Regulations (EU) No 1286/2014 on key information documents for package retail and insurance-based investment products (PRIIPs Regulation) shall also be part of the application file.

On PRIIPs please also refer to **Question 21** above.



**37. May several applications to set up new ELTIFs be included in the same file submitted to CSSF?**

According to ALFI's discussions with the CSSF, if several new compartments (sub-funds) of an umbrella AIF are to be set-up as ELTIFs, separate applications to set up such ELTIFs shall be made, one for each ELTIF.

## **J. Management**

### **38. Can ELTIF managers delegate portfolio or risk management to a non-EU manager or to an EU manager that is not authorised to act as an ELTIF manager?**

In ALFI's view yes. The ELTIF Regulation does not contain any restrictions on delegation of the risk or portfolio management functions that would go beyond the requirements of the AIFMD.

The possibility for ELTIF managers to delegate these functions is explicitly mentioned in Article 5 point 2 b) of the ELTIF Regulation. As a consequence, in the absence of any specific requirements, the general rules set forth in the AIFMD shall apply.

## **K. Marketing passport**

### **39. Which requirements shall apply where an ELTIF is marketed to retail investors based on the marketing passport?**

As results from Article 31 of the ELTIF Regulation, the marketing rules under the AIFMD shall be deemed extended to cover also retail investors in the host countries into which an ELTIF marketing notification has been made. In ALFI's view no additional host country requirements may be imposed based on article 43 of the AIFMD since this would be contrary to the spirit and intent of the ELTIF Regulation.

#### **Further comments:**

The absence of an explicit exemption from Article 43 AIFMD (re: additional host country requirements) could potentially create confusion or could be considered as allowing 'gold plating' by host Member States. In ALFI's view this should be excluded.

## L. Distributions, redemptions and exit

### 40. Under what conditions may an ELTIF distribute income to its investors?

The ELTIF may distribute regularly the proceeds generated by the assets as long as they are not required to meet future commitments of the ELTIF. As per Article 22 such proceeds shall comprise:

- Proceeds that the assets are regularly producing;
- Capital appreciation realised after the disposal of an asset.

Generally, the rules or instrument of incorporation of the ELTIF shall specify the distribution policy to be applied during its life.

In addition to the above, specific Luxembourg legal provisions may apply to the distribution to be performed by an ELTIF.

### 41. Can an ELTIF return capital before its end of life?

As per Article 22 (3) of the ELTIF Regulation capital may be returned to investors upon the disposal of assets if such is deemed to be in the best interest of the investors.

### 42. May an ELTIF make distributions in kind?

Investors shall always have the option to be repaid in cash (Article 18 (5) of the ELTIF Regulation). However, repayments in kind are possible under certain conditions (Article 18 (6) of the ELTIF Regulation).

### 43. May an ELTIF investor request the redemption of its shares/units?

In principle, redemptions shall not be possible before the end of the life of an ELTIF (Article 18 (1) of the ELTIF Regulation).

However, at the choice of the ELTIF manager and under certain mandatory conditions, redemptions at the request of investors may be permitted, provided this is explicitly foreseen in the rules or instrument of incorporation of the ELTIF (Article 18 (2) of the ELTIF Regulation).

Conditions are the following:

- No redemptions may be granted before a date which shall be determined as being no later than 5 years after the date of authorisation of the ELTIF or the half of the life of the ELTIF, whichever is the earlier (Article 17 of the ELTIF Regulation) (this date being the same from which will the portfolio composition and diversification rules apply);
- An operating liquidity management system is in place to monitor the illiquidity risk;
- A redemption policy is clearly set out and provides for periods of time during which redemptions may be requested;
- The amount of redemptions for a period of time has to be limited to a percentage of assets of the ELTIF being transferable securities or money markets instruments;

- Fair treatment of investors and a redemption on a *pro rata* basis, if the total amount of redemption requests exceeds the percentage of available liquidity in the fund, within the said percentage of assets mentioned above.

#### 44. The ELTIF Regulation requires that each ELTIF defines its “end of life”. What does this mean?

The ‘end of life’ of the ELTIF (article 18 (1) of the ELTIF Regulation) shall in ALFI’s view not be understood as the term (within the meaning of Luxembourg corporate laws) of the ELTIF but as the date:

- (i) By which all assets of the ELTIF have been or should have been realised, and
- (ii) From which investors may request the redemption of their interests/units/shares.

Such date needs to be defined under the “rules of instruments of incorporation” of the ELTIF. The ELTIF documents may provide for the right to extend temporarily the end of life, provided such extension possibility is clearly limited in time and the conditions for such extension are clearly disclosed to the investors.

#### Further comments:

The ELTIF Regulation makes reference throughout the text to the ‘end of life’ of the ELTIF, the exact meaning of which has not been defined. Such reference is however of paramount importance as the occurrence of the ‘end of life’ of an ELTIF will trigger a certain number of events (e.g. reporting on the expected realisation of the portfolio or countdown to satisfy redemption requests).

The ‘end of life’ is a date which, for each ELTIF, can be clearly determined by applying the rules set under the ELTIF Regulation. It also appears to be distinct of what is generally referred to as the ‘term’ of a vehicle which, in ALFI’s view, would be the date when the liquidation of the legal structure is closed and liquidation proceeds paid to the investors. Indeed the ELTIF Regulation provides for a winding-down at investor request under certain conditions **after** the ‘end of life’ of an ELTIF. ALFI concludes from such provision that the ‘end of life’ cannot be its term since this would render the winding-down provision obsolete.

‘Term’ and ‘end of life’ should consequently be considered as distinct moments in time. While the ‘term’ is, under Luxembourg law, a legal concept, the ‘end of life’ is an event which will trigger certain legal consequences. Both notions should consequently be disclosed in the legal documentation of the ELTIF.

#### 45. Where should the end of life be disclosed and what are the conditions for its amendment?

According to article 18(1) of the ELTIF Regulation, the end of life needs to be defined in the ‘rules of instruments of incorporation’. This refers, for corporate structures, to the articles of incorporation, for partnerships, to the partnership agreement, or for contractual funds, to the management regulations.

In ALFI’s view it should however be possible to provide for the existence of such ‘end of life’ in the constitutional documents whilst referring, for its precise definition and determination, to other contractual documents binding upon the ELTIF, e.g. the prospectus or the offering documentation of the ELTIF. This is in particular true for umbrella structures.

The amendment to the 'end of life' will need to abide by the rules governing the amendment to the relevant document and/or any other rule set within such document. Such document should also expressly specify the conditions under which the "end of life" of the ELTIF can be extended.

### Further comments:

This aims at reproducing what is already market practice with respect to the term of a fund.

In addition, defining the 'end of life' exclusively under the "rules or instrument of incorporation" of the ELTIF might lead to situations where, depending on the legal form of the ELTIF, the extension to the end of life is more or less flexible (from a general partner decision in a special limited partnership to an extraordinary meeting of shareholders in a corporate entity).

As an example, articles of incorporation of a Luxembourg SICAV can only be amended after shareholder approval at a shareholders' meeting (EGM) held before a notary. To convene a shareholders' meeting is costly and time consuming (in particular if the quorum for the EGM is not reached and hence the EGM has to be reconvened). In addition, if a new ELTIF compartment is to be launched, the shareholders of the existing compartments will have to take the cost for and be invited to the EGM to vote on, among other things, the date of the end of life of another compartment to be launched within the same umbrella, despite the fact that the existing shareholders are not affected or concerned by that new compartment.

## M. Valuation and accounting

### 46. Which valuation rules apply to ELTIFs?

The valuation rules of an ELTIF must comply with the AIFMD law. Precise details are currently being considered in the draft RTS.

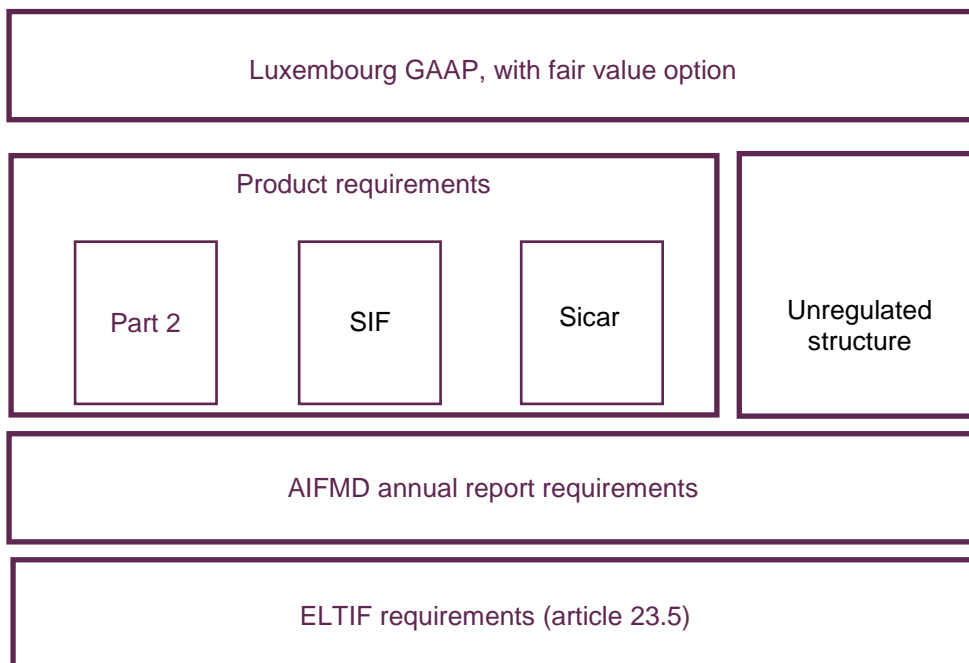
#### Further comments:

See ESMA consultation on Regulatory Standards.

### 47. Which are the available reporting standards?

When determining the accounting standards and annual reporting requirements applicable to an ELTIF in Luxembourg, different legislations may apply in parallel and in such event shall be taken into consideration:

- **Company law requirements**, applicable to ELTIFs set up as a company. This law foresees the option to opt for fair value (IFRS);
- **Sectorial law applicable to funds set up as Part 2, SIFs or SICARs** (Investment funds lay out of balance sheet/profit and loss account, information on portfolio);
- **AIFMD requirements (management report, remuneration disclosure, material changes...)**,
- **ELTIF requirements (cash-flow, information on portfolio...)**.



## N. Solvency/Juncker Plan

### 48. Which is the impact of the Juncker plan / EIB activities on ELTIFs

The so-called Juncker plan foresees substantial investment into the European economy. This plan envisages the mobilisation of at least EUR 315 bn. of additional investment in the EU economy (by EU member states, the Commission and the EIB). At EU level, a new [European Fund for Strategic Investments](#) (not to be confused with an investment fund as such) was established to provide risk support for long-term investments and ensure increased access to risk-financing for SMEs and mid-cap companies. It is expressly mentioned that the EIB plays a pivotal role in the support and financing of investments.

Among the areas of interventions being considered, the European Fund for Strategic Investments should have the possibility to finance not only individual projects but also support private fund structures such as ELTIF, set up by private investors and/or NPBs. This will create an additional multiplier effect and maximise the impact on the ground.

### 49. How are ELTIFs treated under Solvency II?

Solvency II Directive was amended by Commission Delegated Regulation 2016/467 allowing investments in ELTIFs to benefit from the same capital charges as equities traded on regulated markets, lower than that for other equities.

## O. Other

### 50. Can UCITS invest in ELTIFs and under which conditions?

As per the recital 38 of the ELTIF Regulation, “In order to broaden retail investor’s access to ELTIFs, a UCITS is able to invest in units or shares issued by an ELTIF to the extent that the ELTIF’s units or shares are eligible under Directive 2009/65/EC of the European Parliament and of the Council”, UCITS vehicles have the ability to invest into ELTIFs at certain conditions. Further details are provided below. Closed-ended ELTIFs would be considered as eligible transferable securities, provided they meet the criteria of transferable securities and the additional requirements applicable to closed-ended investment funds as listed below. Units in closed-ended funds constituted as investment companies or as unit trusts need to fulfil the following criteria:

They fulfil the criteria applicable to transferable in respect of:

- The potential loss is limited to the amount paid for them;
- Their liquidity does not compromise the ability of the UCITS to comply with redemption request(s);
- Reliable valuation is available for them;
- Appropriate information is available for them;
- They are negotiable;
- Their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS;
- Their risks are adequately captured by the risk management process of the UCITS.

They are subject to corporate governance mechanisms applied to companies.

The entity managing the assets of the closed end funds should be subject to national regulation for the purpose of investor protection.

If the above criteria are all met, the ELTIF will be eligible:

- Under article 50. 1), if admitted or dealt on a regulated market,
- Under article 50. 2), if not listed on a regulated market (with an overall limit of 10% of the UCTS NAV for the total of all securities falling into this category).

#### Further comments:

Against the background of ESMA statement 2012/721 on article 50 (2) (a) of the UCITS Directive open-ended ELTIFs are currently most probably not eligible investments for UCITS.



<b>Term</b>	<b>Definition</b>
ELTIF Regulation	<a href="#">Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds</a>
RTS	Regulatory technical standards
AIF	Alternative investment funds, a fund constituted in accordance with the AIFMD and its supporting delegated regulations.
AIFM	Alternative investment fund manager(s), the manager of an AIF.
AIFM law	<a href="#">Law of 12 July 2013 on Alternative Investment Fund Managers</a>
CSSF	<i>Commission de Surveillance du Secteur Financier</i> (Luxembourg commission for the supervision of the financial sector).
SICAF	<i>Société d'Investissement à Capital Fixe</i> (investment company with fixed capital)
SICAV	<i>Société d'Investissement à Capital Variable</i> (investment company with variable capital)
Soparfi	<i>Société de participations financières</i>
FCP	<i>Fonds Commun de Placement</i> (common investment fund)
SCA	<i>Société en Commandite par Actions</i> (partnership limited by shares)
SCS	<i>Société en Commandite Simple</i> (limited partnership)
SCSp	<i>Société en Commandite Spéciale</i> (special limited partnership)
SIF	Specialised Investment Fund
SIF law	<a href="#">Law of 13 February 2007 on Specialised Investment Funds, as amended</a>
Part II Law	<a href="#">Part II of the Law of 17 December 2010 relating to undertakings for collective investment relating to 'Other UCIs'</a>
AIFM Regulation	<a href="#">Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision</a>
Commission's staff working document (ref SWD (2013) 230 final)	<a href="#">Commission Staff Working Document Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds of 29 June 2013</a>
The Commission's proposal (ref. COM (2013) 462)	<a href="#">Proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds</a>
UCITS IV Directive	<a href="#">Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)</a>
Commitment payment	Commitment payment or rather capital committed to be invested into a fund is a contractual agreement between an investor (typically institutional in this instance) and a fund that obligates the investor to contribute money to the fund. The investor may pay all of the committed capital at one time, or make contributions over a period of time. This often takes place over a number of years.
AIFMD	<a href="#">Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010</a>
UCITS	Undertaking for Collective Investment in Transferable Securities, a fund constituted in accordance with EU Directive 2009/65/EC (UCITS IV), as amended by EU Directive 2014/91/EU (UCITS V).
KIID	Key Investor Information Document, which is a disclosure document that must be handed over to investors in accordance with the UCITS Directive.

MiFID I	<a href="#">Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC</a>
MiFID II	<a href="#">Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU</a>
PRIIPs	Packaged Retail and Insurance-based Investment Products
PRIIPs Regulation	<a href="#">Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)</a>
Eligible stock exchange	
Multilateral trading facility (MTF)	Article 4(1) (15) of the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 refers and defines a multilateral trading facility ('MTF') to mean a 'multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract (...)'.
Clearing agents	
Retail investors	Under article 4(1) (12) MiFID 1 'retail client' means 'a client who is not a professional client' i.e. a client who does not meet the criteria laid down in Annex II of MiFID 1.
Prospectus Directive	<a href="#">Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC</a>
Prospectus Regulation	<a href="#">Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements</a>
ESMA Consultation on Regulatory Standards	<a href="#">ESMA/2015/1239 Consultation Paper - Draft regulatory technical standards under the ELTIF Regulation of 30 July 2015</a>
SICARs	<i>Société d'Investissement en Capital à Risque</i> (investment company in risk capital)
Luxembourg Gaap	Luxembourg Generally Accepted Accounting Principles
ESMA statement 2012/721	<a href="#">Opinion on Article 50(2) (a) of Directive 2009/65/EC</a>
EU	European Union
EIB	European Investment Bank