ELTIF Consultation response

Luxembourg, 19 January 2021

ALFI response to European Commission consultation on the review of the ELTIF regulatory framework

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

Luxembourg has been one of the most active jurisdictions in which ELTIFs are being set-up, which allowed both the service providers and the regulator to build up a particular expertise in this field. Accordingly, ALFI has a very clear and deep insight in a number of aspects that could help the ELTIF framework to become more efficient and attractive to both asset managers using the ELTIF label and potential managers of ELTIFs and the international groups to which these managers belong (collectively referred to herein as “Managers”) and to Investors. ALFI strongly believes that the ELTIF could become a successful third pillar alongside AIFs and UCITS to complete the offering to European investors. ALFI regrets that the ELTIF has clearly fallen short of its potential. Some of the reasons are the complexity of the ELTIF framework as well as technical pitfalls that hold sponsors back from launching ELTIFs. Therefore, ALFI very much welcomes the EU Commission’s detailed consultation and will be very willing to provide additional detail and practical experience on any of the statements here below.

ALFI very much supports the findings of the High-Level Forum on the Capital Markets Union and in particular the work of the subgroup on Capital Raising Ecosystem and the recommendations on European Long-Term Investment Funds.

ALFI has responded to the short version of the questionnaire, see pages 2 to 17.

ALFI has responded to the full version of the questionnaire, see pages 18 to 45.

association of the luxembourg fund industry

SHORT VERSION

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

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

Question 1.1 Please explain your position on your responses to question 1, providing key arguments to support your answers:	In general, ALFI considers that: ❖ The **ELTIF has only been somewhat** successful in achieving its objective of raising and channelling capital towards European long-term investments in the real economy, as, since the creation of the ELTIF regime, only a small number of ELTIF have been set-up. The assets under management of all 28 ELTIF combined remain accordingly low with under € 2 billion. However, we note an increased interest in the ELTIF product from discussions with our members in the past 15 months. We believe that an increase in assets under management will positively impact the traction of the product and thereby strengthen the perception of the ELTIF brand. ❖ The **scope of the ELTIF authorisation** could be broadened. ALFI will further detail arguments in respect of eligible assets (Fund of Fund structures; introducing an evergreen ELTIF; co-investments; definitions regarding real assets; third country investments; etc.) ❖ **Consistent with CMU -** ALFI fully agrees that the ELTIF regime is consistent with the objectives of the CMU. ALFI welcomes the Commission's work and thorough review of the ELTIF Regulation. We support the findings of the High-Level Forum on CMU in relation to the ELTIF. ❖ **Added value for investors and financing long term projects -** Despite the reluctant take up of the ELTIF Regulation, many asset managers appear to currently look at the ELTIF with a view to target retail investors, who in turn look to invest in illiquid asset classes as an attractive income producing additional investment tool. However, as the ELTIFs that have been created have not yet come to an end, it is difficult to assess in general the overall performance throughout the life time of the ELTIF. We are aware from our membership that several ELTIFs invest in debt instruments/ loans that financially support several projects in the SME segment. ❖ **The ELTIF investor protection framework is appropriate** We consider the level of investor protection to be sufficient. The retail investor segment currently targeted by existing ELTIF products appears to be a highly skilled segment

	of investors with significant financial means. These investors require a different protection / safeguards compared with retail investor in standard UCITS products. In this respect, in ALFI's view, the requirements on distribution of ELTIFs to retail investors should be reviewed.

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

	1 (no policy action needed)	2 (policy action could be considered)	3 (policy action desirable)	4 (policy action needed)	5 (policy action very strongly needed)	Don't know - No opinion - Not applicable
General principles and definitions used in the ELTIF Regulation					X	
Market capitalisation threshold defining an SME equity or debt issuer				X		
Authorisation requirements				X		
Operational conditions				X		
Passportability of ELTIFs		X				
Rules pertaining to eligible investments					X	

Clarification and/or practical guidance on the eligibility requirements, notably in relation to investments in real assets					X	
Rules pertaining to the prohibition to undertake certain activities						X
Rules concerning the qualifying portfolio undertakings				X		
Conflict of interests related rules, including the ban on co-investment					x	
Portfolio composition and diversification rules and their application						x
Concentration limits						x
Rules and limitations related to the borrowing of cash				x		

Redemption related rules and life-cycle of ELTIFs	○	○	○	○	x	○
Rules concerning the disposal of ELTIF assets	○	○	○	X	○	○
Transparency requirements	○	○	○	X	○	○
Prospectus-related provisions	○	○	○	○	X	○
Cost disclosure related rules	○	○	○	○	X	○
Rules pertaining to the facilities available to investors for making subscriptions	○	○	○	○	X	○
Requirements concerning the marketing and distribution of ELTIFs to investors	○	○	○	X	○	○
Specific provisions concerning the depositary of an ELTIF marketed to retail investors	○	○	○	○	○	X
Provisions and rules pertaining to the marketing of ELTIFs to retail investors	○	○	○	○	○	○

Provisions integrating the EU Taxonomy for sustainable activities into the ELTIF framework	X					
Inconsistent or duplicative application of the ELTIF related requirements by Member States					X	
Issues arising from the supervisory practices within Member States					X	
Cross-border marketing related challenges					X	
Excessive reliance on distribution networks to market ELTIFs	X					
Excessive costs of setting up and operating ELTIFs	X					
Competition from existing national fund structures						X

Taxation related issues					x	
Other aspects						x

Question 2.1 Please explain your position on your answer to question 2, providing your arguments, and where appropriate, concrete examples and data to support your answers:	Please note that we have decided to focus our answer on some aspects only and not to comment all statements made. With respect to the rules on the **authorisation** of the ELTIF, these are not seen as to pose an issue in Luxembourg. However, broadening the framework to include investments into e.g. fund of fund structures, as argued by ALFI throughout this consultation, would require changes to the authorisation process itself. Rules concerning the **qualifying portfolio undertakings** - larger prospective ELTIF Managers have indicated that there is a certain demand for **increasing the maximum cap** on the market capitalisation of listed qualifying portfolio undertakings of € 500,000,000. **Conflict of interests** related rules, including **the ban on co-investment**, we believe that diverging interpretations of the ELTIF Regulation can lead to uncertainty regarding the situations, which should not be prohibited by the Article 12 ELTIF regulation conflict of interest provisions. **ALFI strongly suggests clarifying** at European level that Article 12 ELTIF Regulation does not prevent the use of parallel funds or aggregator vehicles provided there are no conflicts with the interests of the manager of the ELTIF (e.g. by investing in assets in which the manager has a direct personal interest). **Rules and limitations related to the borrowing of cash** – ALFI members would propose to increase the borrowing limit to 50%. Such a limit has precedence in Luxembourg for retail alternative funds ("UCI Part II" funds in the Law of 17 December 2010 relating to undertakings for collective investment, as amended[1]), and which has not raised any major problems in the past. **Redemption related and lifecycle of ELTIFs** - While the maturity of the assets may not exceed the term of an ELTIF, nothing prevents an ELTIF from foreseeing an **end of life that exceeds the maturity of individual assets.** In the case of a fixed maturity ELTIF, individual assets will mature prior to the maturity of the fund, if re-

[1] https://www.cssf.lu/wp-content/uploads/files/Lois_reglements/Legislation/Lois/L_171210_UCI_upd060618.pdf

	investment is not permitted, the fund will either suffer cash drag in the fund or operational issues with capital repayments, which in the case of retail investors, may lead to misunderstanding, or potentially give rise to unwanted crystallisation of tax (tbc depending on national legislation). It is therefore proposed that it should be possible to structure an ELTIF with reinvestment possibilities and with regular redemption windows. An end of life that exceeds the maturity of individual assets should be permitted. Please also see the ALFI response to Question 23. **Prospectus** - Article 24 (5) ELTIF Regulation lays out that the “essential elements of the fund need to be updated”. Important changes would have to include if the investment strategy of the fund changes to benefit from a widening of the ELTIF regulatory framework. Requirements concerning the **marketing and distribution of ELTIFs to investors** – The possibility of marketing to retail Investors is a main driver for Managers to set up ELTIFs, Managers are concerned about the cumbersome and complex requirements on marketing of the units or shares of ELTIFs to retail investors of Articles 26-30 of the ELTIF Regulation, notably in respect of the operational requirements. - Facilities available to investors (Article 26 of the ELTIF Regulation and Article 5 of Commission Delegated Regulation (EU) 2018/480). - The internal assessment process and suitability test for retail investors (Articles 27 and 28 of the ELTIF Regulation). - The investment advice requirement (Article 29 of the ELTIF Regulation). Practical questions are regularly raised how MiFID and ELTIF rules must be applied in parallel. ALFI would appreciate clarification that where the ELTIF Regulation contains specific criteria (e.g. on the suitability test), such ELTIF-specific provisions prevail over the more generic MiFID rules (“*lex specialis*”). ALFI recommends reviewing the provisions on marketing to retail Investors with a view to maintaining provisions essential to investor protection. **Inconsistent or duplicative application of the ELTIF related requirements by Member States** – ALFI suggests that an anonymous survey should be conducted in this regard with Asset Managers that have set-up ELTIF. In addition, we make reference to our response to question 36. **Issues arising from the supervisory practices within Member States.** - ALFI suggests that an anonymous survey should be conducted in this regard with Asset Managers that have set-up ELTIF.

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

	-2 significant negative impact	-1 negative impact	0 no impact	1 positive impact	2 significant positive impact	Don't know - No opinion - Not applicable
Broad scope of eligible assets under the ELTIF regime		x				
Long-term and illiquid nature of the investments of an ELTIF					X	
Operational conditions		x				
Transparency requirements		X				
Availability of ELTIFs to retail investors					x	
Requirements and safeguards for marketing of ELTIFs to retail investors		x				
Validity of an authorisation as an ELTIF for all Member States					X	
Other aspects						x

Question 3.1 Please explain your position on your answer to question 3, providing your arguments, and where appropriate, concrete examples and data to support your answers:	➢ **Broad scope of eligible assets under the ELTIF regime** – ALFI believes that the broad scope of eligible assets is very positive and provides (retail) investors with access to interesting alternative asset classes which they were previously excluded from. The reach of the ELTIF regulation could be further enlarged if ELTIFs could also invest in target funds (such as European and non-European AIFs, subject to adequate investment exposure and risk spreading requirements), which would grant investors additional access in a well-designed, protected framework. Providing practical guidance for investment in Real Assets will be helpful for potential ELTIF managers. ALFI supports the EU policy goal that the ELTIF Regulation should not seek to promote speculative investments. Guidance would be welcome for the concept of speculative investment and the purpose of contributing to smart, sustainable and inclusive growth, also to avoid confusion with the SFDR requirements which should apply to ELTIFs in just the same way as to any other funds, without additional layer. ALFI suggests enhancing clarity around real estate investments, e.g. by providing practical guidance what types of real estate investments would be excluded subject to being "speculative". In addition, ELTIFs invested in real assets continue to be attractive for retail investors because of fixed returns in times of low interest rates, while affording the necessary protection. Here ALFI believes that it could be helpful to have clear standards on how real estate investments could be considered to support the EU's social policies. ➢ **Operational conditions –** ALFI has consulted its members. One point that was raised was the "suitability test" under article 27 and 28 ELTIF Regulation for the marketing to retail investors with small investments (i.e. as opposed to the segment of well-informed / more professional retail investors). ➢ **Availability of ELTIFs to retail investors** – ALFI members have confirmed that the main motivator to launch ELTIF is the possibility to distribute to retail investors. ➢ **Requirements and safeguards for marketing of ELTIFs to retail investors –** As outlined above under operational conditions, one point that was raised was the "suitability

	test" under article 27 and 28 ELTIF Regulation for the marketing to retail investors with small investments (i.e. as opposed to the segment of well-informed / more professional retail investors). Also, the current rules are deemed inappropriate for high net worth individuals and a lighter regime for these investors should be envisaged. ➢ **Validity of an authorisation as an ELTIF for all Member States –** The retail investor passport is one of the key advantages of the ELTIF framework. Provided that individual EU Member States do not apply additional and more burdensome rules than required by the ELTIF Regulation, the cross border passport has a truly significant positive impact for the asset management industry and ELTIFs could potentially become a third pillar alongside AIFs and UCITS in the European funds offering. The fact that an ELTIF must be managed by an authorised Alternative Investment Fund Manager (AIFM), which benefits from a passport enabling it to offer its management services and market its AIFs (including its ELTIFs) throughout the EU has been a cornerstone of the ELTIF and underlines the spirit of initiatives such as the Capital Markets Union.

Question 4. Which provisions and requirements pertaining to the eligibility of investments and investment assets set out in the ELTIF Regulation need to be updated to improve the functioning of the ELTIF framework? Please rate as follows:

	1 (no policy action needed)	2 (policy action could be considered)	3 (policy action desirable)	4 (policy action needed)	5 (policy action very strongly needed)	Don't know - No opinion - Not applicable
A minimum size eligibility requirement for real assets investments				x		
A condition for an exposure to real estate through a direct holding or indirect holding through qualifying portfolio undertakings of individual real assets				x		
Limitation on eligible investment assets to ELTIFs, EuVECAs and EuSEFs					x	
Inability to invest in a "financial undertaking"			x			
EUR 500 000 000 threshold for investing in listed issuers				x		

Rules related to investments in third- country undertakings					x	
Other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings					x	

Please specify what are the other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings you refer to in your response to question 4:	
Question 4.1 Please explain your position on your answer to question 4: **Eligible investments**	**A minimum size eligibility requirement for real assets investments** - Lowering the €10,000,000 minimum investment in Real Assets for the following reasons: - Long-term projects, e.g. in the field of sustainable investments, often start small. ALFI believes that such projects should be permitted to attract money from ELTIFs, in line with the thinking behind the allowed investments in unlisted or lowly capitalised SME that have a need for external financing because of their limited size. - The current min. investment in Real Assets precludes the channelling of private money into smaller investments. We would like to cross reference our response to question 9, first paragraph. Asset managers often allocate across numerous AIFs. **Limitation on eligible investment assets to ELTIFs, EuVECAs and EuSEFs** and **inability to invest in a "financial undertaking"** - The ELTIF Regulation excludes investment in collective investment undertakings other than ELTIFs, EuVECAs, EuSEFs from eligible investment assets. ➢ An ELTIF is currently limited to 10% allocation to such collective investment undertakings. ➢ Managers consider the restrictions on investing in undertakings for collective investment as unduly restrictive for the following reasons: - Fund of fund strategies are a common and effective way of obtaining rapid exposure to illiquid assets (notably when it comes to real assets). - Allowing reinvestment of excess cash into

	funds could be used by managers to manage liquidity for the benefit of Investors. For example, in the context of fully paid-in capital structures, the ability to invest on a broader basis, in other funds (especially during the portfolio ramp-up period), would allow for a faster deployment of capital. - The opening of the ELTIF for fund of funds strategies could grant retail Investors access to attractive existing professional Investor funds while achieving economies of scale, which are not achievable to the same extent with parallel fund structures. ALFI therefore recommends increasing the flexibility for ELTIF managers to invest in other collective investment schemes **EUR 500 000 000 threshold for investing in listed issuers** – Prospective ELTIF Managers have indicated that there is a certain demand for increasing the maximum cap on the market capitalisation of listed qualifying portfolio undertakings of € 500,000,000. **Rules related to investments in third - country undertakings** - ALFI has noted that there are diverging interpretations regarding the eligibility of non-EU based investments. Recital 4 of the ELTIF clearly confirms that "*long-term investments in projects, undertakings, and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy. Therefore, such investments should not be prevented*." ALFI would welcome a clarification at European level that investments outside the EU are permitted with or without restriction. Furthermore, the requirements in article 11 relating to double tax treaties have created issues. Indeed, for reasons related to the Austria-US DTT there are doubts if an ELTIF marketed into Austria can do US investments, which is likely not an intended prohibition. More generally, there are frequently questions around the geographical location of an asset, e.g. statutory seat of actual business operations, which hold managers back from more largely using the ELTIF framework. Clarification on these points would be required. The ELTIF Regulation should be amended to allow additional investment flexibility during the ramp-up period. Especially in upfront-payment structures (as are quite common for retail funds), there will be high amounts of cash sitting on bank accounts, which could be more usefully invested while waiting for final deployment. The current reading of the ELTIF Regulation does not seem to allow for temporary investments during the ramp-up period outside the UCITS-eligible assets that are allowed for liquidity management purposes. In addition, flexibility should be considered for assets that have a term before the end of the life of the ELTIF or where repayment is made early. Asset managers prefer to have the flexibility to invest, while other investments are sourced.

	Other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings – we would like to refer to our more detailed responses under questions 6 and 7 to the consultation.
Question 5. Should any of the following provisions of the ELTIF legal framework be amended, and if so how, to improve the participation and access of retail investors to ELTIFs? **a) Minimum entry ticket for retail investors and net worth requirements**	YES
Please explain your answer to question 5.a and your suggested approach if you responded yes:	We make reference to article 30 ELTIF Regulation on additional requirements for marketing ELTIFs to retail investors and in particular Article 30 (3) ELTIF Regulation. The suitability test, the mandatory advice and above all the calculation to see whether the retail investor is not exceeding the maximum 50,000 EUR investment have discouraged managers to offer ELTIF to retail investors. As such the minimum entry ticket of 10,000 EUR per investment appears to be well calibrated. Also there should be a possibility for high net worth individuals HNWI to invest without complying with these strict and burdensome requirements. Finally, the possibility to encouraging employee investments was in particular raised.
b) Suitability test **☐ Yes**	The suitability test as set out in article 26 and 27 ELTIF Regulation has been described as cumbersome and not practicable for traditional distribution arrangements. In addition, the overlap of MiFID and ELTIF requirements has led to a lot of confusion. In ALFI's view, the suitability test requirements under the ELTIF Regulation should apply to ELTIF managers only and be aligned with MiFID suitability test requirements preferably by referring directly to the suitability test requirements under MiFID.
c) Withdrawal period of two weeks **☐ No**	Although we do not believe that the withdrawal period of two weeks needs to be amended, we believe that it should be clarified that the withdrawal period starts as at the date of the signature of the commitment agreement (e.g. in a commitment structure where committed sums are drawn down in several instalments).
d) Possibility to allow more frequent redemptions for retail investors **☐ Don't know / no opinion / not relevant**	See above, asset managers and service providers have asked for a clarification on the application of the withdrawal period for retail investors, notably in a capital call system, see Article 30(6) ELTIF Regulation. More generally from the point of view of the ELTIF manager, it would be welcome if ELTIFs could run longer-term strategies and allow regular redemption

	windows without running the risk of winding down upon investor request, see more in detail in our comments on the redemption provisions. Please also see our response to question 23.
e) Procedures and arrangements to deal with retail investors complaints **Don't know / no opinion / not relevant**	Detailed "investor complaints' handling policies" cover these aspects at the level of Investment Fund Manager, who as an ELTIF manager will be regulated by the competent NCA. These policies cover operational aspects and have been written for the benefit of the investor.
f) Provisions related to the marketing of ELTIFs **Yes** **Please explain your answer to question 5.f and your suggested approach if you responded yes:**	Although the possibility of marketing to retail Investors is a main driver for Managers to set up ELTIFs, Managers are concerned about the cumbersome and complex requirements on marketing of the units or shares of ELTIFs to retail investors of Articles 26-30 of the ELTIF Regulation, notably in respect of the operational requirements of: - The facilities available to investors (Article 26 of the ELTIF Regulation and Article 5 of Commission Delegated Regulation (EU) 2018/480). - The internal assessment process and suitability test (Articles 27 and 28 of the ELTIF Regulation). - The investment advice requirement (Article 29 of the ELTIF Regulation). In addition, practical questions are regularly raised how MiFID and ELTIF rules must be applied in parallel. ALFI would appreciate clarification that where the ELTIF Regulation contains specific criteria (e.g. on the suitability test), such ELTIF-specific provisions prevail over the more generic MiFID rules ("lex specialis"). **ALFI recommends reviewing the provisions on marketing to retail investors with a view to maintaining provisions essential to investor protection.**
g) Other provisions and requirements related to **☐ no opinion**	
Question 6. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been adequately covered above. **Please elaborate, more specifically, which amendments of the ELTIF framework could be beneficial in providing additional clarity and practical guidance in facilitating the pursuit of the ELTIF strategy?** **Please include examples and evidence on any issues, including those not explicitly covered by the questions raised in this public consultation:**	ALFI has been following very closely and pro-actively the development of the ELTIF Regulation from the outset and strongly believes that the ELTIF could become a successful third pillar alongside AIFs and UCITS to complement the offering to European investors. Luxembourg is one of the main domiciles for ELTIFs and notably retail ELTIFs are mainly set-up in Luxembourg. The ELTIF Regulation has fallen short of its potential: Some of the reasons are the complexity of the ELTIF regulatory framework as well as technical pitfalls that hold ELTIF managers back from launching ELTIFs. We kindly suggest to review the ELTIF framework from a practical perspective to make sure it can develop its full potential.

FULL VERSION

Section 2. ELTIF Consultation: SCOPE OF THE ELTIF AUTHORISATION AND PROCESS

Question 4. Is the scope of the ELTIF authorisation and operating conditions appropriate? Please explain your answer. NO	**Uncertainty about precise scope of regulatory approval** - The ELTIF Regulation captures all vehicles in all EU Member States. There appears to be a tendency to apply the same approach as for fully regulated local products, even where the ELTIF Regulation does not provide specific requirements (eg approval of board members, disclosures for loan origination, etc.). **Reference to Prospectus Directive[2] disclosures** lead to confusion and there are overlaps between AIFMD (transparency requirements contained in Directive 2011/61/EU) and ELTIF requirements. Due to uncertainties the approval process tends to be even more cumbersome and lengthy than for local retail AIFs. There is a need to focus on essentials elements for the authorisation of an ELTIF and to define what in scope of the authorisation is and what not.
Question 5. Should the ELTIF framework be amended to enhance the use of the ELTIF passport?	Yes
Question 5.1 Please explain how you think the ELTIF framework should be amended to enhance the use of the ELTIF passport. **Please explain your suggestions, including benefits and disadvantages as well as potential costs thereof, where possible:**	Whilst the ELTIF passport appears to be working, the key to unravel its potential will be in broadening the ELTIF framework. The current restrictions and uncertainties around structuring possibilities, eligible investment assets and borrowing rules are considered as a barrier to the launch of ELTIFs and appear to have discouraged prospective ELTIF Managers to launch ELTIF. ALFI believes that reviewing and adjusting the eligible investment framework in certain respects may help to render the structuring of European long term investment funds more attractive whilst at the same time respecting the objectives of the ELTIF framework, by: ❖ Allowing for flexibility for ELTIF investments into other funds such as European or non-European AIFs (subject to adequate investment exposure and risk spreading requirements);

[2] 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 (OJ L 345, 31.12.2003, p. 64).

	❖ Allowing the use of ELTIFs in larger parallel fund set-ups, including the use of aggregator SPVs; ❖ Allowing the use of co-investments; ❖ Allowing to re-invest where assets are redeemed early or mature prior to the end date of the ELTIF. ❖ Clarifying the possibility to make non-EU investments and create a workable framework therefore; ❖ Providing practical guidance for investment in “real assets”; ❖ Lowering the minimum investment in real assets of €10,000,000; ❖ Increasing the cap on the market capitalisation of listed qualifying portfolio undertakings; ❖ Enhancing flexibility regarding “borrowing” provisions; ❖ Clarifying the “Conflict of Interest” provisions of the ELTIF Regulation; ❖ Strengthening the ELTIF lending possibility for the benefit of the real economy (to support economic recovery after COVID); ❖ Creating additional flexibility regarding the duration / term of the ELTIF by introducing an “evergreen” ELTIF; ❖ Reconsidering the redemption rules.

<u>Section 3. ELTIF Regulation: INVESTMENT UNIVERSE, ELIGIBLE ASSETS AND QUALIFYING PORTFOLIO UNDERTAKINGS</u>

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

	-2 investments should be strongly discouraged	**-1** investments should be discouraged	**0** no impact	**1** investments should be encouraged	**2** investments should be strongly encouraged	Don't know - No opinion - Not applicable
Investments in innovative technologies*					X	

Investments in green, sustainable and/or climate related projects					X	
Investments in projects that classify as sustainable under the EU taxonomy for sustainable activities					X	
Post-COVID 19 recovery related projects					X	
Any financial assets with long-term maturities					X	
Investments in digital assets and infrastructure					X	
Investments in social infrastructure and social cohesion					X	

Investments in energy infrastructure and energy efficiency					X	
Any real estate assets, including commercial and residential					X	
real estate without a perceived economic or social benefit under the Union's energy, regional and cohesion policies					X	
The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be further expanded to other areas and asset classes					X	

The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be more restricted or limited to a narrower set of assets /investments						
Other types of assets and investment targets, and /or other regulatory approaches should be pursued					X	

Please specify what are the other types of assets and investment targets, and/or other regulatory approaches should be pursued you refer to in your reply to question 6:	ALFI believes that the ELTIF Regulation should provide investors with a broad access to long-term eligible asset classes, without creating a catalogue of specific asset categories. Indeed the ELTIF framework as such should provide investors with the designed protection, regardless of the long-term assets a particular ELTIF invests in. **Other types of assets and investment targets, and/or other regulatory approaches should be pursued -** As other types of assets and investment targets, ALFI believes that the investment possibilities should be more flexible when it comes to fund of fund strategies as further set out below.

Question 6.1 Please explain your position on your responses to question 6, including the benefits and disadvantages as well as potential costs thereof, where possible. **In particular, please indicate if you consider that any changes in the ELTIF regime are necessary, and if so which ones, and why?** **Should you be of the opinion that investments in certain eligible assets be strongly encouraged, please provide further details on the possible definitions and scope of such different assets (e.g. references to existing or new legal definitions, examples, etc.):**	**Investments in innovative technologies/ Investments in green, sustainable and/or climate related projects/ Investments in projects that classify as sustainable under the EU taxonomy for sustainable activities / Investments in digital assets and infrastructure / Investments in social infrastructure and social cohesion –** ALFI believes that the investment universe of an ELTIF should be flexible. The current eligible investment assets in an ELTIF do not provide for the above mentioned requirements, except for real assets or investment in EuVECAs/EuSEFs/ELTIFs. ALFI believes that these existing classifications for e.g. "real assets" have created uncertainty in what would be a permissible eligible asset for the ELTIF and have thereby discouraged potential ELTIF Managers to set up ELTIF. For private equity, debt or loan strategies, it is required to invest in qualifying portfolio undertakings within the meaning of Article 11 of the ELTIF Regulation. We would argue that it is already possible (and within the meaning of the ELTIF Regulation) to make investments in the above listed proposed assets. When thinking about adding any eligible assets and thereby qualitative criteria, we would suggest keeping the definitions in relation thereto broad enough. From a practical perspective, it may be helpful to remind asset managers active in the above-mentioned sectors (e.g. ESG, sustainability or FinTech) of the possibility to make use of the ELTIF as an alternative investment / financing tool. Post-COVID 19 recovery related projects: The COVID 19-pandemic has had a severe impact, creating demand for financing at the level of small and medium-sized companies (SME). We believe ELTIFs could act as important intermediaries by channeling their European infrastructure or SME financing into the market. Wider take-up would also help to promote investor perception of the ELTIF label as pan-European quality label and would help grow the size of ELTIF funds (to date all ELTIF have under €2 bn in assets under management). Any real estate assets, including commercial and residential / real estate without a perceived economic or social benefit under the Union's energy, regional and cohesion policies ALFI believes that "real assets" are at the heart of the success of the ELTIF going forward, as this asset class has provided to be of interest to a significant number of investment fund managers. Investments in commercial property or residential housing are permitted to the extent that they serve the purpose of contributing to smart, sustainable and

	inclusive growth or to the European Union's energy, regional and cohesion policies. Whilst ALFI supports the EU policy goal that the ELTIF Regulation shall not seek to promote speculative investments, ALFI nonetheless believes that clarity and practical guidance regarding the concept of “speculative investment” and guidance on the purpose of contributing to “smart, sustainable and inclusive growth” or to the “Union's energy, regional and cohesion policies” should be considered. These uncertainties make it difficult to design a real assets strategy, which can be successfully marketed to investors. In addition, confusion should be avoided that ELTIF might be perceived as imposing an additional layer of ESG criteria in addition to the SFDR, which we understand is not intended. <u>The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be further expanded to other areas and asset classes</u> The ELTIF Regulation sets out that a qualifying portfolio undertaking shall be a portfolio undertaking other than a collective investment undertaking, which excludes fund-of-fund strategies (save for investments into other ELTIFs, EuVECAs, EuSEFs re. the illiquid pocket and UCITS for the liquid pocket). ALFI understands that asset managers are considering this restriction in practice as problematic and unduly restrictive for the following reasons: – Fund of fund strategies are a common and effective way of obtaining rapid exposure to illiquid assets (notably when it comes to real assets); – In the context of fully paid-in capital structures, the ability to invest on a broader basis, in other funds (especially during the portfolio ramp-up period), would allow for a faster deployment of capital. – Allowing reinvestment of excess cash into funds as different investments mature would lower the cash drag of the ELTIF. <u>The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be more restricted or limited to a narrower set of assets/investments</u> If it is intended to promote ELTIFs, it should definitely not be considered to restrict/limit the investment universe of ELTIFs, but to broaden it. Further restrictions or investment limits will ultimately make ELTIFs less attractive for asset managers and it may also put in question the investment strategies of existing ELTIFs.

Question 7. Should some of the definitions related to the investment universe of ELTIFs and eligible assets used in the ELTIF Regulation, such as “long- term”, “capital”, “social benefit”, “debt”, “sustainable”, “energy, regional and cohesion policies” and “speculative investments” be revised to enhance the clarity and certainty around the application of the ELTIF regime?	ALFI agrees and believes that some of the definitions should be clarified including, where appropriate, to cross reference recent developments in respect of “sustainability” related aspects. Providing practical guidance for investment in Real Assets o Real Assets have provided to be of high interest to a significant number of Managers considering launching ELTIFs. o Investments in commercial property or residential housing are permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth. o ALFI supports the EU policy goal that the ELTIF Regulation should not seek to promote speculative investments. These uncertainties have held back several Managers from launching ELTIFs in the past. ALFI would welcome practical guidance regarding the concept of speculative investment and guidance on the purpose of contributing to the EU policy objectives of smart, sustainable and inclusive growth. In particular, ALFI suggests enhancing clarity around real estate investments, e.g. by providing practical guidance what types of real estate investments would be excluded subject to being “speculative”.

If so, how should those definitions be amended and why?

long-term	Not defined	No action needed in order to keep flexibility.
capital	Defined in art. 2(1) of the ELTIF Regulations	Suggestion to refer for borrowing limits to non-static benchmarks rather than to capital.
social benefit	Not defined – part of the definition of real assets	In order to broaden the scope of real assets and avoid confusion with SFDR and Taxonomy regulations, it is suggested to delete the reference thereto. Alternatively, in order to retain flexibility, the term should be defined to allow investors/managers/regulators alike with more clarity.
debt	Not defined	No action needed in order to keep flexibility.

sustainable	Not defined– part of the definition of real assets	In order to broaden the scope of real assets and avoid confusion with SFDR and Taxonomy regulations, it is suggested to delete the reference thereto. Alternatively, in order to retain flexibility, the term should be defined to allow investors/managers/regulators alike with more clarity.
energy, regional and cohesion policies	Not defined – part of the definition of real assets	In order to broaden the scope of real assets and avoid confusion with SFDR and Taxonomy regulations, it is suggested to delete the reference to it. Alternatively, in order to retain flexibility, the term should be defined to allow investors/managers/regulators alike with more clarity
speculative investments	Not defined – part of the definition of real assets	To be carefully reviewed.

NB: Ultimately, only the definitions to be amended should remain in the final statement.

Question 8. Is the ELTIF framework appropriate in respect of the provisions related to investments in third countries?	**NO**
Question 8.1 Please explain your answer to question 8.	Article 11 of the ELTIF Regulation allows for investments in a qualifying portfolio undertaking established in an EU Member State, or in a third country provided that the third country fulfills the requirements as further set out in paragraph 1(c)(i) and (ii) of this provision. Recital 4 of the ELTIF Regulation indicates that *"Long-term investments in projects, undertakings, and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy. Therefore, such investments should not be prevented."*, which has led to discussions with the national competent authorities (NCAs) whether the ELTIF Regulation requires that the majority of the investments will have to be made in Member States. In this respect, it should be noted that in order to avoid any discussions with NCAs, some asset managers have self-imposed a maximum limit for non-EU investments, i.e. the majority of investments will be made in EU Member State, but there is uncertainty around this point. ALFI takes the view that from a legal perspective, it might be argued that recital 4 and Article 11 of the ELTIF Regulation expressly consider investments in a Member State and investments in third countries to the extent these investments comply with Article 11(1)(c)(i) and (ii) of the ELTIF Regulation as equivalent, i.e. this provision does expressly **<u>not</u>** restrict (but explicitly allow) investments to EU investments. Also, ALFI takes the view that enlarging the potential investment universe beyond the European borders would be beneficial to investors and would benefit

	the ELTIF's general attractiveness for both sponsors and investors. However, asset managers have asked for a clarification as notably recital 4 of the ELTIF Regulation creates confusion in this regard. In addition to the above, it would be helpful to provide clarity on the following questions: (i) will non-EU intermediary / holding companies through which it is intended to invest in EU investments have an impact on the calculation of the threshold (Example: The underlying assets are in EU Member States, these assets are held by non-EU intermediary companies); (ii) will it be required to the refer to the (formal) registered office which may be in a Member State/third country or to the actual deal-flow office which may be in a Member State/third country, given that Article 11(1)(c) of the ELTIF Regulation refers to the "establishment" of the qualifying portfolio undertaking; (iii) does the location of an investment (and relating assessment of double tax treaty compliance) depend on the statutory seat or the actual operations of such qualifying portfolio undertaking. In addition, it might be helpful for ELTIF managers investing in third countries to clarify that in case of a subsequent non-compliance with the investment requirements for investments in third countries (notably if this is due to a subsequent non-compliance with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital among any of a third country and a Member State of the distribution of the shares of an ELTIF) , that this will be also considered as an event triggering the mitigation procedure set out in Article 14 of the ELTIF Regulation. Currently this passive breach provision refers to the non-compliance with the diversification rules only.
In particular, please describe in detail any necessary adjustments to enhance legal certainty, for instance, with respect to the proportion invested in EU Member States with a view to benefit the ELTIF market, their managers and the broader European economy.	Based on discussions with several asset managers, it is our understanding that the industry requires some flexibility in respect of the allocation of the proportion invested in Member States and third countries. One reason for such need is that non-EU and EU asset managers which invest globally follow their traditional investment strategy and they typically intend to on-board the ELTIF as a co-investment opportunity vehicle for EU investors without having the possibility to adapt their strategy for EU investors only. Interpreting recital 4, as outlined above, as a minimum threshold requirement for investments in Member States will make ELTIF vehicles less attractive for non-EU/EU asset managers, as they will not be in the position to adapt their strategy only for EU

	investors. In other words, granting flexibility regarding the allocation of the proportion invested in Member States and third countries will help non-EU/EU asset managers to integrate ELTIFs in their global investment strategy which ultimately may cause an increase in number of ELTIFs.

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

	1 (no policy action needed)	2 (policy action could be considered)	3 (policy action desirable)	4 (policy action needed)	5 (policy action very strongly needed)	Don't know - No opinion - Not applicable
A size requirement of at least EUR 10 000 000 for eligible real assets investments				x		
A condition for an exposure to real estate through a direct holding or indirect holding through qualifying portfolio undertakings of individual real assets				x		
Limitation on eligible investment assets to units or shares of ELTIFs, EuVECAs and EuSEFs, as opposed to other potential fund categories					x	
Inability to invest in a "financial undertaking"			x			

EUR 500 000 000 market capitalisation threshold set out in the ELTIF Regulation for investing in listed issuers				x		
Rules related to investments in third-country undertakings					x	
Other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings					x	

Please specify what are the other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings you refer to in question 9:	<u>A size requirement of at least EUR 10 000 000 for eligible real assets investments.</u> ALFI believes that the requirement for minimum investments in real assets should be lowered. We believe that this floor precludes many smaller investments or the possibility of risk-pairing by fund managers by allocating smaller amounts to different projects. <u>Limitation on eligible investment assets to units or shares of ELTIFs, EuVECAs and EuSEFs, as opposed to other potential fund categories</u> The ELTIF Regulation sets out that a qualifying portfolio undertaking shall be a portfolio undertaking other than a collective investment undertaking, which excludes fund of fund strategies (save for investments into other ELTIFs, EuVECAs, EuSEFs regarding the illiquid pocket and UCITS for the liquid pocket). Asset managers are considering this restriction in practice as problematic and unduly restrictive for the following reasons: – Fund of fund strategies are a common and effective way of obtaining rapid exposure to illiquid assets (notably when it comes to real assets); – In the context of fully paid-in capital structures, the ability to invest on a broader basis, in other funds (especially during the portfolio ramp-up period), would allow for a faster deployment of capital. – Allowing reinvestment of excess cash into funds as different investments mature would lower the cash drag of the ELTIF.

	Inability to invest in a "financial undertaking" Based on the feedback from several asset managers, the definition of "financial undertaking" is considered to be too restrictive, notably when it comes to the investments in FinTech related projects which intend to invest in "financial holdings" or "mixed-activity holding companies". EUR 500 000 000 market capitalisation threshold set out in the ELTIF / Regulation for investing in listed issuers ALFI consulted larger fund managers having set up or being in the process of launching ELTIFs, who indicated that there is a certain demand for increasing the maximum threshold of EUR 500,000,000. In order to invest in larger companies and to extend the investment opportunities for asset managers, this would be useful, which would make the ELTIF label more attractive to larger asset management companies. Rules related to investments in third- country undertakings *Please see our response to question 8.1 above.*
Question 9.1 Please provide your assessment of the adequacy and effectiveness of the ELTIF framework with respect to the execution of fund-of- fund investment strategies, real assets investment strategies and any restrictions on investments in other funds throughout the ELTIF's life.	Asset managers consider the fund-of-fund restriction in practice as very problematic and unduly restrictive and they request for opening the ELTIF for this structuring possibility, to broaden the reach of the ELTIF Regulation and grant investors a larger economically interesting access to long-term assets. Furthermore, the ELTIF Regulation should explicitly allow the integration of ELTIFs into larger structures involving parallel funds which invest via aggregators or holding SPVs. This structuring possibility would significantly enhance the possibility for retail investors to benefit from investment opportunities similar to other fund structures, however, within the safe framework and benefiting from the protection mechanisms that the ELTIF regulation foresees. With respect to real assets investments, asset managers request for more flexibility regarding the minimum investment threshold and more guidance regarding the *real asset* definitions in order to make this asset class more attractive for asset managers under the ELTIF Regulation.
Please explain and provide your suggestions which specific provisions of the ELTIF Regulation may benefit from improvements, and why:	Parallel funds set-ups are one of the main opportunities for ELTIFs to develop their full potential and such structuring possibility should be explicitly confirmed and hence it is suggested the ELTIF Regulation will be amended (e.g. clarification in Article 12 ELTIF Regulation). In relation thereto, the use of aggregator vehicles / SPVs should be clearly allowed,

	there are doubts in the market and at the level of NCA. With respect to real assets investments, the definition in Article 2(1) of the ELTIF Regulation and Article 10(e) of the ELTIF Regulation may benefit from improvements. With respect to the contemplated implementation of fund-of-fund strategies, the ban of collective investment undertakings in Article 11(1) of the ELTIF Regulation should be removed.

Section 4. ELTIF Regulation: TYPES OF INVESTORS AND EFFECTIVE INVESTOR PROTECTION

Question 10. Please describe key barriers to the development of the ELTIF market, whether regulatory or of another nature, if any, to institutional investments that you consider reduce the attractiveness of the ELTIFs for institutional investors? […] **Please explain:**	ALFI believes that some of the main barriers to the development of the ELTIF market are on the supply side – i.e. barriers which deter AIFMs from becoming ELTIF managers and launching ELTIF products. These include: ❖ Obtaining authorisation as an ELTIF and as a manager of an ELTIF; ❖ The limitations to the eligible investments of ELTIFs, and in particular the eligible investment assets and the portfolio diversification rules; ❖ The ELTIF marketing rules and in particular the “additional requirements for marketing ELTIFs to retail investors” under Article 30 of the ELTIF Regulation. ALFI believes that overall investors, including both professional and retail investors, would be keen to invest in many more ELTIF-type products if they were available. From the perspective of investors, the main restraints are the limitations to the eligible investments.
Question 11. Should any of the following provisions of the ELTIF legal framework be amended, and if so how, to improve the participation and access of retail investors to ELTIFs? **Please explain which of the following provisions should be amended and give specific examples where possible and explain the benefits and disadvantages of your suggested approach, as well as potential effects and costs of the proposed changes.**	
a) Amendment of the size of the initial minimum amount for retail investors, and net worth requirements ☐ **Yes**	The requirement for retail investors whose financial instrument portfolio of a potential retail investor does not exceed €500,000, to invest a minimum amount

Please explain your answer to question 11.a, as well as your suggested approach if you responded yes:	in one or more ELTIFs of €10,000 may serve to dissuade retail investors from diversifying their investment portfolios. Further complexities arise where a retail investor invests in ELTIFs managed by other AIFMs. This would also be difficult to monitor. In addition, it would be advisable to create a lighter access regime for HNWI.
b) Amendment of the specific requirements concerning the distribution of ELTIFs to retail investors (suitability test) **☐ Yes**	ELTIFs may be distributed to retail investors in the EEA either directly by ELTIF managers or by distributors, such as banks. While AIFMs are not specifically subject to requirements to perform a suitability test, distributors are subject to MiFID requirements. ALFI is of the view that the specific requirements concerning the distribution of ELTIFs to retail investors are appropriate in the sense that ELTIF managers should be required to ensure that the product is suitable for the investors before distributing the shares or units of the ELTIF directly to retail investors. However, in ALFI's view, the suitability test requirements under the ELTIF Regulation should apply to ELTIF managers only and be aligned with MiFID suitability test requirements preferably by referring directly to the suitability test requirements under MiFID.
c) Withdrawal period of two weeks **☐ No** **Please explain your answer to question 11.c, as well as your suggested approach if you responded yes:**	ALFI believes that the withdrawal period of two weeks is appropriate. However, an issue that presents itself in the scenario where retail investors are permitted to invest into the ELTIF and the commitment approach is applied by the ELTIF Manager, should be clarified. Although these scenarios would typically be rare, it should be clarified that the withdrawal period starts as at the date of the signature of the commitment agreement.
d) Possibility to allow more frequent redemptions for retail investors **☐ No** **Please explain your answer to question 11.d, as well as your suggested approach if you responded yes:**	ALFI believes that the redemption conditions should be amended to allow measured redemptions on a regular basis without triggering the potential winding down upon request by one investor.
e) Procedures and arrangements to deal with retail investors complaints **☐ No** **Please explain your answer to question 11.e, as well as your suggested approach if you responded yes:**	ALFI believes that the requirements on complaints made by retail investors are appropriate.
f) Provisions related to the marketing of ELTIFs **☐ No**	ALFI believes that the requirements on marketing of units or shares of ELTIFs under Article 31 of the ELTIF regulation are appropriate.

	However, in ALFI's view, the additional requirements for marketing ELTIFs to retail investors under Article 30 are a barrier to the development of the ELTIF market (see response to "g" here below).
g) Other provisions and requirements related to retail investors **☐ Yes**	In ALFI's view, the additional requirements for marketing ELTIFs to retail investors under Article 30 are a barrier to the development of the ELTIF market and in particular: ❖ Under paragraph 1, the requirement to ensure that retail investors are provided with appropriate investment advice from the manager of the ELTIF or the distributor. ALFI is of the view that the performance of a suitability test under Article 28 provides sufficient protection to retail investors without the additional requirement to ensure that the retail investor is provided with investment advice. ❖ Under paragraph 3, the requirement to ensure, on the basis of the information provided, that a potential retail investor does not invest an aggregate amount exceeding 10% of that his/her financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is €10,000 where the financial instrument portfolio of the potential retail investor does not exceed €500,000. The application of additional requirements applicable to investors whose financial instrument portfolio does not exceed €500,000 creates a barrier to the distribution of ELTIFs to retail investors by setting arbitrary limits. For such investors: – The requirement to ensure that a potential retail investor does not invest an aggregate amount exceeding 10% of that his/her financial instrument portfolio in ELTIFs does not necessarily entail additional investor protection. – As stated in ALFI's response to question 11 a), the requirement to invest a minimum amount in one or more ELTIFs may serve to dissuade retail investors from diversifying their investment portfolios. In ALFI's view, these requirements should be removed.

Question 12. Which safeguards, if any, should be introduced to or removed from the ELTIF framework to ensure appropriate suitability assessment and effective investor protection, while considering the specific risk and liquidity profile of ELTIFs, including sustainability risks, investment time horizon and risk-adjusted performance?	As stated in ALFI's response to Question 11 b), above, in ALFI's view the suitability test requirements under the ELTIF Regulation should apply to ELTIF managers only and be aligned with MiFID suitability test requirements preferably by referring directly to the suitability test requirements under MiFID.

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

Section 5. ELTIF Regulation: CONFLICT OF INTERESTS

Question 13. Are mandatory disclosures under the ELTIF framework sufficient for investors to make informed investment decisions? **☐ Don't know**	
Question 13.1 Please explain your position on your responses to question 13, including benefits and disadvantages of the potential changes as well as costs:	ALFI is of the view that the mandatory disclosures under the ELTIF framework are sufficient for investors to make informed investment decisions.
Question 14. Which elements of mandatory disclosure requirements, if any, should be tailored to the specific type of investor? **Please explain your position, including benefits and disadvantages of the potential changes as well as costs:**	ALFI is of the view that the mandatory disclosures under the ELTIF framework are sufficient for investors to make informed investment decisions.
Question 15. Are the ELTIF rules on conflicts of interest appropriate and proportionate? **☐ No**	
Question 15.1 Please explain how you think how should such rules on conflicts of interest be amended. Please explain the benefits and disadvantages of the potential changes as well as costs, as well as how specifically such amendments could facilitate the effective management of conflicts of interests, co-investment strategies and indirect investment strategies:	<u>*Article 12 ELTIF Regulation conflict of interest and relating interpretation (e.g. parallel funds / aggregators should be allowed)*</u> Article 12 should be amended to clarify that parallel fund set-ups and the use of aggregators by ELTIF managers are allows. Parallel fund set-ups are one of the main opportunities for ELTIFs to develop their full potential and this structuring possibility should be explicitly confirmed and spelled out (as a clarification in article 12). In relation thereto, the use of aggregator vehicles / SPVs should be clearly allowed, there are uncertainties in the market and at the level of NCAs. ALFI is of the view that the provisions of Article 12 of the ELTIF Regulation should be revised and clarified. The provisions of this article materially differ from those applicable to UCITS management companies (as covered in Chapter 3 of Commission Directive 2010/43/EU) and UCITS are by definition also addressed at retail investors. There are, in ALFI's view, no reasons for an ELTIF manager to be subject to stricter rules than those applicable to UCITS management companies. The ELTIF Regulation also provides for more restrictive

	rules than those foreseen under the AIFMD (on which the ELTIF Regulation is built) in this respect. In any case, ALFI considers that the reference to the terms "direct or indirect interest" contained in Article 12 should be clarified in order to more clearly authorise structures and vehicles put in place in order to realise or participate to the ELTIF's investments, such as with parallel funds managed by the manager of the ELTIF (and the aggregators put in place in this context) and SPVs in which the manager of the ELTIF may be invested (for example for control purposes). These structures and vehicles are, in ALFI's views, already authorised to invest through SPVs but this should be made clearer for the avoidance of any doubt.[3] Finally, it should also be taken into account that certain investors tend to require a participation of the AIFM (or of its group) in the fund's investments in order to have an alignment of interests between those of the investors and of the AIFM. An alignment of interests is by definition not detrimental to investors and should therefore be permitted with the consequence that investments by the manager of the ELTIF in an ELTIF's asset should not be expressly prohibited.

Section 6 ELTIF Consultation: BORROWING OF CASH AND LEVERAGE

Section 6 Borrowing cash and leverage	**Draft answers**
Q°16: Which of the following policy choices related to the leverage of the ELTIF funds do you find most appropriate? X Increasing total allowed leverage Please specify what other policy choice(s) related to the leverage of the ELTIF funds you would find most appropriate:	To tick « Increasing total allowed leverage" Specification of another policy choice(s): An ELTIF may currently borrow cash provided, inter alia, that it represents no more than 30 % of the value of the capital of the ELTIF and it encumbers assets that represent no more than 30 % of the value of the capital of the ELTIF.

[3] In accordance with article 89 & 90 AIFMR - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0231

	Managers would prefer to increase the limit to 50%, which is a limit that exists in Luxembourg for retail alternative funds (so-called “Part II” funds), and which has not raised any major problems in the past. Managers would also suggest to introduce the concept of a “ramping-up period” at the starting phase of the ELTIF’s life during which there would a temporarily derogation from the borrowing limits. In addition, several managers would like to have the possibility to borrow in a different currency (a currency other than the currency of the assets to be acquired). Finally, a clarification at European level that the issuance of debt instruments to investors (e.g. notes, alongside or instead of shares / units) does not constitute “borrowing” in the meaning of Article 16 would be welcome. Depending on the legal form in which an ELTIF is structured, the issuance of debt instruments to investors is recognised in certain countries. ➢
<u>Q°16.1</u>: Please explain your response to question 16 with the description of the advantages and disadvantages of your proposed approach, including its implications for ELTIF managers, the performance and risk and liquidity profile of the fund, the risk-adjusted returns of investors and the attractiveness of the ELTIF regime:	The proposed approach would be advantageous because it would: - soften the borrowing restrictions; - render the structuring of ELTIFs more attractive; - provide for more flexibility at the launch of an ELTIF.
<u>Q°17</u>: What should be the optimal maximum allowed net leverage allowed for ELTIF funds? Please explain:	The optimal maximum net leveraged allowed for ELTIF funds could be 50% in order to align with certain borrowing limits which already exist in Luxembourg. Such increase would also permit ELTIFs to develop like the US Business Development Companies (BDCs) which may borrow up 100% of their NAV.
<u>Q°18</u>: How should regulation of leverage for ELTIFs marketed to retail investors be different from that of the ELTIFs marketed solely to professional investors? Which safeguards are particularly relevant and appropriate, and why?	The current leverage-related rules set out in the ELTIF Regulation could be maintained for ELTIFs marketed to retail investors. Managers should however have the possibility to set a higher leverage threshold for ELTIFs marketed solely to professional investors.
<u>Q°19</u>: Do the requirements related to the “contracting in the same currency” as the assets to be acquired with borrowed cash, maturity-related rules and other limits on the borrowing of cash constitute significant limitations to the operations and leverage strategy of ELTIFs?	We would suggest introducing the possibility to borrow in a different currency (i.e. a currency other than the currency of the assets to be acquired). The obligation to borrow in the same currency is a significant limitation to the operations and leverage

	strategy of ELTIFs. Removing this requirement related to the "contracting in the same currency" as the assets to be acquired with borrowed cash would give a greater flexibility to the managers and, in certain circumstances, would allow them to opt for a more efficient solution while maintaining adequate investor protection safeguards.
<u>Q°20:</u> Please explain which regulatory safeguards, if any, you deem appropriate to ensure the effective management of liquidity, subscriptions and the financing of assets in the investment portfolio. In addition, please explain if you consider it appropriate to provide for any alternative regulatory approach for the borrowing of cash rules specifically during the ramp-up period in the ELTIFs' life:	No additional regulatory safeguards are required in our view to ensure the effective management of liquidity, subscriptions and the financing of assets in the investment portfolio. We would suggest introducing the concept of a "ramping-up period" which would provide more flexibility at the starting phase of the ELTIF's life during which there would a temporarily derogation from the borrowing limits. We would also suggest the extension of leverage limits to 50% which would extent liquidity management tools. Finally, having an evergreen ELTIF would provide additional leverage tools in terms of ability to raise further capital.

<u>Section 7. ELTIF Consultation: RULES ON PORTFOLIO COMPOSITION AND DIVERSIFICATION</u>

Q°21: Which of the following policy choices pertaining to the ELTIF rules on diversification do you consider most appropriate?	**Fewer regulatory requirements and more flexibility by ELTIF managers with respect to portfolio composition and diversification**
Please specify what other policy choice(s) pertaining to the ELTIF rules on diversification <u>you</u> would consider most appropriate:	**a) Allowing for flexibility for ELTIF investments into other funds** The ELTIF Regulation excludes investment in collective investment undertakings other than ELTIFs, EuVECAs, EuSEFs from eligible investment assets. An ELTIF is currently limited to 10% allocation to only such qualifying collective investment undertakings.

Managers consider the restrictions on investing in undertakings for collective investment as unduly restrictive for the following reasons:

- Fund of fund strategies are a common and effective way of obtaining rapid exposure to illiquid assets (notably when it comes to real assets).
- Allowing reinvestment of excess cash into funds could be used by managers to manage liquidity for the benefit of investors. For example, in the context of fully paid-in capital structures, the ability to invest on a broader basis, in other funds (especially during the portfolio ramping-up period), would allow for a faster deployment of capital.
- The opening of the ELTIF for fund of fund strategies could grant retail investors access to attractive existing professional investor funds (e.g. EU or non-EU AIFs) while achieving economies of scale, which are not achievable to the same extent with parallel fund structures.

ALFI therefore recommends increasing the flexibility for ELTIF managers to invest in other collective investment schemes.

b) Providing practical guidance for investment in real assets

As outlined above, real assets have provided to be of high interest to a significant number of managers considering launching ELTIFs.

Investments in commercial property or residential housing are permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth.

ALFI supports the EU policy goal that the ELTIF Regulation should not seek to promote speculative investments.

However, there is no guidance regarding the concepts of speculative investment and guidance on the purpose of contributing to smart, sustainable and inclusive growth.

These uncertainties have held back several managers from launching ELTIFs in the past.

ALFI would welcome practical guidance regarding the concept of speculative investment and

	guidance on the purpose of contributing to smart, sustainable and inclusive growth. In particular, ALFI suggests enhancing clarity around real estate investments, e.g. by providing practical guidance what types of real estate investments would be excluded subject to being "speculative". **c) Lowering the minimum investment in real assets of €10,000,000** Long-term projects, e.g. in the field of sustainable investments, often start small. ALFI believes that such projects should be permitted to attract money from ELTIFs, in line with the thinking behind the allowed investments in unlisted or lowly capitalised SME that have a need for external financing because of their limited size. The minimum investment in real assets of €10,000,000 precludes the channeling of private money into smaller investments, which would benefit the European Union economy and thereby limits the benefit of the ELTIF investments to large projects only. **ALFI suggests that the minimum investment in real assets should be lowered and it should be clarified that such limit applies to all real assets held collectively, directly or indirectly, by a qualifying portfolio undertaking.** **d) Increasing the cap on the market capitalisation of listed qualifying portfolio undertakings** Larger prospective ELTIF managers have indicated that there is a certain demand for increasing the maximum cap on the market capitalisation of listed qualifying portfolio undertakings of € 500,000,000. Increasing the cap on the market capitalisation of listed qualifying portfolio undertakings to permit investment in larger companies would extend the investment opportunities for managers and make the ELTIF label more attractive to larger managers. **ALFI suggests considering raising the cap on the market capitalisation of listed qualifying portfolio undertakings to permit investment in larger companies.**

	e) Clarifying EU / non-EU investments ALFI has noted that there are diverging interpretations regarding the eligibility of non-EU based investments. Recital 4 of the ELTIF Regulation clearly confirms that "long-term investments in projects, undertakings, and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy. Therefore, such investments should not be prevented." **ALFI would welcome a clarification at European level that investments outside the EU are permitted with or without restriction.** **Furthermore, the provisions on the location of investments and relating double tax treaty requirements should be reviewed as indicated above (see response to question 4.1).**
<u>Q°21.1</u>: Please explain your response to question 21 with the description of the advantages and drawbacks of your preferred policy approach. In particular, should you consider that the diversification and portfolio composition related rules under the ELTIF Regulation need to be amended, please explain, to what extent and why?	The current restrictions and uncertainties around eligible investment assets are considered as a barrier to the launch of ELTIFs. In many cases, prospective ELTIF managers have decided not to launch ELTIFs due to issues related to investment in eligible assets. ALFI believes that reviewing and adjusting the eligible investment framework in certain respects may help to render the structuring of ELTIFs more attractive whilst at the same time respecting the objectives of the ELTIF framework.
<u>Q°22</u>: Do you consider the minimum threshold of 70% of eligible assets laid down in Article 13(1) of the ELTIF Regulation to be appropriate? Please specify what you mean by other in your response to question 22:	**Fewer regulatory requirements and more flexibility by ELTIF managers with respect to portfolio composition and diversification** <u>Explanation</u>: The threshold of 70% of eligible assets, i.e. long-term assets, reduces the attractiveness of ELTIFs, both for investors and managers alike. Investors will be more attracted by a vehicle with more flexibility regarding the liquid and illiquid portfolio composition.. Managers would welcome the possibility to invest at a higher proportion into liquid assets during the life cycle of an ELTIF.
<u>Q°22.1</u>: Please explain your position on your response to question 22 by assessing the advantages and drawbacks of your preferred policy option pertaining to asset diversification rules:	Managers would have more flexibility to develop their investment strategies and retail investors would be more attracted to ELTIFs with diversified strategies.

Section 8 ELTIF Consultation: REDEMPTION RULES AND LIFE OF ELTIFs

Question 23. Please provide a critical assessment of the impacts of the ELTIF Regulation rules on redemption policy and the life-cycle of ELTIFs, including the appropriateness of the ELTIF Regulation for the structuring of the ELTIF funds, taking into account the legitimate interests of the investors and achieving the stated investment objective of ELTIFs:	ALFI recognises an appetite for very long-term / evergreen ELTIFs and for ELTIFs which grant regular redemption windows. The current strict requirements for redemptions are deemed inappropriate as they do not allow for such structures. Indeed, the current text allows each individual investor to trigger the winding-up of the entire ELTIF if a redemption request has not been satisfied within a year, which is a risk that many managers do not wish to take, as this would be harmful to other investors and to the fund as a whole and possibly to the entire ELTIF brand. The latter example does also limit the attractiveness of the ELTIF from the investor point of view, due to different risk appetites and investment horizons. ALFI believes that redemption rights can be structured in a way that duly protects the investor interest and avoiding imposing consequences that are deemed too harsh. E.g. regular redemption windows for a defined percentage of assets with defined gates and proportional allocation between redeeming investors would seem a sensible and protective solution (as applied in many retail products such as UCITS). The winding-up right in case of non-execution of a redemption request after 12 months seems not necessary and in some cases non-proportionate.
Question 24. If longer-term investments were to be limited only to those with certain maturities, what threshold might be considered appropriate? X **Other possible maturity**	
Please specify what other threshold might be considered appropriate: **Question 24.1 Please explain your answer to question 24:**	ALFI believes that there is no one-size-fits-all approach but the maturity of a fund will depend on the asset class, the investment strategy and the exit strategy. Indeed, Private equity and debt assets can have a shorter maturity, while real assets and notably infrastructure may have a very long maturity. It is therefore suggested to leave the determination of the adequate maturity to the ELTIF manager and to allow sufficient flexibility in the ELTIF Regulation to capture various types of long-term assets, rather focussing on a proper analysis / due diligence by the manager than imposing any strict maturities in the ELTIF Regulation, which would restrict the possible per se of the ELTIF Regulation rather than enlarging it. Defining Weighted Average Maturity (WAM) / Weighted Average Life (WAL limits) might permit a

	balance of longer term assets aligned to the development of CMU objectives, while also shorter term assets provide liquidity.
Question 25. If shorter-term investments were allowed to be included into the portfolio, what proportion of the portfolio should be permitted? **☐X Other options**	Please see the answer to Q24 above.
Please specify what other proportion of the portfolio should be permitted: **Question 25.1 Please explain your answer to question 25:**	ALFI believes that 30% liquid assets seem to be acceptable during the holding period of an ELTIF, however during the ramp-up period a higher proportion is necessary, particularly where an ELTIF has been structured with upfront-payment (as is the case in retail ELTIFs, as retail investors are not very familiar with capital call structures). In these ELTIF structures, there would typically be a high amount of cash in the fund from the outset, for this reason it would be helpful for the ELTIF Regulation to explicitly allow for additional flexibility regarding the eligible temporary investments and higher levels of liquid assets to be held during the ramp up period of the fund.
Question 26. Do you consider that "mid-term" redemption should be allowed? YES	Yes
Question 26.1 Please explain your position on your responses to question 26 and provide for advantages and disadvantages of your policy choice from the perspective of ELTIF managers, ELTIF liquidity and risk profile, returns of investors, and other regulatory aspects:	Please our response to Question 23 above.
Question 27. Do you consider it appropriate to allow for regular redemptions or an "evergreen" vehicle approach (no maturity)? **☐ Yes**	Yes
Question 27.1 How frequent should ELTIF redemptions be, and if so, which additional safeguards would you consider necessary to cater for the illiquidity, redemptions and other fund cycle related aspects of the ELTIF framework?	ALFI believes that there is a high appetite for "evergreen" ELTIF structures, which are deemed very attractive by managers. Given the high cost and administrative burden to create ELTIFs, sponsors would welcome the possibility to structure ELTIFs as an evergreen vehicle with regular redemption windows, allowing investors to benefit from a long-term alternative vehicle with adequate exit possibilities, without increasing the costs by having to wind-up and re-launch a new ELTIF after the end of life. The frequency of redemption windows will depend on the precise strategy and asset class(es), for some it could be every 10 years, for others 5 years and some may even have monthly or quarterly redemp-

	tion possibilities (subject possibly to gating mechanics) if the size and regular income of the ELTIF so allow.
Question 28. Is it appropriate to provide for any alternative regulatory approach with respect to the redemption rules or portfolio composition, diversification rules, etc. for ELTIFs during the ramp-up period in the ELTIFs' life-cycle? **☐ Yes**	
Question 28.1 Please explain your position and provide for advantages and disadvantages of your policy choice:	We refer to our response to question 23 in respect of increasing flexibility by allowing "evergreen structures". We would also like to refer to our response to question 25, where higher percentages of liquid assets and additional assets should be permitted to be held by an ELTIF during its ramp-up period (in respect of retail investors).
Question 29. Are the provisions of the ELTIF Regulation pertaining to the admission to the secondary market and the publication of "periodical reports" clear and appropriate?	ALFI does not believe that the provisions of the ELTIF Regulation pertaining to the admission to the secondary market and the publication of "periodical reports" are clear nor appropriate.
Question 30. Are the limitations of the ELTIF Regulation regarding the issuance of the new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors clear and appropriate?	ALFI does not believe that the limitations of the ELTIF Regulation regarding the issuance of the new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors are clear nor appropriate.
Question 31. Should the provisions in the ELTIF framework related to the issuance of new units or shares be amended, and if so how? […]	ALFI believes that the provisions in the ELTIF framework related to the issuance of new units and shares should be amended. Clarification is needed on the preferential subscription right, which is not adapted to AIFs. In addition, clarification would be helpful that all ELTIFs must be unitised, i.e. capital accounts cannot replace unitised shares / units.

<u>Section 9 ELTIF Consultation: MARKETING STRATEGY FOR ELTIFS AND DISTRIBUTION RELATED ASPECTS</u>

Question 32. What are the key limitations stemming from the ELTIF framework that you consider reduce the attractiveness of the ELTIF fund structure or the cross-border marketing and distribution of ELTIFs across the Union? **Please explain:**	ALFI believes that a key limitation in the ELTIF framework that reduces the attractiveness of the ELTIF would be in relation to the distribution to retail investors, which triggers additional requirements. As said above, the rules applicable to retail marketing should be critically reviewed and it should be considered to create less burdensome rules for

	HNWI to which the strict requirements may not be adapted.
Question 33. Do you consider that review of the ELTIF rules related to the equal treatment of investors is warranted? **☐ Yes**	
Question 33.1 Please explain your position on your answer to question 33:	The rules for equal treatment should not be read to prohibit existing market standards and in particular share class features that permit differing cost structures e.g. for retail and professional investors or for high volume or early bird investors. Article 30(4) ELTIF Regulation in respect of „equal treatment of investors" could be clarified to make clear that this does not prevent share classes with differing cost structures in these quite usual scenarios.
Question 34. Is it necessary to clarify the ELTIF framework with regard to the application of the principle of equal treatment of investors at the level of individual share classes, and any other specific arrangements for individual investors/group of investors. **If possible, please provide a specific suggestion:** […]	See answer to question 33.1 above.

Section 10. ELTIF Consultation: Misc.

Question 35. Is the effectiveness of the ELTIF framework impaired by national legislation or existing market practices? Please provide any examples you may have of "goldplating" or wrong application of the EU acquis. Please explain: […]	
Question 36. Are you aware of any national practices or local facility requirements for ELTIF managers or distributors of ELTIFs that require a local presence or otherwise prevent the marketing of ELTIFs on a cross-border basis? **Please explain and provide specific examples:**	We have been informed by our members of foreign double tax treaty (DTT) issues: according to the peer review the DTT between Austria and the United States is deemed not "fully" but only "largely" compliant with the OECD model tax convention, which potentially prevents marketing ELTIF into Austria if investments in the US are envisaged. Local facilities: ➢ France: Use of a centralising correspondent ➢ Italy: Use of a distributor & paying agent

	➢ Spain: Use of a local entity required to pay the fees to the regulator (fees cannot be paid from abroad, e.g. fees cannot be paid from the home Member State of the ELTIF)
Question 37. Which features of the current ELTIF framework, if any, should be defined in more detail and which should be left to contractual arrangements? **Please explain:** […]	
Question 38. Which specific provisions in the ELTIF framework could be amended, and how, in order to lower costs and reduce compliance, administrative or other burdens in a manner that would not lead to an increase in material risks from the perspective of effective supervision or investor protection? […]	
Question 39. Please elaborate on whether and to what extent the current ELTIF regime is appropriate for the AIFMs falling under Article 3(2) of Directive 2011/61/EU to have an incentive to market ELTIFs. **Please explain:** […]	
Question 40. Please provide examples of any national taxation regimes towards long-term investment funds that are either discriminatory or that you deem materially reduce the relative attractiveness of the ELTIF framework vis- à-vis other (national) fund vehicles, also taking into account the interaction with foreign tax systems? Please provide specific examples of such cases: ☐ **Don't know / no opinion / not relevant**	
Question 41. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been adequately covered. Please elaborate, more specifically, which amendments of the ELTIF framework could be beneficial in providing additional clarity and practical guidance in facilitating the pursuit of the ELTIF strategy. Please include examples and evidence on any issues, including those not explicitly covered by the questions raised in this public consultation:	
Question 42. Would you be willing to provide additional clarifications or follow-up input upon a direct request from the Commission services?	ALFI would welcome to be able to share additional technical clarifications and any follow-up the Commission services may request.
Question 42.1 Please specify under which conditions you would be willing to provide additional clarifications or follow-up input upon a direct request from the Commission services:	ALFI would welcome sufficient time to work on technical aspects, to allow as the case may be time to consult its members and thereby obtaining a balanced response from our membership.