

**PROFESSIONAL  
GUIDE** OCTOBER 2024

# Practical guide to ELTIF 2.0



### **IMPORTANT NOTE**

This *Practical Guide – ELTIF 2.0* has been drawn up by the AFG with the assistance of Kramer Levin Naftalis & Frankel LLP and the members of the AFG's ELTIF Working Group in order to familiarise AFG members with these new regulations.

This *Practical Guide – ELTIF 2.0* is intended to be concise and does not claim to be exhaustive. It should not be construed as constituting advice to AFG members and each AFG member is invited to form its own opinion on the elements contained in this Practical Guide before considering the ELTIF 2.0 authorisation of an alternative investment fund. Neither the AFG, Kramer Levin Naftalis & Frankel LLP nor any member of the AFG's ELTIF Working Group may be held liable in any way whatsoever in connection with this guide.

This *Practical Guide – ELTIF 2.0* reflects the authors' understanding of the state of the law on 30 August 2024. It will be updated periodically by the AFG. Nevertheless, readers are strongly advised to ensure that no legislative or regulatory changes or administrative interpretations have occurred since the date of publication or of any updates that might alter the content.

# EXECUTIVE SUMMARY

The *ELTIF Regulation* was introduced back in 2015 to encourage investment in long-term projects within the European Union (EU), aiming to channel funding towards key sectors such as, infrastructure, sustainable energy, SMEs, and technological innovation.

The need to recast this regulation quickly became apparent due to the many shortcomings of the initial text (notably, the dissuasive nature of numerous management constraints and of severe access restrictions for retail investors). This has now been achieved with the *ELTIF Regulation 2*, which came into force in January 2024. The new text considerably simplifies the structuring and distribution of these funds, making them considerably more attractive, as a result of consultations and the strong involvement of all stakeholders.

**A revised regulation to respond effectively to the long-term investment needs, and to add to the financial strength, of the EU.**

In November 2021, as part of the relaunch of the EU Capital Markets Union (CMU), the successful development of an investment vehicle specifically adapted to long-term assets was identified among the Commission's top priorities. Indeed, the previous successes of the UCITS, MMF and AIF regulatory standards have demonstrated the importance of such systems for the successful operation of European financial markets and their ability to attract investors, as well as for the vigour of the European economy.

Promoting long-term savings vehicles for retail investors is also one of the main proposals put forward by the AFG in its "Europe 2030" Manifesto, which is aimed at the financing of businesses, and innovation, as well as their transition.

In asset management, an adapted and widely used regulatory standard favours a single set of rules across the EU for portfolio composition, diversification and eligible assets, liquidity rules, disclosures, etc. This also enhances investor

protection and comparability of the European offering, which is all the more important in the context of cross-border marketing of these investment funds to retail customers. As this is greatly facilitated, an ELTIF fund can be freely marketed throughout Europe, giving rise to funds with larger assets under management.

Ultimately, these regulatory standards also help to build greater confidence among savers and investors and allow benefit from a "brand effect", a source of economic efficiency.

**An adapted regulation, a strategic tool for mobilising capital.**

ELTIF 2 is positioned as an essential strategic tool for mobilising the capital needed to achieve the EU's economic and sustainable objectives. Financing European companies over the long term, by means of an innovative, cross-border investment scheme for European savings, should make ELTIF 2 a major step towards strengthening the EU's economy, and helping to ensure its financial sovereignty.

This initiative to mobilise, modernise and develop savings has seen its priority reinforced in the political agendas for 2024, both in France (see the *Noyer Report*) and at the European level (see in particular the *Letta Report*, as well as the *2024-2029 Political Guidelines* of the president of the European Commission – U. von der Leyen).

Funding is sometimes lacking for projects such as transport infrastructure, sustainable energy production or distribution, social infrastructure (housing or hospitals), the deployment of new systems and technologies to reduce resource and energy consumption, or the development of SMEs. As a number of recent events have shown, supplementing bank financing with more varied sources of funding, enabling capital markets to be better mobilised, could help fill the gaps. In this respect, ELTIF 2s should play an essential role, and can also mobilise capital by attracting investors from third countries.

## A benefit for the entire ecosystem

### ON THE “SUPPLY” SIDE

By offering managers a broader range of assets and the possibility of combining them within a single fund, as well as simpler, more flexible management rules, the *ELTIF Regulation* should help catalyse financial innovation to better meet investor needs.

ELTIF 2 marks a significant step forward for long-term investment in the EU, and could lead to an overhaul of the offering for investors, particularly retail investors.

The success of this regulation, which we hope will be achieved, should enable the European financial landscape to evolve and offer new sources of financing to meet the current challenges of sustainability, innovation and financing the economy.

### ON THE “DEMAND” SIDE

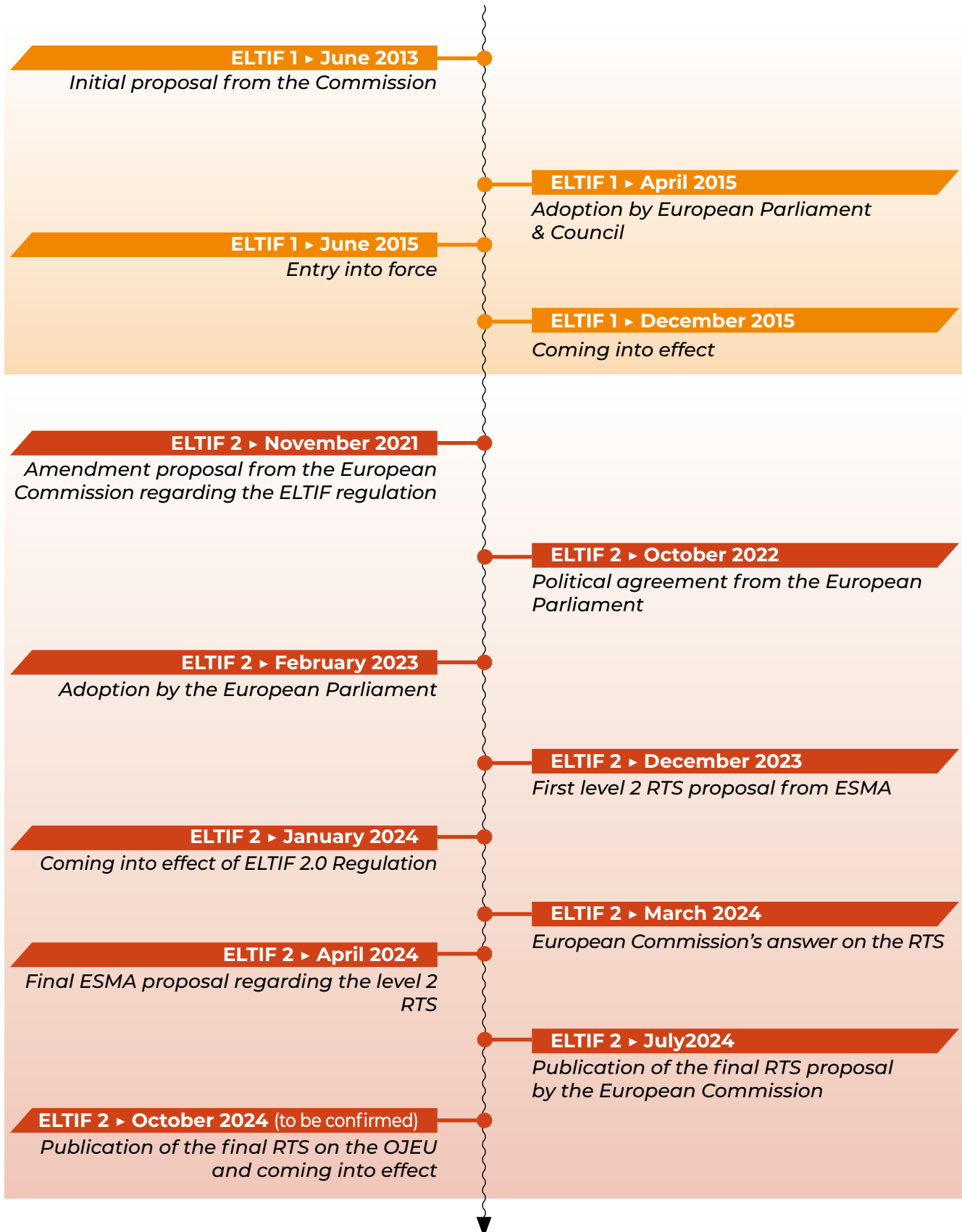
While offering less liquidity than investments in transferable securities (but in the case of open-ended, semi-open-ended or evergreen funds, at least “semi-liquidity”), ELTIF 2s make it possible, in particular, to broaden the investment universe accessible to retail clients, providing well-defined access to non-listed assets, and enabling them to better diversify their assets.

Through this new regulation illustrated in the technical guide we are offering you, asset managers benefit in particular from increased flexibility to invest in new underlying assets, combined with tailored risk management and greater transparency.

They will thus, by working closely with distributors and regulators, be able to leverage their expertise and develop optimal solutions to meet the needs of private investors.

*Frédéric Surry,*  
*president of the AFG's ELTIF Working Group*

## Calendar ELTIF – ELTIF 2.0



## Major changes from ELTIF 1.0 toward ELTIF 2.0

	ELTIF 1.0	ELTIF 2.0
<b>INVESTMENT POLICY</b>		
	All customers	Retail Customers*
Minimal part of ELTIF eligible assets	70%	55%
Diversification ratio	10%	20%
Concentration ratio	25%	30%
Fund Structure	Close-ended Structure only	Open-ended fund structure available
<b>ELIGIBLE ASSETS</b>		
Physical assets	Limited eligibility	Near total eligibility
Companies (Equity, quasi-Equity Debt instruments and loans)	Unlisted companies with less than 500M€ of capitalization Europe and third country (under conditions)	Unlisted or listed with a less than 1.5 Mds € market capitalisation, located in Europe or in a 3 <sup>rd</sup> country (eased conditions) + Green Bonds + STS Securitisation (under conditions)
Investment into funds	ELTIF, EuVECAs and EUSEFs	ELTIF, Euvecas, EUSEFs + OPCVM + FIA UE (transparency approach)
<b>COMMERCIALISATION</b>		
Minimum investment	10K€ minimum that mustn't represent more than 10% of the financial portfolio	No minimum
Requirements from the investor	Ad-hoc requirements	MIFIDII Suitability Test
Internal evaluation from the ELTIF manager marketed to retail investors	Ad-hoc requirements	MIFID II
<b>STRUCTURATION</b>		
ELTIF master feeder	Impossible	Possible only from ELTIF to ELTIF
Funds of funds	Possible for ELTIF, EUVECAs, EuSEFs, limited to 20% of the total asset and with an exposure ratio of 10% for each funds	Possible toward all EU funds and up to 100% of the fund assets, and with an exposition limit of 20% for each funds

# AN OPERATIONAL SYSTEM

## 1. COMMUNITY LEGISLATION

The *ELTIF Regulation 2* was published in the *Official Journal of the EU* on 20 March 2023 and came into force on 10 January 2024. For the purposes of this Guide, the term “ELTIF Regulation” refers to *ELTIF Regulation 1*, as amended by *ELTIF Regulation 2* (consolidated ELTIF Regulation).

**Certain provisions of the *ELTIF Regulation* refer to regulatory technical standards (RTS).**

These RTS were the subject of a Commission *Delegated Regulation* dated 19 July 2024, which was at the same time notified to the European Parliament and the Council (the “*Delegated Regulation*”). The latter have a period of three months in which to object to the *Delegated Regulation*. Given this three-month non-objection period, the *Delegated Regulation* should be published in the *Official Journal of the EU (OJEU)* by the end of October 2024 at the latest, unless the non-objection procedure is extended by a period of three months, which would postpone publication of the *Delegated Regulation* in the OJEU to the end of December 2024 at the latest.

The provisions of this *Delegated Regulation* cover in particular:

- ▶ the use of derivative financial instruments for hedging purposes (art. 9(2)(d) of the *ELTIF Regulation* and art. 1 of the *Delegated Regulation*);
- ▶ the circumstances in which the life of the ELTIF is considered to be consistent with the economic life cycle of each asset (art. 18(3) of the *ELTIF Regulation* and art. 2 of the *Delegated Regulation*);
- ▶ only in the case of an ELTIF open to redemption:
  - the criteria for determining the minimum holding period (art. 18(2)(a) of the *ELTIF Regulation* and art. 3 of the *Delegated Regulation*);
  - the minimum information relating to the redemption policy and liquidity management tools that the ELTIF manager must communicate to the competent authority regarding redemption policy and liquidity management tools (art. 18(2)(b) of the *ELTIF Regulation* and art. 4 of the *Delegated Regulation*);
  - redemption policy, in particular redemption procedures and conditions (art. 18(2)(c) of the *ELTIF Regulation* and art. 5 of the *Delegated Regulation*);
  - the criteria to be taken into account to determine the percentage of liquid assets to which redemptions may be limited (art. 18(2)(d) of the *ELTIF Regulation* and art. 6 of the *Delegated Regulation*);
- ▶ only if a matching procedure is set up:
  - the ELTIF rules in terms of matching policies and procedures (art. 19(2 bis) of the *ELTIF Regulation* and art. 7 of the *Delegated Regulation*);
  - the determination of the execution price and the prorating conditions in the event of outgoing investors’ requests exceeding those of potential investors (art. 19(2 bis) of the *ELTIF Regulation* and art. 8 of the *Delegated Regulation*);
  - information that must be sent to investors in the event of matching (art. 19(2 bis) of the *ELTIF Regulation* and art. 9 of the *Delegated Regulation*).
- ▶ market evaluation criteria for potential buyers (art. 21(2)(a) of the *ELTIF Regulation* and art. 10 of the *Delegated Regulation*);
- ▶ valuation criteria for assets to be sold (art. 21(2)(c) of the *ELTIF Regulation* and art. 11 of the *Delegated Regulation*);
- ▶ the definitions, calculation methods and common presentation rules to be applied to ELTIF costs (art. 25 of the *ELTIF Regulation* and art. 12 of the *Delegated Regulation*).

## 2. FRENCH LEGISLATION

The act of 23 October 2023 relating to the green industry (the “Green Industry Act”) was published in the *Journal officiel de la République française* on 24 October 2023.

Some of its provisions (art. 35) relating to life insurance and PERs will not come into force until 24 October 2024, subject to the adoption of a number of implementing regulations.

**These implementing regulations have now adopted:**

- ▶ decree no. 2024-539 of 12 June 2024 relating to the conditions for valuation and redemption of units of account made up of categories of collective investment undertakings mainly invested directly or indirectly in unlisted assets;
- ▶ order of 12 June 2024 on the conditions for using estimated values for units of account with underlying real assets of low liquidity;
- ▶ decree no. 2024-551 of 18 June 2024 setting out the terms and conditions for providing information in connection with certain redemptions of units of account;
- ▶ order of 1 July 2024 amending the order of 7 August 2019 implementing the retirement savings reform;
- ▶ order of 1 July 2024 introducing profiled management for capitalisation contracts and certain life insurance contracts;
- ▶ decrees no. 2024-713 and no. 2024-714 of 5 July 2024 aimed at modernising the investment universe for life insurance and capitalisation contracts and PERs;

**In addition, the Green Industry Act empowered the government to issue ordinances to modernise the rules governing alternative investment funds.**

This was done with ordinance no. 2024-662 of 3 July 2024, modernising the regime for alternative investment funds, published in the *Journal Officiel de la République française* on 4 July 2024. The main changes introduced by this order concern:

- ▶ the creation of the *société de libre partenariat spéciale* (SLPS), an unincorporated *société de libre partenariat* (SLP), to meet the tax constraints applicable to investors located in certain jurisdictions such as Belgium or Canada;
- ▶ the possibility for Specialised Professional Funds (SPFs), including SLPs, to issue debt securities, which was authorised prior to the ordinance only for SFOs and TOs;
- ▶ the possibility for Specialised Financing Organisations (SFOs) to issue tracking units, which was only authorised prior to the ordinance for SPFs (including SLPs), provided that these tracking units do not result in the scheme being classified as a securitisation transaction within the meaning of the Securitisation Regulation;
- ▶ the removal of the ceiling on receivables held by an FPCI to 10% of its assets;
- ▶ the express qualification of SFOs under co-ownership form (FFSs) as “*fonds communs de placement*” (FCPs);
- ▶ the possibility for corporate mutual funds “*fonds communs de placement d’entreprise*” (FCPEs) to invest in ELTIFs (decree expected).



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# GENERAL COMMENTS

ELTIF is an acronym for the European long-term investment funds that were created on 29 April 2015 by the *ELTIF Regulation 1*, in the framework of the EU Capital Markets Union.

According to the recitals of the *ELTIF Regulation 1* « *long-term finance is a crucial enabling tool for putting the European economy on a path of smart, sustainable and inclusive growth, in accordance with the Europe 2020 strategy, high employment, and competitiveness for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance of lasting duration to various infrastructure projects, unlisted companies, or listed small and medium-sized enterprises (SMEs) that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the Union's real economy and the implementation of its policies* ».

This is not about a new legal vehicle, but an authorisation issued by a competent authority of any EU Member State (the *Autorité des Marchés Financiers* (AMF) in France) to any AIF within the meaning of the AIFM Directive managed by an AIF manager approved in accordance with this directive that complies with the conditions.

Like any EU regulation, it is of direct effect (i.e. without transposition into national law) in the 27 Member States:

- ▶ an ELTIF may carry out the investment transactions authorised by the *ELTIF Regulation* in the 27 EU Member States, notwithstanding their national rules (in particular those applicable to the banking monopoly);
- ▶ an ELTIF can, moreover, benefit from marketing passport to retail investors in the 27 EU Member States, whereas an AIF within the meaning of the AIFM Directive and managed in accordance with that directive, that is not approved as an ELTIF, can only benefit from a marketing passport to professional investors in the EU in accordance with the AIFM Directive.

The *ELTIF Regulation 1* was not as successful as expected.

In its report to the Parliament and the Council of 25 November 2021, the Commission counted 57 ELTIFs in October 2021 for the EU as a whole, representing a total net value of roughly 2.4 billion Euros (compared with a total net value of EU AIFs at the same date of around 6,800 billion Euros), made up by 4 Member States: France, Luxembourg, Italy and Spain.

In order to relaunch the Capital Markets Union and direct the savings of European professional and retail investors towards financing Europe's real economy and the energy and digital transitions, the *ELTIF Regulation 2* amended the provisions of the *ELTIF Regulation 1* that were at the root of this failure.

The *ELTIF Regulation 2* was published in the OJEU on 20 March 2023 and came into force on 10 January 2024.

Some provisions of the *ELTIF Regulation* refer to regulatory technical standards (RTS). These RTS were the subject of a Commission *Delegated Regulation* dated 19 July 2024, which was notified at the same time to the European Parliament and the Council (the "**Delegated Regulation**"). The latter have a period of three months in which to object to the *Delegated Regulation*. Given this three-month non-objection period, the *Delegated Regulation* should be published in the OJEU by the end of October 2024, unless the non-objection procedure is extended by three months, which would delay publication of the *Delegated Regulation* in the OJEU until the end of December 2024 at the latest.

The fact that the *Delegated Regulation* has not yet been published in the OJEU does not prevent managers of French AIFs from applying to the AMF for ELTIF authorisation. The AMF has made it clear that it is willing to authorise French-registered AIFs as ELTIFs provided that, if some of the operating rules of these ELTIFs are subject to the technical regulatory standards, a *rendez-vous* clause is included between the manager of the ELTIF and the AMF to adapt the ELTIF documentation, if necessary, when the *Delegated Regulation* is published in the OJEU. To this end, the AMF has drafted an undertaking letter under which the management company undertakes that the AIF in question will comply with all the requirements set out in the *Delegated Regulation* as published in the OJEU.

Any ELTIF-approved AIF is therefore governed by the applicable national rules of the place where it is established and in addition complies with the conditions of the *ELTIF Regulation*. Hence the importance of ensuring, in the interests of competitiveness with other European asset management centres, that the accumulation of French national rules and those of the *ELTIF Regulation* provide a competitive environment for certain AIFs.

The Green Industry Act, adopted in France on 23 October 2023, significantly modifies the regulatory framework for the marketing of AIFs to retail investors, (1) by allowing certain AIFs existing before 1 January 2024 (FCPR, OPCI) to elect until 9 January 2026 to be governed by the provisions applicable to ELTIF FPSs, (2) by creating a new long-term investment scheme for young people (the PEAC – *Plan d'Épargne Avenir Climat*) and (3) by modifying the other French investment envelopes used by retail investors (Assurance-Vie, PER, PEA, PEA-PME) in order to facilitate their investment in ELTIF-approved AIFs.

The implementing texts of the Green Industry Act were published in June and July 2024.

Without relating directly to the entry into force of the *ELTIF Regulation 2*, it must be noted that the Green Industry Act had empowered the Government to legislate by ordinance within 9 months of the promulgation of this Act in order to adapt (1) the provisions relating to the composition, the issuance of financial securities, liquidity management tools and the constitution of FPSs, FPCIs and OFSs to facilitate their authorisation as ELTIFs and (2) the rules relating to the composition and constitution of AIFs open to non-professional investors to ensure their complementarity with the AIFs referred to in (1).

The Ordinance modernising AIFs was adopted on 3 July 2024 and came into force on 4 July 2024 (see Section "*An operational system*").

# GLOSSARY

**AIF:** Alternative Investment Fund as defined by the AIFM Directive.

**AIFM Directive:** Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC as well as Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

**CBDF (Cross Border Fund Distribution) Directive:** Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings.

**Delegated Regulation:** delegated regulation adopted by the Commission on 19 July 2024 on regulatory technical standards (RTS).

**Eligible asset:** an eligible asset which meets the conditions set out in section 1.1.

**ELTIF Regulation:** *ELTIF Regulation 1*, as amended by the *ELTIF Regulation 2* (consolidated ELTIF Regulation).

**ELTIF Regulation 1:** Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.

**ELTIF Regulation 2:** Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 modifying the *ELTIF Regulation 1*.

**ESMA:** European Securities and Markets Authority.

**EuSEF:** European Social Entrepreneurship Fund under Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.

**EuVECA:** European Venture Capital Funds under Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds.

**FPCI:** French professional private-equity fund (*Fonds professionnel de capital-investissement*).

**FPS:** French specialised professional fund (*Fonds professionnel spécialisé*).

**FPVG:** French general purpose professional fund (*Fonds professionnel à vocation générale*).

**Green Industry Act:** Act no. 2023-973 of 23 October 2023 on the green industry.

**Liquid assets:** the assets referred to in Article 50(1) of Directive 2009/65/EC (UCITS Directive), which may not represent more than 45% of the capital of the ELTIF.

**MFC:** French Monetary and Financial Code (*Code monétaire et financier*).

**MiFID II:** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

**OFS:** French specialised financing organisation (*Organisme de financement spécialisé*).

**OJEU:** Official Journal of the European Union.

**Ordinance modernising AIFs:** Ordinance no. 2024-662 of 3 July 2024 modernising the regime for alternative investment funds.

**PEA:** French shares savings plan (*Plan d'épargne en actions*).

**PEA-PME:** Equity savings plan designed to finance small and medium-sized enterprises and mid-cap companies (*Plan d'épargne en actions destiné au financement des petites et moyennes entreprises et des entreprises de taille intermédiaire*).

**PER:** French retirement savings plan (*Plan d'épargne retraite*).

**PRIIPs Regulation:** Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products.

**Prospectus Regulation:** Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

**Qualifying portfolio undertaking:** a company that meets the conditions set out in section 1.2.

**RCW:** Redemption Ceiling per Window.

**Securitisation Regulation:** Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

# 1. MORE FLEXIBLE CONDITIONS FOR ELIGIBLE ASSETS AND QUALIFYING PORTFOLIO UNDERTAKINGS

## 1.1 More flexible eligibility criteria

### 1.1.1 MINIMUM QUOTA OF ELIGIBLE ASSETS

Since the *ELTIF Regulation 2*, an ELTIF must invest at least 55% of its capital in the eligible assets described below (compared with 70% in the *ELTIF Regulation 1*). The reduction in this minimum amount invested in illiquid assets should enable managers of ELTIFs to better manage the liquidity of ELTIFs and, in particular, to honour redemption requests for open-ended or semi-open-ended ELTIFs, in strategies that do not generally involve liquidity tools.

The maximum remaining 45%, constituting the ELTIF's liquid pocket, must be invested in the assets referred to in Article 50(1) of Directive 2009/65/EC (the “**liquid assets**”), i.e. assets eligible for inclusion in the assets of UCITS (transferable securities, money market instruments listed or traded or issued by first-ranking issuers subject to supervision, UCITS units, deposits, etc.). However, it should be noted that liquid assets that meet the criteria for eligible assets may represent 100% of the capital of the ELTIF. For example, shares in a UCITS invested in listed companies with a market capitalisation of less than €1.5 billion at the time of the initial investment are, by transparency, eligible assets for investment by the ELTIF without the 45% limit being applicable.

Investments of an ELTIF in the units or shares of other collective investment undertakings in the European sense of the term are only taken into account, in determining compliance with this 55% investment ratio in eligible assets, up to the amount of the investments of these undertakings in said eligible assets.

### 1.1.2 ASSETS ALREADY ELIGIBLE

The following assets were already eligible under the *ELTIF Regulation 1*, although the *ELTIF Regulation 2* introduces a number of easings:

- (a) Equity or quasi-equity instruments issued by a qualifying portfolio undertaking, whether these instruments are subscribed directly with this company or acquired from a third party on the secondary market.

The *ELTIF Regulation 2* allows these instruments to be subscribed via an intermediary entity in which an eligible portfolio company has a capital holding, regardless of whether this holding is majority or minority (e.g. a minority co-investment).

- (b) Debt instruments issued by a qualifying portfolio undertaking.

Although the *ELTIF Regulation* does not expressly state so, these debt instruments may be subscribed directly with this company or acquired from a third party on the secondary market.

- (c) Loans granted by the ELTIF to a qualifying portfolio undertaking, the maturity of which does not exceed the life of the ELTIF.

This possibility offered by the *ELTIF Regulation 1* was one of the major reasons for ELTIF authorisation of AIFs prior to the adoption of the *ELTIF Regulation 2*. Due to the direct effect of the *ELTIF Regulation 1*, ELTIFs can then grant loans in the 27 Member States independently of the applicable local rules on the banking monopoly (its Article 1(3) prohibiting Member States from laying down additional requirements in areas governed by the *ELTIF Regulation*). This means that an ELTIF governed by foreign law can grant loans in France, where rules on the banking monopoly are also very strict.

- (d) Physical assets (a physical asset being defined as an asset that has an intrinsic value linked to its substance and properties) with no minimum value requirement (the minimum value of 10 million Euros provided for in the *ELTIF Regulation 1* has been repealed by the *ELTIF Regulation 2*).

Recitals (6) to (8) of the *ELTIF Regulation 2* mention in particular immovable property (such as communications, environmental, energy or transport infrastructure, social infrastructure such as retirement homes or hospitals, educational, health and social assistance infrastructure, industrial infrastructure, commercial or residential property), intellectual property, ships, equipment, machinery, aircraft, rolling stock, water rights, forestry rights, construction rights and mining rights. Works of art, manuscripts, wine stocks, jewellery or other assets that do not in themselves represent long-term investments in the real economy are expressly excluded.

- (e) Units or shares in one or more other ELTIFs, EuVECAs (European Venture Capital Funds) and EuSEFs (European Social Entrepreneurship Funds) provided that these ELTIFs, EuVECAs and EuSEFs make eligible investments and have not themselves invested more than 10% of their assets in another collective investment undertaking.

The *ELTIF Regulation 2* now allows an ELTIF to be created as part of a master-feeder strategy where the feeder ELTIF invests more than 85% of its assets in units or shares of a master ELTIF, in which case the aforementioned 10% limit does not apply (see *sections 3.2 and 3.3*).

### 1.1.3 NEW ELIGIBLE ASSETS

- (a) Units or shares of EU UCITS or AIFs managed by AIF managers, established in the EU, provided that these EU UCITS and AIFs invest in eligible investments and have not themselves invested more than 10% of their assets in another collective investment undertaking (this 10% limit does not apply to feeder ELTIFs).

This amendment now makes it possible to create an ELTIF with a fund-of-funds strategy, including of a secondary kind. In particular, this option allows management companies to set up captive ELTIF funds of funds investing in other funds managed by the management company.

- (b) Simple, transparent and standardised securitisations where the underlying exposures correspond to (1) residential mortgage real estate loans, commercial mortgage real estate loans, or credit facilities (including loans and leases) granted to businesses or (2) trade receivables or other underlying exposures which the originator or sponsor considers to be a separate type of asset, provided that the proceeds from the securitisation of such trade receivables or other underlying exposures are used to finance or refinance long-term investments.

This new asset class is designed to promote ELTIF investments in securitised assets with a high level of transparency and supervision.

- (c) “Green bonds” issued in accordance with Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds.

This new asset class is designed to encourage private capital flows towards more environmentally sustainable investments.

## 1.2 Greater flexibility for qualifying portfolio undertakings

At the time of the ELTIF's initial investment, the qualifying portfolio undertaking in which the ELTIF invests must meet the following three conditions:

1. It is not a financial undertaking (defined as a credit institution, an investment firm, an insurance or reinsurance undertaking, a financial holding company, a mixed holding company or a UCITS or AIF management company), unless it is (1) a financial undertaking investing exclusively in qualifying portfolio undertakings or physical assets, or (2) a financial undertaking other than a financial holding company or mixed holding company authorised or registered less than five years before the date of the initial investment.

The *ELTIF Regulation 2* now allows investment in newly authorised or registered innovative financial companies, such as financial technology companies (Fintechs), given the important role they can play in promoting digital innovation through the development of innovative products or technologies that aim to automate or improve existing business models, applications and products.

The *ELTIF Regulation* makes it now possible to invest in a financial undertaking if it invests exclusively in qualifying portfolio undertakings or in physical assets.

2. It is a company that is not admitted to trading on a regulated market or a multilateral trading facility or, if it is admitted, its market capitalisation does not exceed 1.5 billion Euros at the time of initial investment (compared with 500 million Euros at any time under the *ELTIF Regulation 1*).

This change resulting from the *ELTIF Regulation 2* is intended to enable ELTIFs to invest in securities offering greater liquidity and to facilitate the eligibility of ETIs, as well as to enable ELTIFs to provide them with the best possible support throughout their growth.

3. It is established in the EU or in a third country provided that the third country is not (1) identified as a high-risk country within the meaning of the Delegated Act adopted in implementation of Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and (2) mentioned in Annex I of the Council Conclusions on the revised EU list of non-cooperative countries and territories for tax purposes.

The *ELTIF Regulation 1* already allowed investment in third countries by recognising that a proportion (whether majority or not) of the assets and investments of ELTIFs, or the main sources of income or profits from those assets and investments, may be located outside the EU but that those assets and investments may also provide capital to ELTIFs and benefit the real economy of the EU (for example, submarine fibre optic cables linking Europe to other continents, liquefied natural gas terminals, cross-border investments in renewable energy installations and infrastructure that contribute to the resilience of the electricity grid and to the energy security of the EU).

The *ELTIF Regulation 2* removes the requirement for a tax treaty to be concluded between the third country in which the qualifying portfolio undertaking is located and the Member State of the AIF manager and all the Member States in which the ELTIF is marketed, retaining only the exclusion of non-cooperative or high-risk jurisdictions for the purpose of combating money laundering and terrorist financing. The list of excluded third countries is aligned with the European standards already defined and applicable to AIF managers.

## 2. MORE FLEXIBLE RULES ON DISTRIBUTION AND MARKETING TO INVESTORS

### 2.1 Professional and retail investors

As a preliminary point, it is worth recalling the concept of professional investors and retail investors within the meaning of the *ELTIF Regulation*.

A “professional investor” is an investor who is considered to be a professional client or who is likely to be treated, on request, as a professional client in accordance with Annex II of the MiFID II.

A “retail investor” is an investor who is not a professional investor.

“Professional investors” within the meaning of the *ELTIF Regulation* are professional clients by nature or by option, the list of which transposing Annex II of the MiFID II is given in articles D. 533-11 et seq. of the MFC.

Thus, “semi-professional” investors (in particular those investing more than 100,000 Euros) authorised under French law to subscribe to professional AIFs (FPVG, OPPCI, FPCI, FPS, SLP and OFS) are considered to be “retail investors” within the meaning of the *ELTIF Regulation*.

### 2.2 Distribution and marketing to professional investors

The rules governing the distribution and marketing of an ELTIF to professional investors are essentially those set out in the *ELTIF Regulation 1*.

#### 2.2.1 PREPARATION AND CONTENT OF THE ELTIF PROSPECTUS

In addition to the authorisation of the ELTIF by the competent authority (the AMF in the case of an AIF governed by French law) (see section 6), the fund manager must draw up a prospectus containing all the information necessary to enable investors to make a fully informed assessment of the investment proposed to them, and in particular the risks inherent in it.

The prospectus contains at least the following information:

- (a) a statement of how the investment objectives of the ELTIF and its strategy to achieve them make it a long-term fund by nature;
- (b) information to be disclosed by closed-ended collective investment undertakings in accordance with the *Prospectus Regulation* concerning the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market;

- (c) the information to be provided to investors in accordance with Article 23 of the AIFM Directive (description of the investment strategy and objectives; types of assets; use of leverage; identification of the manager, custodian and auditor and any delegate; procedure for valuing assets and determining NAV; management of liquidity risk and investors’ redemption rights; description of all fees, charges and commissions, if any, and their maximum amounts borne directly or indirectly by investors; respect for the fair treatment of investors), if not already covered by point (b);
- (d) a clear and visible indication of the asset classes in which the ELTIF is authorised to invest, their long-term nature and the illiquid nature of the ELTIF;
- (e) a clear and visible indication of the jurisdictions in which the ELTIF has invested and is authorised to invest (clear and regular information to be sent to investors at least once a year);
- (f) a clear and visible indication of the lifetime of the ELTIF and the conditions for its possible extension;



- (g) a clear presentation of investors' rights with regard to the redemption of their investment (distinguishing between open-ended and closed-ended ELTIFs);
- (h) a clear presentation of the frequency and timing of any distributions to investors during the life of the ELTIF;
- (i) a clear recommendation to investors to invest in the ELTIF only a small percentage of their overall investment portfolio;
- (j) a clear description of the ELTIF's hedging policy, including an indication that financial derivatives may only be used to hedge the risks inherent in the ELTIF's other investments and an indication of the possible impact of the use of financial derivatives on the ELTIF's risk profile;
- (k) in the case of investments in physical assets, clear information for investors on the risks associated with this type of investment.

### 2.2.2 SPECIAL CASE OF THE FEEDER ELTIF

The *ELTIF Regulation 2* introduces the possibility of approving a feeder ELTIF. In this case, the feeder ELTIF's prospectus contains, in addition to the information mentioned in section 2.2.1 above, the following specific information:

- (a) a statement to the effect that the feeder ELTIF is the feeder of a master ELTIF in which it permanently invests at least 85% of its assets;
- (b) the investment objective and policy of the feeder ELTIF, including its risk profile and information on whether the performance of the feeder ELTIF and the master ELTIF are identical or why they differ;
- (c) a brief description of the master ELTIF, its organisation, its investment objective and policy, including its risk profile, and how to obtain its prospectus;
- (d) a summary of the internal conduct of business agreement or rules between the feeder ELTIF and the master ELTIF and how to obtain further information about the master ELTIF and this agreement;
- (e) a description of any remuneration or reimbursement of costs payable by the feeder ELTIF as a result of its investment in the master ELTIF and the total costs of the feeder ELTIF and the master ELTIF.

### 2.2.3 INDICATION OF COSTS

The prospectus informs investors, in a clearly visible manner, of the level of the various charges that they will have to bear directly or indirectly. These costs are grouped under the following headings:

- (a) ELTIF creation costs;
- (b) costs related to the acquisition of assets;
- (c) management fees and performance-related commissions;
- (d) distribution costs;
- (e) other costs, such as administrative, regulatory, custody, commission and audit fees.

The prospectus specifies an overall ELTIF cost ratio that must be calculated and updated each year.

The *Delegated Regulation* provides that the charges referred to in paragraph (e) and the overall cost ratio of the ELTIF must be calculated as a percentage of the net assets on an annual basis (and not of the capital of the ELTIF).

If the ELTIF is a feeder ELTIF, the prospectus must describe any remuneration or reimbursement of costs payable by the feeder ELTIF as a result of its investment in the master ELTIF and the total expenses of the feeder ELTIF and the master ELTIF. This information must also be disclosed in the annual report of the feeder ELTIF.

## 2.3 Distribution and marketing to retail investors

This is undoubtedly one of the major innovations of the *ELTIF Regulation 2*.

An ELTIF can now be marketed from the first euro to retail investors in the 27 EU Member States after activation of the marketing passport provided for in Article 32 of the AIFM Directive: (1) transmission of the marketing application by the ELTIF manager to the AMF, which forwards the application to the competent authorities where marketing is requested; (2) marketing by the ELTIF manager upon receipt of the AMF's notice of transmission to the competent authorities, which must be sent by the AMF to the ELTIF manager within 20 working days of the marketing application.

The requirements set out in the *ELTIF Regulation 1*, whereby retail investors (1) must not invest more than 10% of their portfolio of financial instruments in ELTIFs and (2) the minimum amount invested in one or more ELTIFs must be 10,000 Euros are repealed.

### 2.3.1 ELIMINATION OF REDUNDANT DISTRIBUTION AND MARKETING RULES UNDER THE *ELTIF REGULATION 1*

All the provisions of the *ELTIF Regulation 1* that imposed on ELTIFs specific rules on distribution and marketing have been repealed. Indeed, some of these rules are now provided for in the CBDF Directive amending the AIFM Directive.

This is so for:

- (a) the obligation under the *ELTIF Regulation* for the manager of the ELTIF to set up, in each Member State where the marketing of the ELTIF is contemplated, facilities enabling the subscription, payment, repurchase or redemption of units or shares and to make available the information that the ELTIF must provide; this obligation now derives from Article 43 bis of the CBDF Directive;
- (b) the obligation for the ELTIF manager to carry out a specific suitability test on the basis of information previously collected from the retail investor relating to such investor's knowledge and experience in the investment field relevant to the ELTIF, financial situation (including the investor's capacity to incur losses), and investment objectives (including the investor's time horizon);
- (c) the obligation for the ELTIF manager to provide "appropriate investment advice", after having carried out the specific suitability test, without there being any certainty as to whether this "appropriate investment advice" corresponded to the concept of "investment advice" already provided for by the MiFID II or, on the contrary, was additional to it.

### 2.3.2 DISTRIBUTION AND MARKETING RULES SET OUT IN THE *ELTIF REGULATION*

The *ELTIF Regulation* now treats the retail investor in an ELTIF like any other investor in financial instruments in accordance with the MiFID II. An ELTIF may now only be marketed to a retail investor if:

- (a) a suitability assessment has been carried out in accordance with the MiFID II on the basis of information about the investor's knowledge and experience of the ELTIF financial product, financial situation (including the investor's capacity to incur losses), and investment objectives (including the investor's risk tolerance); and
- (b) a declaration of suitability has been provided to the retail investor in accordance with the MiFID II.

The *ELTIF Regulation* specifies that the suitability assessment does not apply where the retail investor is an employee or subsidiary of the ELTIF manager (in particular the management team that subscribes to carried units in order to align interests with investors), and has sufficient knowledge of the ELTIF.

The suitability assessment is carried out whether the units or shares of the ELTIF are acquired from the distributor or the manager of the ELTIF, or via the secondary market (see section 4.3).

The express consent of the retail investor indicating that such investor understands the risks associated with investing in an ELTIF is obtained where all of the following conditions are met:

- (a) the suitability assessment is not provided in the context of investment advice;
- (b) the ELTIF is considered not suitable following the suitability assessment carried out;
- (c) the retail investor wishes to proceed with the transaction despite the fact that the ELTIF is considered unsuitable for that investor.

The distributor or manager of the ELTIF shall keep a record in accordance with the MiFID II, including the documents concluded with the retail investor, the rights and obligations of the parties and the other conditions applicable to the services provided to the retail investor.

### 2.3.3 DOCUMENTS TO BE DELIVERED AND SPECIFIC INFORMATION IN THE PROSPECTUS

The distributor or manager of the ELTIF must provide the retail investor with a key information document in accordance with the *PRIPs Regulation*, as well as the ELTIF prospectus.

The prospectus for an ELTIF marketed to retail investors includes the information set out in section 2.2 above.

In addition, the distributor or manager of the ELTIF issues a clear written warning informing the retail investor of the following:

- (a) where the life of an ELTIF exceeds 10 years, that the ELTIF might not be fit for retail investors that are unable to sustain such an illiquid commitment in the long term;
- (b) where the ELTIF's constitutive documents provide for the possibility of matching units or shares (see section 4.3), that the availability of such a possibility neither guarantees nor entitles the retail investor the right to exit or obtain redemption of such investor's units or shares of the ELTIF concerned.

### 2.3.4 WITHDRAWAL PERIOD

During the subscription period and for a period of 2 weeks after signing the subscription form, retail investors may cancel their subscription and be reimbursed without penalty.

### 2.3.5 HANDLING COMPLAINTS

The ELTIF manager shall establish appropriate procedures and arrangements for dealing with complaints from retail investors which allow retail investors to lodge complaints in the official language or one of the official languages of their Member State.

## 3. MORE FLEXIBLE MANAGEMENT RULES FOR ELTIF

### 3.1 Importance of the notion of ELTIF lifespan and the lifecycles of each asset

The *ELTIF Regulation 2* makes no changes to the concepts of “life of the ELTIF” and “asset life-cycles”. However, these concepts are recalled here given their importance in the structuring and operation of the ELTIF.

The “life of the ELTIF” shall be consistent with the long-term nature of the ELTIF and shall be compatible with the “life-cycles of each of the individual assets” (measured according to the illiquidity profile and economic life-cycle of the asset concerned) and the stated investment objective of the ELTIF.

The *Delegated Regulation* provides that the manager of the ELTIF must consider the following aspects:

- (a) the liquidity profile of each asset;
- (b) the liquidity profile of the ELTIF portfolio as a whole, on a weighted basis;
- (c) the time elapsing between the acquisition of an asset and its disposal, taking due account of the economic life of the asset and the life of the ELTIF;

- (d) the investment objective of the ELTIF;
- (e) if the ELTIF is open, the ELTIF redemption policy;
- (f) the ELTIF’s liquidity requirements and expected cash flows and liabilities;
- (g) the possibility of extending or terminating the ELTIF’s exposure to the assets;
- (h) the existence of a reliable, solid and up-to-date valuation of the assets in the ELTIF portfolio;
- (i) the composition of the ELTIF portfolio and the life-cycle management of the assets over the lifetime of the ELTIF.

Despite the importance attached to the notion of long-term investment in the *ELTIF Regulation*, it does not stipulate any minimum life for an ELTIF or the investments it makes.

### 3.2 More flexible diversification ratios

The *ELTIF Regulation 2* has significantly eased the diversification rules.

An ELTIF may not invest more than:

- (a) 20% of its capital (as opposed to 10% in the *ELTIF Regulation 1*) in instruments issued by one and the same qualifying portfolio undertaking or in loans granted to one and the same qualifying portfolio undertaking;
- (b) 20% of its capital (compared with 10% under the *ELTIF Regulation 1*) in a single physical asset;
- (c) 20% of its capital (as opposed to 10% under the *ELTIF Regulation 1*) in units or shares of a single EU ELTIF, EuVECA, EuSEF, UCITS or AIF managed by an AIF manager established in the EU;
- (d) 10% of its capital (compared with 5% under the *ELTIF Regulation 1*) in assets corresponding to the liquidity pocket referred

to in section 1.1.1 issued by a single entity (this limit is raised to 25% for covered bonds issued by an EU credit institution).

The total value of simple, transparent and standardised securitisations may not exceed 20% of ELTIF’s capital.

The total counter party risk incurred by an ELTIF in connection with derivatives transactions, repurchase agreements or reverse repurchase agreements may not exceed 10% of the ELTIF’s capital (compared with 5% in the *ELTIF Regulation 1*).

It is important to note:

- ▶ none of these diversification rules apply if the ELTIF is marketed solely to professional investors;
- ▶ that the limit referred to in (c) does not apply in the case of a feeder ELTIF.

### 3.3 Easing on concentration limits

An ELTIF may not acquire more than 30% (as opposed to 25% under the *ELTIF Regulation 1*) of the units or shares of a single EU ELTIF, EuVECA, EuSEF, UCITS or AIF managed by an AIF manager established in the EU. These concentration limits are assessed on the basis of the transparency of collective investment undertakings.

It is important to note that these limits do not apply if the ELTIF is marketed solely to professional investors or if the ELTIF is a feeder fund.

### 3.4 Easing of liquidity borrowing rules

The *ELTIF Regulation 2* has significantly eased the rules for borrowing liquidity.

An ELTIF can now borrow cash if the borrowing complies with all the following conditions:

- (a) it does not represent more than 50% of the net asset value of the ELTIF if the ELTIF is marketed to retail investors, or more than 100% if the ELTIF is marketed solely to professional investors (compared with 30% of capital under the *ELTIF Regulation 1*, regardless of the type of investor);
- (b) its purpose is to make investments or provide liquidity, including to cover costs and expenses, if the ELTIF's cash position is not sufficient to make the investment concerned. The requirement in the *ELTIF Regulation 1* that borrowing to finance loans (this activity being akin to banking intermediation) is prohibited is repealed by the *ELTIF Regulation 2*;

- (c) it is denominated in the same currency as the assets to be acquired with the borrowed funds, or in another currency for which the foreign exchange risk has been appropriately hedged;
- (d) it has a maturity date that does not exceed the lifetime of the ELTIF.

When borrowing cash, the ELTIF may encumber assets in order to implement its borrowing strategy.

Liquidity borrowings that are fully covered by investors' capital commitments (i.e. equity bridge financing implemented in order to pool calls for funds) are not considered to be borrowings within the meaning of this paragraph.

The manager of the ELTIF shall state in the prospectus whether the ELTIF intends to borrow cash as part of its investment strategy and, if so, the borrowing limits.

### 3.5 Assessment and corrections

The diversification rules referred to in section 3.2 apply at the latest from the date of the end of the ramp-up period, cease to apply as soon as the ELTIF begins to sell assets with a view to repay investors at the end of the fund's life and are temporarily suspended, for a maximum period of 12 months, in the event of additional capital being raised or existing capital being reduced.

The end date of the *ramp-up* period is that indicated in the ELTIF's constitutive documents. It shall take into account the particularities of the assets in which the ELTIF is to invest and shall not be more than 5 years after the date of authorisation of the fund or, if this period is shorter, after the date corresponding to half of its life. In exceptional circumstances, the competent authority of the ELTIF may, on presentation of a duly justified investment plan, agree to this period being extended by a further year.

The borrowing limits referred to in section 3.4 only apply from the date specified in the ELTIF's constitutive documents, which is no later than 3 years after the date on which marketing of the ELTIF began. These borrowing limits are temporarily suspended, for a maximum of 12 months, in the event of raising additional capital or reducing existing capital.

For the purposes of verifying compliance with diversification rules and borrowing limits (and avoiding regulatory arbitrage), the assets and

cash borrowing position of the ELTIF and the other collective investment undertakings in which the ELTIF has invested are combined. This verification is carried out on the basis of information updated at least quarterly.

If the ELTIF fails to comply with its diversification rules and borrowing limits due to circumstances beyond the control of the manager of the ELTIF, the latter will take appropriate steps within an appropriate time frame to correct the position, taking due account of the interests of investors.

### 3.6 Summary table

	ELTIF marketed exclusively to professional investors	ELTIF that may be marketed to retail investors
<b>DIVERSIFICATION RULES</b>		
Eligible assets	55% min. of capital	
Liquid assets	45% max. of capital <sup>1)</sup>	
Instruments issued by, or loans made to, a single eligible holding company	N/A	20% max. of capital
One single physical asset	N/A	20% max. of capital
Units or shares of a single EU ELTIF, EuVECA, EuSEF, UCITS or AIF	N/A	20% max. of capital (N/A for a feeder ELTIF)
Liquid assets issued by a single entity	N/A	10% max. of capital (25% for covered bonds)
STS securitisations	N/A	20% max. of capital
Risk on a single counterparty (derivatives, repos, etc.)	N/A	10% max. of capital
<b>CONCENTRATION LIMITS</b>		
Units or shares of a single EU ELTIF, EuVECA, EuSEF, UCITS or AIF <sup>2)</sup>	N/A	30% max. of units or shares issued (N/A for a feeder ELTIF)
<b>BORROWING LIMITS</b>		
Cash borrowings	100% of the ELTIF's net asset value	50% of the ELTIF's net asset value

**NB :** for the record, the ratios are calculated transparently in the case of investment via an eligible UCI.

<sup>1)</sup> Liquid assets that meet the criteria for eligible assets may represent 100% of the capital of the ELTIF. For example, the shares of a UCITS invested in listed companies with a market capitalisation of less than €1.5 billion at the time of the initial investment are, by transparency, eligible assets for investment by the ELTIF without the 45% limit being applicable.

<sup>2)</sup> These concentration limits are assessed on the basis of transparency for collective investment undertakings.

## 3.7 Limited or prohibited operations

An ELTIF cannot perform the following operations:

- (a) short selling of assets;
- (b) taking direct or indirect exposure to commodities, including by means of derivatives, certificates representing commodities, indices based on commodities or any other means or instrument likely to result in exposure to commodities;
- (c) entering into securities lending or borrowing transactions, repurchase or reverse repurchase transactions or any other agreement having an equivalent economic effect and presenting similar risks, if more than 10% of the ELTIF's assets are involved;
- (d) the use of derivative financial instruments, except where such instruments are used solely to hedge the risks inherent in the ELTIF's other investments.

As a reminder, the total counter party risk incurred by an ELTIF in connection with derivatives transactions and repurchase or reverse repurchase agreements may not exceed 10% of the ELTIF's capital.

## 4. THE CENTRAL QUESTION OF THE LIQUIDITY OF AN ELTIF

### 4.1 Principle of prohibition of redemption requests by investors (closed ELTIF)

Given the illiquid nature of the investments made by an ELTIF, the *ELTIF Regulation* maintains the principle whereby investors may not request redemption of their units or shares before the end of the ELTIF's life. Investors can only redeem their units from the day following

the date of the end of life of the ELTIF, as specified in the ELTIF's constitutive documents subject to conditions for a temporary extension of its life.

ELTIF is therefore a “dated” fund, closed to redemption requests.

### 4.2 Exception to this principle of prohibition: the possibility for the ELTIF to be open

Given the broadening of the investor base to include retail investors (whose time horizon is often shorter than that of professional investors and who may wish to dispose of their savings without having to wait for the end-of-life date of the ELTIF), the *ELTIF Regulation* maintains the possibility of allowing redemption during the life of the ELTIF.

The ELTIF is then an “open” fund, or rather “semi-open” fund taking into account mandatory liquidity restrictions (see section 4.2.3 below), or even an “evergreen” fund where investors can just as well subscribe to and redeem units or shares in the ELTIF during its lifetime.

The option given by the *ELTIF Regulation 1* to investors in an ELTIF to request the liquidation of said ELTIF if their requests for redemption made in accordance with the ELTIF's redemption policy have not been met within one year of their requests is deleted.

The following four conditions, which are cumulative, must be met in order to ensure sound management of ELTIF's liquidity risk.

#### 4.2.1 MINIMUM HOLDING PERIOD

This minimum holding period corresponds to a lock-up period during which investors cannot request redemption of their units or shares.

It is difficult to reconcile with the practice of creating “evergreen” funds and with certain French investment envelopes such as life insurance, where retail investors can dispose of their investment at any time (see section 5).

The *Delegated Regulation* confirms that the minimum holding period remains optional, included at the manager's discretion when designing and structuring the fund. The ELTIF manager may decide not to set a minimum holding period, particularly if the ELTIF is evergreen. However, practice shows that some managers provide for lock-up periods in unit-linked funds, which leads life insurers to ensure liquidity for retail investors during this period.

If the ELTIF manager decides to set a minimum holding period, the manager must take into account the following elements:

- (a) the long-term nature of investments and the ELTIF's investment strategy;
- (b) the different categories of assets held by the ELTIF, their liquidity profile and their situation in relation to their life cycle;
- (c) the ELTIF's investment policy and the way in which the ELTIF participates in the investment policy and governance of the assets in which it has invested;
- (d) the investors in the ELTIF: if the ELTIF is marketed to retail investors, the expected level of concentration of these retail investors; if the ELTIF is only marketed to professional



investors, information on the degree of concentration of these professional investors, where available;

- (e) the ELTIF's liquidity profile;
- (f) asset valuation procedures and the time required to obtain a reliable, solid and up-to-date valuation of these assets;
- (g) the possibility for the ELTIF to borrow, grant loans, enter into securities lending or borrowing transactions, repurchase or reverse repurchase agreements or any other agreement with an equivalent economic effect and involving similar risks;
- (h) the composition and diversification of the ELTIF portfolio;
- (i) the average life of the assets in the portfolio, if applicable;
- (j) the duration and characteristics of the ELTIF life cycle and the ELTIF redemption policy;
- (k) the duration of the ELTIF investment period;
- (l) the minimum holding period, if applicable, is consistent and proportionate with the time required to make the ELTIF investments and, unless otherwise justified by the ELTIF manager, lasts for at least the time required to invest the capital subscribed by investors.

The manager of the ELTIF must justify to the competent authority of the ELTIF, at the latter's request, the appropriateness of the duration of the minimum holding period and its compatibility with the ELTIF's valuation procedures and redemption policy.

#### 4.2.2 COMMUNICATION TO THE COMPETENT AUTHORITY

The *Delegated Regulation* specifies the information that must be provided by the manager of the ELTIF to the competent authority at the time of authorisation of the fund and throughout its life.

If the ELTIF is open, its manager must provide the competent authority with the following information when applying for authorisation of the ELTIF (which is essentially the same required by the AIFM Directive):

- (a) the ELTIF's redemption policy, with a clear indication of the conditions and procedures for requesting redemption and the processing of redemption requests received;
- (b) the entity responsible for managing the

redemption process and the manner in which redemptions will be documented;

- (c) a description of how assets and liabilities are appropriately managed in the event of redemption;
- (d) a description of the procedures, if applicable, designed to prevent dilution of investors as a result of redemptions;
- (e) a description of the ELTIF's valuation procedures in accordance with the AIFM Directive;
- (f) the results and assumptions used, in accordance with the AIFM Directive, for liquidity simulations under normal and stressed conditions in order to assess the ELTIF's liquidity risk and demonstrate whether and how, in a crisis situation, the ELTIF is able to manage redemption requests;
- (g) the liquidity offered to investors and the liquidity profiles of assets under normal and stressed conditions;
- (h) information on the implementation of liquidity management tools;
- (i) the elements referred to in section 4.2.3(a);
- (j) the approach adopted by the ELTIF manager to determine the maximum percentage referred to in the first sub-paragraph of section 4.2.3(d) (see *Method 1*).

In the event of a change to this information, the manager of the ELTIF must inform the competent authority as soon as possible and at least 1 month before implementing these changes or, for a change unforeseeable and beyond the manager's control, immediately after the change has occurred. In the absence of a reaction from the competent authority within 20 days, these modifications are considered accepted by the latter. The AMF will be clarifying these rules in the coming months.

Throughout the duration of the ELTIF, its manager must provide, at the request of the competent authority, detailed and up-to-date information on the activation of liquidity management tools to manage redemption requests (under what circumstances and how) as well as updated liquidity stress results and assumptions under normal and stressed conditions. In the event of substantial modification of the information listed in this section, the ELTIF manager must also communicate an updated version of this information. The AMF will be clarifying these rules in the coming months.

### 4.2.3 REDEMPTION POLICY

- (a) The *Delegated Regulation* provides that for open ELTIFs, the redemption policy must contain the following elements:
- ▶ the conditions under which redemption requests can be made;
  - ▶ the timing and duration of windows for redemption requests;
  - ▶ the frequency and periodicity of redemption requests;
  - ▶ the procedure to be followed and the conditions to be met in order to submit redemption requests, notably the minimum notice period and the division of roles among those involved in the redemption procedure;
  - ▶ in the case of redemption requests that could not be satisfied in full, the possibility and terms for investors to request cancellation of their unsatisfied redemption requests;
  - ▶ if the ELTIF provides for the possibility of repayment in kind from the assets, the conditions for the exercise of this option by the investor, in accordance with the *ELTIF Regulations* (see art. 18(5));
  - ▶ if the ELTIF provides for a minimum holding period, the duration and conditions of this minimum holding period (see section 4.2.1);
  - ▶ a description of the liquidity management tools in place and the conditions for their activation;
  - ▶ the maximum percentage referred to in Section 4.2.3(d) above which redemption requests are not honoured (requests being ultimately honoured on a pro rata basis of total requests, in order to preserve fairness for holders (see art. 18(2)(e) *ELTIF Regulation*).
- (b) When adopting the redemption policy, the manager of the ELTIF takes into account the characteristics of the fund in order to determine its liquidity profile.
- (c) If redemption dates can occur more frequently than quarterly, the manager of the ELTIF must justify to the competent authority the appropriateness of such a redemption frequency and its compatibility with the specific characteristics of the ELTIF.
- (d) The maximum percentage of liquid assets above which a global prorating of repay-

ments is triggered. For the purposes of this guide, we will refer to this percentage as the Redemption Ceiling per Window (“RCW”), as it is expressed in the *ELTIF Regulation* (article 18(2)(d)) and in its *Delegated Regulation*, as a percentage of the pocket of liquid assets defined in the fund’s rules or prospectus. As a reminder, this pocket must itself represent a maximum of 45% of the fund’s assets. This RCW is an integral part of the ELTIF redemption policy. The ELTIF manager must calibrate this percentage, at its discretion, taking into account one of the following two methods and respecting the value ceilings expressed in the tables in Annex I or II of the *Delegated Regulation*:

- ▶ the frequency of redemption requests and the notice period (**Method 1**) (Annex I of the *Delegated Regulation*);
- ▶ the frequency of redemption requests and the minimum percentage of liquid assets (**Method 2**) (Annex II of the *Delegated Regulation*).

The following points may be noted:

- Method 1 does not require a minimum pocket of liquid assets, while Method 2 calls for a minimum pocket of liquid assets that increases as the selected redemption frequency increases;
- recital 9 of the *Delegated Regulation* states that a linear interpolation is provided for when the fund parameters (redemption frequency, notice period) have values intermediate to those provided in the tables in Annexes I and II. This gives greater structuring flexibility and avoids threshold effects and possible arbitrages;
- in both Methods, it is up to the manager to calibrate the RCW, “at its discretion”, while respecting the RCW ceilings given by the application of Method 1 or Method 2, the choice of the Method employed also being at its discretion when drafting its redemption policy; however, care must be taken to ensure that the liquidity actually offered to investors is clearly understood by them, in order to avoid any risk of ‘mis-selling’ by marketing as ‘open’ a fund that is in fact only partially open.
- practical examples of the application of Methods 1 and 2 are given at the end of this section 4.2.3(d).

**METHOD 1 TABLE****BASELINE OPTION**

*N.B. : other maximum percentages are however applicable in case of aggregation on a monthly (Option 2) or bimonthly (Option 3) basis.*

Notice period / Redemption frequency	No notice period	2 weeks notice period	1 month notice period	3 months notice period	6 months notice period	9 months notice period	12 months notice period
12 months	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
6 months	50.0%	52.2%	54.5%	66.7%	100.0%	100.0%	100.0%
3 months	25.0%	26.1%	27.3%	33.3%	50.0%	100.0%	100.0%
2 months	16.7%	17.4%	18.2%	22.2%	33.3%	66.7%	100.0%
1 month	8.3%	8.7%	9.1%	11.1%	16.7%	33.3%	100.0%
Bimonthly	4.2%	4.3%	4.5%	5.6%	8.3%	16.7%	100.0%
Weekly	1.9%	2.0%	2.1%	2.6%	3.8%	7.7%	100.0%

**OPTION 2 – AGGREGATION ON A ONE-MONTH BASIS**

Notice period / Redemption frequency	No notice period	2 weeks notice period	1 month notice period	3 months notice period	6 months notice period	9 months notice period	12 months notice period
12 months	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
6 months	50.0%	52.2%	54.5%	66.7%	100.0%	100.0%	100.0%
3 months	25.0%	26.1%	27.3%	33.3%	50.0%	100.0%	100.0%
2 months	16.7%	17.4%	18.2%	22.2%	33.3%	66.7%	100.0%
1 month or more frequent than 1 month	On an aggregate basis, during the period of one month: 8.3%	On an aggregate basis, during the period of one month: 8.7%	On an aggregate basis, during the period of one month: 9.1%	On an aggregate basis, during the period of one month: 11.1%	On an aggregate basis, during the period of one month: 16.7%	On an aggregate basis, during the period of one month: 33.3%	On an aggregate basis, during the period of one month: 100.0%

**OPTION 3 – AGGREGATION ON A TWO-MONTHS BASIS**

Notice period / Redemption frequency	No notice period	2 weeks notice period	1 month notice period	3 months notice period	6 months notice period	9 months notice period	12 months notice period
12 months	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
6 months	50.0%	52.2%	54.5%	66.7%	100.0%	100.0%	100.0%
3 months	25.0%	26.1%	27.3%	33.3%	50.0%	100.0%	100.0%
2 months or more frequent than 2 months	On an aggregate basis, during the period of two months: 16.7%	On an aggregate basis, during the period of two months: 17.4%	On an aggregate basis, during the period of two months: 18.2%	On an aggregate basis, during the period of two months: 22.2%	On an aggregate basis, during the period of two months: 33.3%	On an aggregate basis, during the period of two months: 66.7%	On an aggregate basis, during the period of two months: 100.0%

**METHOD 2 TABLE**

<b>Redemption frequency</b>	<b>Minimum % of liquid assets</b>	<b>Maximum % cap</b>
<b>12 months and less</b>	10%	100%
<b>6 months</b>	15%	67%
<b>3 months</b>	20%	50%
<b>1 month and less</b>	25%	20%, aggregated on a monthly basis

To determine the maximum amount redeemable on a given redemption date, the ELTIF manager applies the selected RCW to the sum of liquid assets and cash flows expected with a high degree of certainty to materialise (and therefore excluding the possibility of raising new capital or disposing of eligible long-term assets), on a conservative basis over the next 12 months.

In the event that the ELTIF manager has opted for Method 2 and the amount of liquid assets falls below the threshold stipulated by Method 2, the manager must take the necessary steps, within an appropriate time frame given the ELTIF, to reconstitute the minimum percentage of liquid assets, while maintaining the possibility for investors to obtain redemption of their units or shares.

### EXAMPLE 1

Either an ELTIF marketed to non-professional clients, targeting a 20% liquid assets pocket in its investment strategy, and offering a quarterly redemption frequency to its clients, with a 3-month notice period.

- The maximum RCW that the manager can offer according to Method 1 is 33.3%. In other words, given 20% of the fund's assets in liquid assets, the maximum redemption percentage that the manager can retain, expressed as a % of the fund's assets<sup>3</sup>, is  $(33.3\% \times 20\%) = 6.7\%$  each quarter.
- The maximum RCW that the manager can offer under Method 2 is 50%. In other words, given 20% of the fund's assets in liquid assets, the maximum redemption percentage that the manager can retain, expressed as a % of the fund's assets, is  $(50\% \times 20\%) = 10\%$  each quarter.
  - It may be noted that the maximum % is higher in Method 2, but that at the same time, a commitment is made to respect a minimum threshold for the liquid assets pocket.
  - It should be noted that the RCWs in the tables for Methods 1 and 2 are maximums and that the manager may, at its discretion, and possibly on a variable basis over the life of the ELTIF<sup>4</sup>, offer lower RCWs. Care must be taken, however, to ensure that the liquidity actually offered to investors is clearly understood by them, so as to avoid any risk of “mis-selling”, by marketing as “open” a fund that is in fact only partially open.

### EXAMPLE 2

Same ELTIF as in Example 1, except that the targeted liquid assets pocket is 15% (not 20%).

- Method 1 makes it possible to offer up to  $(33.3\% \times 15\%) = 5\%$  of the fund's assets at each quarterly redemption window.
- Method 2 is inapplicable with the set of parameters adopted by this ELTIF. The manager must either (i) reduce its redemption frequency to 6 months, and the manager can then offer up to  $(67\% \times 15\%) = 10\%$  of the fund's assets at each quarterly redemption window; or (ii) give up having only 15% of the fund in the liquid assets pocket, and increase its strategic allocation in liquid assets to 20%, which again allows offering up to  $(50\% \times 20\%) = 10\%$  of the fund's assets at each quarterly redemption window.

### EXAMPLE 3 : SPECIAL CASE OF OPTIONS 2 AND 3 OF METHOD 1

Same ELTIF as in Example 1, except that the redemption frequency is now fortnightly and the notice period has been removed.

- Method 1 (Option 1) offers up to  $(4.2\% \times 15\%) = 0.63\%$  of the fund's assets at each fortnightly redemption window.
- Alternatively, Method 1 (Option 2) can be used to aggregate the RCW of the two fortnightly windows over one month, and offer up to a total of  $(8.3\% \times 15\%) = 1.25\%$  of the fund's assets to be spread over two fortnightly redemption windows.
  - In this example, flexibility is offered to managers who wish to offer a fortnightly repayment frequency, but only apply their RCW to a “rolling sum” of repayments requested at the end of two consecutive repayment windows.
  - Option 3 of Method 1 is similar, allowing RCWs to be aggregated over as many repayment windows as there are over two months (instead of one month in Option 2).

<sup>3</sup> Please note that while the usual practice to date has been to calculate caps as a percentage of the fund's assets, the ELTIF Regulation expressly states that the cap should be calculated as a percentage of liquid assets, and care must be taken to take this into account when managing liquidity and redemption policy (particularly as the size of the liquid assets pocket is by nature more variable than the fund's total assets).

<sup>4</sup> This point has yet to be confirmed by European regulators.

- (e) If the notice period is less than 3 months, the ELTIF manager must inform the competent authority of it and explain the reasons that lead the manager to choose a shorter period and how this period is consistent with the specific characteristics of the ELTIF.
- (f) The manager of the ELTIF may, but is not obliged to, implement at least one anti-dilution liquidity management tool: anti-dilution levies, swing pricing or redemption fees. It may also use other liquidity management tools.

The manager of the ELTIF must, at the request of the competent authority, explain the reasons that led the manager, taking into account the specific characteristics of the

## 4.3 Secondary market

The *ELTIF Regulation 1* already stated that the documents making up an ELTIF do not prevent that:

- (a) its units or shares are admitted to trading on a regulated market or a multilateral trading facility;
- (b) investors may freely transfer their units or shares to third parties other than the ELTIF manager, subject to applicable regulatory requirements and the conditions set out in the ELTIF prospectus.

The *ELTIF Regulation 2* breaks new ground by providing that the ELTIF's constitutive documents may provide for the possibility, during the life of the ELTIF, of a total or partial matching of transfer requests for units or shares in the ELTIF from outgoing investors and transfer requests from potential investors, which is reminiscent of the French mechanism applicable to SCPIs.

The following conditions must be met:

- (a) The manager of the ELTIF has an application matching policy that clearly states all of the following:
  - ▶ the transfer process for both outward investors and potential investors;
  - ▶ the role of the manager of the ELTIF or fund administrator in carrying out transfers and matching applications;

ELTIF, not to implement anti-dilution liquidity management tools or to prefer other liquidity management tools. It should be remembered that the forthcoming entry into application of AIFMD II (April 2026) will mean, from that date, requirement of each AIF (with the exception of money market funds) to select at least two liquidity management tools from among the 9 listed in the annex to this directive.

### 4.2.4 FAIR TREATMENT

The redemption policy ensures that investors are treated fairly and that redemptions are granted on a pro rata basis if redemption requests exceed the aforementioned percentage cap.

- ▶ the frequency and periods during which outgoing investors and potential investors may request the transfer of shares or units in the ELTIF, the duration of the period, the execution dates, and the conditions and deadlines for submitting a transfer request;
  - ▶ the rules determining the execution price;
  - ▶ the rules determining the conditions relating to pro rata;
  - ▶ the timetable and type of information to be provided concerning the transfer process;
  - ▶ any fees, costs and charges relating to the transfer process.
- (b) The policy and procedures for matching the applications of outgoing ELTIF investors with those of potential investors ensure that investors are treated fairly and that in the event of an imbalance between outgoing investors and potential investors, matching is carried out on a prorata basis.
  - (c) Matching of requests allows the ELTIF manager to monitor the fund's liquidity risk, and matching is consistent with its long-term investment strategy.

The *Delegated Regulation* specifies the conditions for the use of matching and the information that ELTIFs must communicate to investors.

## 5. THE GREEN INDUSTRY ACT, A VECTOR FOR ELTIF

The Green Industry Act adopted on 23 October 2023 significantly modifies the French investment envelopes used by retail investors (life insurance, PERs, PEAs, PEA-PMEs) in order to facilitate their investment in ELTIF-approved AIFs.

In addition, in order to ensure the long-term viability of FCPRs and OPCIs existing before 1 January 2024, they are offered the possibility until 9 January 2026 to elect to be governed by the provisions applicable to ELTIF FPSs,

and in so doing to free themselves from the investment constraints under French law associated with their legal form as FCPRs or OPCIs and be subject only to the relatively less restrictive investment rules applicable to an ELTIF-approved FPS.

The implementing regulations for the Green Industry Act were published mainly at the end of June and beginning of July 2024 (see *Section “An operational system”*).

### 5.1 French investment envelopes take account of ELTIF approval

#### 5.1.1 CHANGES TO LIFE INSURANCE RULES

The Green Industry Act amends Article L. 131-1-1 of the French Insurance Code, which now reads as follows:

*“The units of account referred to in the second paragraph of article L. 131-1 may consist of units in alternative investment funds open to professional investors, covered by sub-section 3 and units in financial institutions covered by sub-section 5 of section 2 of chapter IV of title 1 of Book II of the Monetary and Financial Code, subject to conditions relating in particular to the financial situation, knowledge or experience of the contracting party. A decree of the Conseil d’État sets these conditions and specifies the funds concerned.”*

*“Where the fund has received authorisation to use the name “ELTIF” pursuant to Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds and may be marketed pursuant to the same Regulation to retail investors, within the meaning of Article 2(3) of that Regulation, the conditions set out in the first paragraph of this Article shall not apply.”*

These life insurance rules only apply if the ELTIF-approved AIF is governed by French law.

With regard to the particular case of master-feeder structures, article R. 131-1 of the French Insurance Code, amended by the decree of 5 July 2024, stipulates that:

*“when the collective investment schemes mentioned in this I are [ ] feeder alternative investment funds within the meaning of IV of article L. 214-24 of the French Monetary and Financial Code, their master must itself be a collective investment scheme mentioned in this article”.*

In other words, both the feeder ELTIF and the master ELTIF must be governed by French law.

These rules will come into force on 24 October 2024.

It is important to specify that, insofar as the in fine investor in the units or shares of the ELTIF-approved AIF referenced in life insurance and capitalisation contracts is a retail investor, from a strictly legal point of view the investor in such an AIF is an insurance company, i.e. a professional investor:

- (a) the management company that manages such an AIF must not have a restriction on professional customers in its approval grid or, if such a restriction exists, it must use a third-party management company with no such restriction, to which the management company that wishes to manage the ELTIF will delegate financial management (see *AMF Position DOC-2012-19, footnote 20*);
- (b) the diversification rules (see *section 3.2*), concentration limits (see *section 3.3*) and borrowing limits (see *section 3.4*) will be notably those applicable to an ELTIF marketed to retail investors.

### 5.1.2 CHANGES TO THE RULES APPLICABLE TO PERS

The Green Industry Act creates a new article L. 224-3-1 in the MFC, which states:

*“The financial securities and units of account referred to in the first two paragraphs of Article L. 224-3 may consist of units in alternative investment funds open to professional investors, covered by sub-section 3 of section 2 of Chapter IV of Title 1 of this Book, and units in financial institutions covered by sub-section 5 of the same section 2, subject to compliance with conditions relating in particular to the financial situation, knowledge or experience of the holder. A decree of the Conseil d’État shall set these conditions and specify the funds concerned.”*

*“Where the fund has received authorisation to use the name “ELTIF” pursuant to Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds and may be marketed pursuant to the same Regulation to retail investors, within the meaning of Article 2(3) of that Regulation, the conditions set out in the first paragraph of this Article shall not apply.”*

These rules only apply if the ELTIF-approved AIF is governed by French law.

With regard to the specific case of master-feeder structures, Article R. 224-1 of the French Monetary and Financial Code, amended by the decree of 5 July 2024, clarifies that *“when the collective investments mentioned in this section I are [ ] feeder alternative investment funds within the meaning of IV of Article L. 214-24, their master must itself be a collective investment mentioned in this section”*. Put another way, both the ELTIF feeder and the ELTIF master must be governed by French law.

These rules will come into force on 24 October 2024.

As indicated in section 5.1.1, it is important to clarify that the rules applicable to an ELTIF marketed to retail investors will apply even if the insurance undertaking is a professional investor.

### 5.1.3 CHANGES TO THE RULES APPLICABLE TO PEAs AND PEA-PMES

The Green Industry Act amends article L. 221-31 (PEA) and article L. 221-32-2 (PEA-PME) of the MFC by inserting a new paragraph as follows:

*“Financial securities issued by AIFs mentioned in II or III of Article L. 214-24 that have received authorisation to use the name “ELTIF” pursuant to Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, provided that they undertake to invest the quota mentioned in paragraph 1 of Article 13 of the same Regulation directly or indirectly in companies that comply with the conditions mentioned in [4° of this I (in the case of Article L. 221-31)/ 5 of this article (in the case of Article L. 221-32-2)] and that they do not directly or indirectly hold physical assets within the meaning of e of Article 10 of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 referred to above.”*

These PEA and PEA-PME rules apply whether the ELTIF-approved AIF is governed by French or foreign law.

The amounts paid into the PEA or PEA-PME may be invested in financial securities issued by an ELTIF-approved French or foreign AIF, provided that it invests, directly or indirectly, at least 55% of its capital in eligible assets within the meaning of the *ELTIF Regulation* for investment in companies eligible for the PEA (art. L. 221-31 I 4°) or PEA-PME (art. L. 221-32-2 5), as applicable, to the exclusion of any direct or indirect investment in physical assets.

Consequently, an ELTIF-approved AIF, although 100% invested in debt, should be eligible for the PEA or PEA-PME if it complies with the conditions mentioned above.



## 5.2 Migration of FCPRs and OPCIs to ELTIF-approved FPSs

### 5.2.1 MIGRATION FROM FCPRs TO ELTIF-APPROVED FPSs

The Green Industry Act allows FCPRs to elect, until 9 January 2026, to be governed by the rules of the ELTIF FPSs if the following cumulative conditions are met:

- (a) be ELTIF-approved and able to be marketed to retail investors;
- (b) have been established before 1<sup>st</sup> January 2024;
- (c) have as their main purpose direct or indirect investment in debt, equity or quasi-equity instruments of qualifying portfolio undertakings within the meaning of the *ELTIF Regulation*;
- (d) have notified the AMF of their choice to be governed by the rules applicable to FPSs and have informed investors individually in accordance with the procedures specified in the *General Regulation of the AMF*.

FCPR unit holders who have exercised this option will continue to benefit from the exemption provided for in article 163 *quinquies* B of the French General Tax Code, subject to compliance with the conditions set out in that article.

These provisions came into force on 10 January 2024.

### 5.2.2 MIGRATION OF OPCIs TO ELTIF-APPROVED FPSs

As with FCPRs, the Green Industry Act allows OPCIs to elect to be governed by the rules of the ELTIF FPSs until 9 January 2026, provided the following cumulative conditions are met:

- (a) be ELTIF-approved and able to be marketed to retail investors;
- (b) have been established before 1<sup>st</sup> January 2024;
- (c) have a majority of their assets in property;
- (d) have notified the AMF of their choice to be governed by the rules applicable to FPSs and have informed investors individually in accordance with the procedures specified in the *General Regulation of the AMF*.

Open-ended real estate investment trusts (*sociétés de placement à prépondérance immobilière à capital variable*) that have exercised this option will continue to benefit from the exemption provided for in 3<sup>o</sup> *nonies* of article 208 of the French General Tax Code, subject to meeting the conditions set out in article L. 214-69 of the MFC.

Article 239 *nonies* of the French General Tax Code is applicable to real estate investment funds that have exercised this option, subject to meeting the conditions set out in article L. 214-81 of the MFC.

These provisions came into force on 10 January 2024.

## 5.3 Possibility for FCPEs to invest in ELTIFs

Ordinance no. 2024-662 of 3 July 2024, modernising the regime for alternative investment funds, authorises corporate mutual

funds (FCPEs) to invest in French or EU ELTIF-approved AIFs under conditions set by decree (to be issued).

## 6. OBTAINING ELTIF APPROVAL

ELTIF authorisation may be requested when the AIF is set up or during its lifetime. In the case of an AIF with sub-funds, each sub-fund must be ELTIF-approved.

The application for approval as an ELTIF includes all the following elements:

- (a) the AIF's constitutive documents;
- (b) the name of the ELTIF manager;
- (c) the name of the depositary and, where required by the competent authority for an ELTIF that may be marketed to retail investors, the written agreement with the depositary;
- (d) where the ELTIF may be marketed to retail investors, a description of the information to be made available to such investors, including a description of the arrangements for dealing with complaints from such investors;
- (e) where applicable, the following information on the master-feeder structure of the ELTIF:
  - ▶ a statement that the feeder ELTIF is a feeder fund of the master ELTIF;
  - ▶ the master ELTIF's constitutive documents and the agreement between the feeder ELTIF and the master ELTIF or the internal rules of conduct;
  - ▶ where the custodian of the master ELTIF is different from that of the feeder ELTIF, the information exchange agreement;
  - ▶ if the feeder ELTIF is established in a Member State other than the master ELTIF's home Member State, a certificate from the competent authority of the master ELTIF's home Member State certifying that the master ELTIF is fed by the feeder ELTIF.

Only an AIF manager established in the EU and authorised under the AIFM Directive may apply to the competent authority for the ELTIF for authorisation of the AIF as an ELTIF. Where the competent authority for the ELTIF is the same as the competent authority for the AIFM, this application for authorisation refers to the documentation submitted for authorisation under the AIFM Directive.

If the AIF manager is established in a Member State other than that of the ELTIF competent authority, it must provide the latter with the written agreement with the depositary, information on the delegation arrangements concerning portfolio and risk management, information on the investment strategies, the risk profile, and other characteristics of the AIFs for the management of which the manager of the AIF is authorised.

Applicants are informed within 2 months of the date of submission of a complete application whether or not they have been approved as an ELTIF. The competent authority will give the reasons for its refusal.

The competent authority may only refuse to approve the application of an AIFM established in the EU to manage an ELTIF if the AIFM:

- (a) does not comply with the *ELTIF Regulation*;
- (b) does not comply with the AIFM Directive;
- (c) is not authorised by its competent authority to manage AIFs which follow investment strategies of the type covered by the *ELTIF Regulation*;
- (d) has not provided the required documents or the information or details requested by the competent authority.



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**Published by the Asset Management division**

- Stéphane Aidan, Head of Investment & Risk Management Department  
s.aidan@afg.asso.fr
- David Muresianu, Head of Real Assets  
d.muresianu@afg.asso.fr

41 rue de la Bienfaisance | 75008 Paris | T : +33 (0)1 44 94 94 00  
Avenue de Cortenbergh 100 | 1000 Bruxelles

[www.afg.asso.fr](http://www.afg.asso.fr) 