association française de la gestion financière

CONSULTATION AFG's RESPONSE

AFG's response to the public consultation on the review of the ELTIF regulatory framework

January 2021

The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2019 more than €4,000 billions in assets, i.e. a quarter of continental Europe's assets under management.

The AFG's remit:

- Representing the business, financial and corporate interests of members, the entities that they manage (collective investment schemes) and their customers. As a talking partner of the public authorities of France and the European Union, the AFG makes an active contribution to new regulations,

- Informing and supporting its members; the AFG provides members with support on legal, tax, accounting and technical matters,

- Leading debate and discussion within the industry on rules of conduct, the protection and economic role of investment, corporate governance, investor representation, performance measurement, changes in management techniques, research, training, etc.

- Promoting the French asset management industry to investors, issuers, politicians and the media in France and abroad. The AFG represents the French industry – a world leader – in European and international bodies. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA), of PensionsEurope and of the International Investment Funds Association (IIFA).

For AFG's response to the EC consultation only:

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SHORT VERSION OF THE QUESTIONNAIRE

Questions 1 to 3 are common to the short and full version of the questionnaire.

There are specifics questions 4 to 6 to each version.

PART 1. INTRODUCTORY QUESTIONS

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

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
The ELTIF framework has been successful in achieving its objective of raising and channelling capital towards European long-term investments in the real economy	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:

AFG's response :

ELTIFs are investment vehicles geared towards long-term financing of the European economy and offer the advantage of being able to invest, in particular, in the capital of unlisted companies (including SMEs), in private debt or in real assets requiring significant initial investment, such as infrastructure.

However, the ELTIF regime has not developed as expected, partly because of its overly restrictive regime and difficulties in marketing ELTIF-labelled funds to retail investors.

Making the characteristics of ELTIFs more compatible with the needs of retail investors would be a powerful lever to direct more individual savings towards a fund with a large pool of (less liquid) long-term assets, in a context where retail investors' demand for long-term investments is increasing. Retirement savings plans, in particular, are set to continue to grow in the coming years.

By constituting an attractive savings placement solution in addition to UCITS, the new ELTIF will contribute more broadly to long-term financing and the recovery of the European economy. To achieve this objective, the new ELTIF will have to offer a flexible generalist structure (with assets that can be more diversified if the manager deems it necessary, and with adequate liquidity, even though redemption possibilities will be less frequent than for UCITS). On the other hand, it may offer a higher expected return than UCITS, and a lower volatility due to its long-term investment horizon. Rules on the demand side should also be reviewed to have a less binding framework which has significantly limited so far the marketing of ELTIFS to retail investors.

In order to achieve these objectives while remaining attractive to institutional investors (who do not necessarily have the same needs in terms of diversification or liquidity, for example), the ELTIF must be sufficiently flexible to allow the manager to set up a structure adapted to the needs of its investors and to its underlying assets.

Rules on eligible investments and eligible assets should in particular be reviewed to extend the asset classes in which ELTIFs can invest in and clarify some definitions used in the current text.

Moreover, amendments should be made on the taxation regime (especially regarding withholding tax), in order to create a level playing field across Europe in the tax treatment, and to ensure tax neutrality when investing domestically or in the rest of the EU Single Market.

Lastly, the Commission should also access the opportunity to modify the prudential treatment, especially under Solvency II, of the ELTIFs in order to encourage the institutional investors to invest in ELTIFs.

Otherwise efforts to adapt the current ELTIF framework could finally be useless.

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					X	
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

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

AFG’s response :

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:

AFG’s response :

We recommend :

- to allow the ELTIF to invest in a company admitted to trading on a regulated market or in a multilateral trading facility, with a market capitalisation of up to €2 billion (compared to €500 million currently). This would enable ELTIF to invest not only in micro-caps, but also on some small-caps. This would enlarge the investment universe and offer the possibility to invest on more liquid stocks.

- to allow the ELTIF to invest in funds other than ELTIFs, EuVECAs and EuSEFs (there are very few of theses funds). Via a fund of funds strategy, the ELTIF may thus offer the subscriber exposure to a wide variety of assets: unlisted companies, real estate, infrastructure, etc. (to do this, the fund of funds strategy appears relevant because in practice, the expertise of the various asset classes is often implemented by different teams). In the experience of French AIFM management companies, funds of funds are appreciated by French retail clients because they allow them to invest in private equity funds with a very high level of diversification. Funds of funds are a good first step to private equity for clients who fear the main risk associated to an investment in private equity: losing a substantial part of their investment. Funds of funds allow clients to invest in private equity, but with a very diversified portfolio compared to a pure private equity investment fund.

- any investment in an eligible asset within the meaning of the ELTIF regulation should be able to be made indirectly (via a fund, a holding company or any other type of vehicle). If this is the case, the ratios applicable to the ELTIF may be calculated using look-through.

- regarding the eligibility of physical assets, the minimum value threshold of €10 million should be abandoned. This threshold results in a minimum fund size (which may require the fund manager to bring in “seed money”), and thus constitutes an additional entry barrier to the creation of ELTIFs. Moreover, this threshold limits the scope of eligible assets and hinders the diversification of the fund.

- under the current regulation, the ELTIF may not invest more than 10% of its capital in a single qualifying portfolio undertaking, a single real asset or a single fund (cf. 2 a, b and c of Article 13 of ELTIF Regulation). This rule is binding, and it is complicated to maintain this ratio throughout the life of the fund.

  For some funds, it is impossible to comply with this ratio : as an example, please note that due to different regulations across the European Union (on banking monopoly, for example), funds which invest in private debt often invest through another structure layered between the fund and the portfolio investments. The 10% diversification ratio imposed by Article 13 of the ELTIF regulation excludes these mechanisms from the scope of the funds which can be labelled as ELTIF funds. A good solution to this would be to enable management companies to calculate the ELTIF ratios by looking through any intermediate structure layered between the fund and the portfolio company.

- Additional flexibility should be provided first on the general structure of the fund: the asset manager should be able to create a closed-ended fund or an open-ended fund. The possibility to create open-end funds would help to attract not only institutional but also retail investors. Accordingly, the subscription and redemption frequencies should be adapted to be aligned with the expectations of end-clients. Lastly flexibility should be given to the minimum proportion of eligible long term assets. The minimum threshold should be reduced to 50 % instead of 70% today. As a result, the proportion of liquid assets should be increased (above the current 30% limit). Liquidity management tools should also be envisaged to comply with the level of protection which prevails for retail investors while keeping some flexibility in the overall design of the fund.

- Current marketing rules should also be reviewed as they are far too binding in the current framework in the context of retail investors. In particular the current entry ticket of 10 k€ should be removed. These have clearly impeded the access of retail investors to ELTIF structure

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

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

AFG's response :

Amendments should be made on the taxation regime (especially regarding withholding tax), in order to create a level playing field across Europe in the tax treatment, and to ensure tax neutrality when investing domestically or in the rest of the EU Single Market.

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:

AFG's response :

As a preliminary comment, responses provided in the table above are based on considering what most provisions are important for the well functioning of the ELTIF regime.

As explained previously, most negative impact in the existing ELTIF framework is coming from the lack of availability to retail investors due to rules which are not adapted to their expectations and needs. As mentioned previously further flexibility should be introduced in the current regime to align the existing expectations of retail investors in terms of redemption policy while adapting accordingly liquidity and diversification requirements to those designed for retail investors. Exiting marketing rules are also too binding as explained above in our response to Q.2.

The second main issue is the lack of sufficiently broad scope of assets eligible for eligible investments. The present threshold of 10M€ for real assets is an obstacle, together with the conditions introduced for eligible real estates. The 500M€ cap is also too low for Midcaps and a higher level would be beneficial; a 2000M€ cap for SMEs was recently retained in some French regulations. In addition, the cap should have to be observed only at investment time but not after since this would penalize good investments in performing firms.
Investments in other funds than ELTIFs, EuVECA and EuSEF should also be possible together with fund of funds structures.

FULL VERSION OF THE QUESTIONNAIRE

PART 2. SCOPE OF THE ELTIF AUTORISATION AND PROCESS

Question 4. Is the scope of the ELTIF authorisation and operating conditions appropriate?

Please explain your answer.

AFG's response :

We don't have comments regarding article 5 (on authorisation) and article 6 (on operating conditions) of the ELTIF regulation.

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

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

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

We recommend many amendments, in particular scope of assets as well as minimum threshold for investment by retail investors.

Due to multiple different interpretations by NCAs, the ELTIF passport does not function in an optimal way. Multiple registrations and notification procedures (as direct consequence of different interpretations) result in painful processes to benefit from the passport and additional costs for end-investors.

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

Please specify what you mean by other in your response to question 5:

AFG's response :

PART 3. INVESTMENT UNIVERSE, ELIGIBLE ASSETS AND QUALIFYING PORTFOLOIO UNDERTAKINGS

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 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					X	
Other types of assets and investment targets, and /or other regulatory approaches should be pursued						X

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.):

Afg's response

AFG’s response :

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?

Regarding eligibility of real assets, article 2 (6) is not clear enough.

Instead of these definitions, we recommend to mention that when investing in real assets, the ELTIF manager has to take some ESG criteria into account.

Residential and commercial real estate should be clearly eligible, provided that some ESG criteria are taken into account.

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

AFG’s response :

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

Yes	
No	X
Don’t know / no opinion / not relevant	

Question 8.1 Please explain your answer to question 8.

In particular, please describe in detail any necessary

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

AFG's response :

The ELTIF regulation should include a maximum threshold of 50% for investments in third countries:

- this threshold will ensure that the ELTIF invests a significant part of its portfolio (at least 50%) in the EU, and at the same time offer flexibility to invest in third countries, to the benefit of diversification and possibly returns depending on market opportunities ;
- the possibility to invest up to 50% in third countries will help to attract investors from these third countries.

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				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:

AFG’s response :

Limitations in terms of investment ratios should not apply at least during the ramp-up period nor during the divestment period for close-ended funds.

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.

Currently, ELTIFs are specialized (PE funds, infrastructure funds, real estate funds, loand funds, etc.). This is one of the reason of the limited success of ELTIF, especially for the retail market.

It would be desirable to allow the ELTIF to invest in funds other than ELTIFs, EuVECAs and EuSEFs. Via a fund of funds strategy, the ELTIF may thus offer the subscriber exposure to a wide variety of assets: unlisted companies, real estate, infrastructure, etc. (to do this, the fund of funds strategy appears relevant because in practice, the expertise of the various asset classes is often implemented by different teams). This would allow to lower risk through higher diversification, and to provide indirect access for retail clients to these assets which often provide quite high levels of return.

When investing in an other fund, if this fund has retail and institutional share classes, the ELTIF manager should choose the institutional shares, in order to have lower fees.

From another perspective, regarding real asset investment strategies, the current cumulative and unclear conditions to be fulfilled (see our answer to Question 7 in particular) are significant barriers to facilitate real asset investments through ELTIFs.

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

AFG's response :

PART 4. TYPES OF INVESTORS AND EFFECTIVE INVESTOR PROTECTION

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

Please explain:

AFG's response :

ELTIF has added value for institutional investors, especially for small or midsize institutional clients. But it could become more attractive with more diversification opportunities and broader scope of 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	X
No	
Don't know / no opinion / not relevant	

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

AFG's response :

Regarding the distribution of ELTIF to retail investors, Article 30 of ELTIF Regulation states, in particular, that if the portfolio of financial instruments of a potential retail investor does not exceed €500,000 (which is a very high amount, that most retail investors do not hold), then the manager or distributor shall ensure that:

- the retail investor does not invest more than 10% of their portfolio of financial instruments in ELTIF;
- and that the minimum initial amount invested in one or more ELTIF is €10,000.

With these two limits, any investor wanting to invest in an ELTIF fund has to hold a portfolio of financial instruments at least equal to 100 000€, which excludes a lot of people.

These rules limit the possibilities of marketing ELTIF to retail investors, who often subscribe through scheduled payments rather than through a single subscription. As a result, the unit subscription amount has limited relevance. And even in the case of a single subscription, when clients invest for the first time in a class of assets, they often want to start with investing only a small amount, in order to test if this class of assets fits them.

These limits are also particularly complex to monitor from an operational point of view, as the targeted investors are often multi-banked. As a result, advisers often prefer to offer national, non-ELTIF-labelled products that are not subject to these limits.

As a consequence, we consider that these rules (entry ticket and maximum percentage of the portfolio of financial instruments) should be removed.

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

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

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

AFG's response :

In terms of a suitability test for fund distributors to administer to their retail clients, the Commission should consider aligning the present Article 28(1) requirements with the relevant provisions (Article 25) of the MiFID II regime.

c) Withdrawal period of two weeks

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

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

AFG's response :

d) Possibility to allow more frequent redemptions for retail investors

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

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

AFG's response :

As the regulation currently stands, since the ELTIF is a closed-end fund or a fund with limited possibilities of redemptions, its investors may not request the redemption of their units or shares before the end of the life of the fund other than by way of an exemption.

The AFG recommends providing for the possibility for the fund to offer regular subscription and redemptions windows at a frequency appropriate to the fund's assets (for example, weekly, bi-monthly or monthly).

Such a scheme would make it possible to increase the size of the fund (and thus the possibilities for diversification) as new subscriptions are made, and would meet the need of distribution networks to have products that are permanently open for collection, without having to manage a specific subscription period.

In addition, the redemption possibilities would meet the aspirations of retail investors, who might be reluctant to lock in their investments for a long period of time with no possibility of redemption.

This possibility to allow more redemption flexibility is one of the recommendations made by Better Finance in a recent report (« *Obstacles to the Development of the EU ELTIF Market* »)

The success of French OPCIs (open ended real estate funds) for many years shows that it is possible to design and to manage a fund composed of long-term non-listed assets, with frequent possibilities of redemptions.

You will find below to exemples of OPCI, and how their liquidity is managed. These exemples show the consistency between composition of assets, frequency of possibilities of subscription/redemptions, and liquidity management tools.

Exemple 1 :

- 51 to 65% of assets invested in real estate assets (the rest being invested in financial assets)
- bi-monthly possibility of susbscription and redemption, without gates
- settlement period for share redemption requests : 8 days. But the delay might be higher (but less than 2 months)
- incentive notice periods for institutional investors
- stress tests when OPCI is launched, and then every 6 months

Exemple 2 :

- up to 95% of assets invested in real estate assets
- bi-monthly possibility of susbscription and redemption.
- settlement period for share redemption requests : 8 days. But the delay might be higher (but less than 2 months)
- incentive notice periods for institutional investors
- redemption gates
- stress tests when OPCI is launched, and then every 6 months

Two other French types of long term-funds with possibilities of redemptions can be mentioned :

- Evergreen FCPR (French venture capital mutual investment funds)
- OFS (Specialised Financing Vehicles) : the OFS is a vehicle that allow all investments of a vehicle wishing to use the ELTIF Label to be made under French law. The OFS may invest in a wide range of assets (loans,

receivables, plain vanilla debt securities or debt securities giving access to the issuer's capital, equity securities, property) and finance itself from a broad base of European investors, including retail investors. Shares and debt securities issued by an OFS may be redeemed by the OFS at the request of the holders if the fund rules or the articles of incorporation so provide. The fund rules or the articles of incorporation must adjust, or even prohibit, this option depending on the liquidity of the assets held by the OFS, even if this means that a lockup period and, after the end of this lockup period, a ceiling on redemption requests (gates) must be provided for.

e) Procedures and arrangements to deal with retail investors complaints

Yes	
No	
Don’t know / no opinion / not relevant	X

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

AFG’s response :

f) Provisions related to the marketing of ELTIFs

Yes	X
No	
Don’t know / no opinion / not relevant	

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

AFG’s response :

g) Other provisions and requirements related to retail investors

Yes	X
No	
Don’t know / no opinion / not relevant	

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

AFG’s response :

ELTIF should be more compatible with retail investor’s needs (in order to make sure that liquidity/volatility is consistent) which implies :

- to introduce possibilities of subscriptions/redemptions on a regular frequency and evergreen structures
- to lower the threshold of long term assets, from 70% to 50%
- to review diversification rules.

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

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

AFG’s response :

PART 5. CONFLICTS OF INTERESTS

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

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

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

AFG's response :

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:

AFG's response :

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:

AFG's response :

The mandatory disclosure requirements should be tailored to the specific type of investor: if ELTIFs are targeting only non-retail clients, the disclosure requirements should be lighter.

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

Yes	
No	
Other	X
Don’t know / no opinion / not relevant	

Question 15.1 Please explain how you think how should such rules on conflicts of interest be amended.

Please explain the benefits and disadvantages of the potential changes as well as costs, as well as how specifically such amendments could facilitate the effective management of conflicts of interests, co-investment strategies and indirect investment strategies:

AFG’s response :

The wording of the provisions relating to the management of conflicts of interest should be clarified.

Article 12 of ELTIF Regulation on conflicts of interest stipulates that “An ELTIF shall not invest in an eligible investment asset in which the manager of the ELTIF has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs or EuVECAs that it manages”. It would be useful to clarify what types of conflicts of interest are referred to here.

Indeed, it should be clear in the Article, that the following schemes are not covered. These schemes, which are very common in the asset management industry, do not constitute situations of conflict of interest:

- case of “seed-money” or “initial capital” contributed to the ELTIF by the manager, in order to facilitate the development of the fund. In this case, the manager's interest is perfectly aligned with that of the investors of the ELTIF.
- case of co-investment in the same asset between the ELTIF and another fund managed by the same management company (fund that might have received “seed money” or “initial capital” by the management company). If both funds make the same type of investment (for example, both funds invest in capital, or both invest in debt, then the interest of the unitholders of both funds is well aligned). This possibility of co-investing would facilitate investment in large assets.

Question 15.1 Please specify what you mean by other in your

response to question 15:

AFG's response :

PART 6. BORROWING OF CASH AND LEVERAGE

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

Increasing total allowed leverage	X
Decreasing total allowed leverage	
Maintaining the current leverage-related rules set out in the ELTIF regime intact	
Other	
Don't know / no opinion / not relevant	

AFG's response :

There should be more flexibility on the maximum allowed net leverage at least during a ramp-up period of 5 years. During this ramp-up period, it should be allowed to have a net leverage temporarily over 30%.

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Please specify what other policy choice(s) related to the leverage of the ELTIF funds you would find most appropriate:

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

AFG's response :

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

Please explain:

AFG's response :

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

Which safeguards are particularly relevant and appropriate, and why?

AFG's response :

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

AFG's response :

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

In addition, please explain if you consider it appropriate to provide for any alternative regulatory approach for the

borrowing of cash rules specifically during the ramp-up period in the ELTIFs' life:

AFG's response :

PART 7. RULES ON PORTFOLIO COMPOSITION AND DIVERSIFICATION

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

Please specify what other policy choice(s) pertaining to the ELTIF rules on diversification you would consider most appropriate:

AFG's response :

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

Question 21.1 Please explain your response to question 21 with the description of the advantages and drawbacks of your preferred policy approach.

In particular, should you consider that the diversification and

portfolio composition related rules under the ELTIF Regulation need to be amended, please explain, to what extent and why?

AFG's response :

See our response to Q.2.1

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

Yes

X No

Other

Don't know / no opinion / not relevant

Please specify what you mean by other in your response to question 22:

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

AFG's response :

Under the current regime, the ELTIF must invest at least 70% of its capital in eligible investment assets defined by article 10 of ELTIF Regulation. This excessively high threshold does not make it possible to attract investors interested in funds that are more diversified and offer more liquidity for both subscriptions and redemptions. Moreover, the example of national funds invested in real assets and intended for retail investors shows lower proportions of long-term assets versus liquid assets. We therefore recommend lowering this minimum threshold to 50%, with the manager naturally being allowed to decide to go beyond this, depending on the structure of the fund's liabilities and the liquidity risk management tools in place.

This lower threshold will make it possible to broaden the base of fund types that can qualify as an ELTIF. For example, OPCI (French real estate collective investment undertakings) must reach a quota of 51% of non-listed real estate assets. As the ELTIF regulation currently stands, the minimum rate of 70% of eligible assets makes many OPCI ineligible for the ELTIF label. Similarly, FCPR (French venture capital mutual investment funds) are subject to a minimum investment quota of 50%.

PART 8. REDEMPTION RULES AND LIFE OF ELTIFs

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

AFG's response :

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

Shorter maturity of between 5 to 10 years Maturity of 5 years and more	
Only investments with a maturity +10 years	
Only investments with a maturity +15 years	
Other possible maturity	X

Don’t know / no opinion / not relevant	

Please specify what other threshold might be considered appropriate:

AFG’s response :

Introducing limits in terms of assets maturity would not be beneficial and would not be consistent with the objective of ELTIF. On infrastructures, debt maturity is often 20, 25 or 30 years.
There should not be any limitation on maturity, it is up to the fund manager to cope with this topic. Liquidity management tools and stress tests also allow for the management of this question.

Question 24.1 Please explain your answer to question 24:

AFG’s response :

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

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

Please specify what other proportion of the portfolio should be permitted:

AFG's response :

Question 25.1 Please explain your answer to question 25:

AFG's response :

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

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

Please specify what you mean by other in your response to question 26:

AFG's response :

A possibility of mid-term redemption is not enough (cf answer to question 27)

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:

AFG's response :

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

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

Please specify what you mean by other in your response to question 27:

AFG's response :

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?

AFG's response :

The AFG recommends providing for the possibility for the fund to offer regular subscription and redemptions windows at a frequency appropriate to the fund's assets (the highest possible frequncy being bi-monthly). However, it should also remain possible for an ELTIF to offer no possibility of redemption.

Depending on the frequency of possibilities of redemptions, the fund manager will adapt-:

- the structure of the fund's assets: greater or lesser proportion of long-term assets, greater or lesser diversification, etc.;

- the liquidity risk management tools: setting up side pockets or redemption gates (the gate threshold, as a percentage of net assets, being consistent with NAV frequency), for example. Depending, in particular, on the various criteria already mentioned (percentage of illiquid assets on the assets side, frequency of subscription/redemption opportunities, etc.), the manager may, if necessary, provide for liquidity risk management tools: redemption gates, swing pricing or anti dilution levies (ADL), side pockets, mandatory and incentive redemption notices, settlement periods, selling of fund units on a secondary market / Multilateral Trading Facility, lock-up period, redemptions in kind, suspension, etc

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	X
No	
Other	
Don't know / no opinion / not relevant	

Please specify what you mean by other in your response to question 28:

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

AFG's response :

Under the current regulation, the ELTIF may not invest more than 10% of its capital in the a single qualifying portfolio undertaking, a single real asset or a single fund (cf. 2 a, b and c of Article 13 of ELTIF Regulation). This rule is binding, and it is complicated to maintain this ratio throughout the life of the fund:

In the case of a fund open to subscriptions and redemptions, it will be difficult to comply with this ratio at the beginning of the fund's life, as investments are progressive.

In the case of a closed-ended fund, this ratio will be difficult to comply with not only during the investment phase but also during the disinvestment phase. Indeed, during this investment phase, the portfolio may be temporarily “distorted”. It should be noted that in the case of investment in debt, the issuer may in some cases make early redemptions, which the manager cannot by definition predict or anticipate (exemple of such a clause : « a borrower to which a Term Loan has been made may, if it or the Company gives the Agent not less than three Business Day’s […] prepay the whole or any part of that Term Loan […] »

It therefore seems necessary to provide more flexibility regarding this rule, or even to cancel it. This point is especially critical during ramp-up.

Moreover, there should be more flexibility on the maximum net leverage during ramp-up period.

Secondary market and issuance of new units or shares

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

AFG’s response :

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?

AFG’s response :

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

and if so how?

AFG's response :

PART 9. MARKETING STRATEGY FOR ELTIFS AND DISTRIBUTION RELATED ASPECTS

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

Please explain:

AFG's response :

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

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

Please specify what you mean by other in your response to question 33:

AFG's response :

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

AFG's response :

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:

AFG's response :

PART 10. MISCELLANEOUS

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

AFG's response :

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:

AFG's response :

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:

AFG's response :

We have observed different interpretations of some provisions of the ELTIF regime by NCAs, both on eligible assets (due to the lack of clarity of some related provisions) and in the notification/registration rules imposed at national level. These diverging local practices have not facilitated the development of ELTIFs. In many cases opting for national vehicles is less burdensome.

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?

AFG's response :

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:

AFG's response :

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:

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:

AFG's response :

Article 21 of the ELTIF regulation regarding disposal of ELTIF assets is no longer relevant for evergreen funds, and should be amended accordingly.

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

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

AFG's response :

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:

AFG’s response :