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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the functioning of the European long-term investment funds (ELTIF) framework

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1. BACKGROUND

Regulation (EU) 2015/760 on European long-term investment funds (the 'ELTIF Regulation')[1] establishes a European regulatory framework for alternative investment funds (AIFs) that invest in long-term projects. Their goal is to raise and channel capital towards European long-term investments in the real economy and promote the Union objective of smart, sustainable and inclusive growth.

ELTIFs invest in a broad range of projects, such as social and transport infrastructure, real assets and small and medium-sized enterprises (SMEs). ELTIFs are intended to facilitate long-term investments and provide an alternative, non-bank source of finance to the real economy. In June 2020, the High Level Forum on the Capital Markets Union (CMU) published a report[2] recommending a targeted review of ELTIFs to improve their low uptake by the market and increase the flow of long-term financing[3].

The revised CMU action plan[4] recognises the need to support the financing of long-term investment projects and the participation of retail investors. The Commission also committed to review the ELTIF Regulation[5]. This review has strong links with the CMU, the European Green Deal[6], the European Energy Union[7], the sustainable finance strategy and other important EU initiatives[8]. On 2 December 2020, the Council of the European Union called on the Commission to review the ELTIF Regulation[9].

The requirement to review the functioning of the ELTIF regulatory framework is set out in Article 37 of the ELTIF Regulation which requires that the review analyses redemption policies, asset diversification requirements, the extent to which ELTIFs are marketed in the Union and whether the list of eligible assets and investments should be updated[10].

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[1] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).
[2] Final report of the High Level Forum on the Capital Markets Union - A new vision for Europe's capital markets. 10 June 2020. Source: https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en
[3] *Ibid*, page 12.
[4] Communication from the European Commission. A Capital Markets Union for people and businesses-new action plan. COM(2020) 590 final. 24 September 2020. Source: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12498-A-Capital-Markets-Union-for-people-and-businesses-new-action-plan
[5] *Ibid,* page 8 (Action 3).
[6] A European Green Deal. Source: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en
[7] Energy Union Strategy. Source: https://ec.europa.eu/energy/topics/energy-strategy/energy-union_en
[8] Notably, the review of the ELTIF framework would contribute to the EU agenda on Sustainable Finance by channelling financing to respective long-term projects, including the potential to promote the sustainability objectives of the Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (EU Taxonomy Regulation; OJ L 198, 22.6.2020, p. 13).
[9] More specifically, the Council has urged the Commission '*to prioritise and accelerate the work on … inter alia … improving the regulatory framework for long-term investment vehicles by reviewing the European Long-Term Investment Fund (ELTIF) Regulation, thereby particularly taking into account the need to support the non-bank financing of SMEs and of long-term investment in infrastructure, which is needed for the transition to a sustainable and digital economy*'. Council of the European Union Conclusions on the Commission's CMU Action Plan. 12898/1/20. ECOFIN 1023. Point 19(e). Adopted 2 December 2020. Source: https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf
[10] Article 37(2) of the ELTIF Regulation sets out that "*following the review […], and after consulting ESMA, the Commission shall submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of ELTIFs to the completion of the Capital Markets Union and to the achievement of the objectives set out in Article 1(2). The report shall be accompanied, where appropriate, by a legislative proposal.*"

This report draws upon technical advice by the European Securities and Markets Authority (ESMA)[11], desk research and stakeholder feedback from the public consultation. It identifies a number of barriers to market growth as well as other issues relevant to the functioning of the ELTIF framework[12]. The report seeks to inform the European Parliament and the Council of the European Union of the key areas of the review and shortly present its key findings[13].

In the context of the ELTIF framework review, this report summarises the key findings of the evaluation of the regulatory framework's operation.

2. FUNCTIONING OF THE ELTIF FRAMEWORK: EVALUATION

As of October 2021, only around 57 ELTIFs, with approximately EUR 2.4 billion in net assets under management, had been authorised to operate. The reported ELTIFs were domiciled in only four Member states (France, Luxembourg, Italy and Spain). According to the information compiled by ESMA, the total size of the ELTIF market has grown from slightly above EUR 1.5 billion in 2020 to around EUR 2.4 billion in 2021. Despite this relative growth, when compared to the overall size of the EU AIF market of around EUR 6.8 trillion, ELTIFs remain a very small segment of this[14].

The low number of ELTIFs, their low net assets, geographic concentration and portfolio composition indicate that the ELTIF industry is underdeveloped. As a result, the ELTIF framework has not realised its full potential in terms of size (in particular, in terms of assets under management and the number of funds) and scope (e.g. range of eligible projects and investments)[15]. ELTIFs have not achieved mainstream market appeal or fulfilled their potential to channel capital financing to long-term investments.

2.1. Demand-side restrictions

The key demand-side problem drivers are the rules that impose restrictions and make it difficult for investors to invest in ELTIFs. The current rules seem to create unnecessary barriers preventing retail investors from entering the market. For example, the obligation under the ELTIF Regulation that the asset manager has to assess a retail investor's knowledge and experience partially duplicates the suitability assessment under Directive 2014/65/EU on markets in financial instruments (MiFID II)[16].

Furthermore, as outlined in the impact assessment, the minimum initial investment of EUR 10 000 and the 10% limitation on aggregate investment for investors with a financial

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[11] *See* ESMA response to the European Commission of 3 February 2021 on the functioning of the ELTIF regulatory framework. ESMA34-46-99. Source: https://www.esma.europa.eu/press-news/esma-news/esma-provides-input-commission-improvements-eltif

[12] Notably, see the analysis of the redemption policy and life of ELTIFs in Section 3, asset diversification in Section 4, certain aspects of the marketing of ELTIFs in Section 5, the eligibility of assets and investments in Section 6, diversification and portfolio composition in Section 7, and provisions on the borrowing of cash in Section 8.

[13] To that end, Section 2 to 7 summarise the evaluation of the ELTIF framework, redemptions-related provisions and life-cycle of ELTIFs, minimum threshold for eligible investment assets, marketing of ELTIFs by sub-threshold AIF mangers, eligible assets and investments, diversification and portfolio composition rules and borrowing of cash provisions.

[14] ESMA Statistical Report 2021. EU Alternative Investment Funds, page 6. Source: https://www.esma.europa.eu/document/eu-alternative-investment-funds-2021-statistical-report (7 June 2021).

[15] All funds were domiciled in only four Member States (Luxembourg, France, Italy and Spain), while none of the other Member States had domestic ELTIFs. Register of Authorised ELTIFs. ESMA34-46-101. Source: https://www.esma.europa.eu/document/register-authorised-european-long-term-investment-funds-eltifs

[16] OJ L 173, 12.6.2014, p. 349, as amended.

portfolio below EUR 500 000 constitute a significant barrier for retail investors[17]. Even where an investor wishes to invest EUR 10 000 in a single ELTIF, investing in other ELTIFs and diversifying their long-term portfolio could prove difficult, given the 10% *aggregate* threshold requirement[18]. In addition, both the EUR 500 000 and 10% exposure figures are based on self-reporting by retail investors, and asset managers or distributors are unable to independently verify the true exposures by retail investors.

2.2. Supply-side restrictions

The key supply-side problem drivers of the ELTIF framework consist of restrictive fund rules that limit the available investment universe, fund structures and investment strategies and make it less attractive for asset managers to set up ELTIFs.

The current ELTIF fund rules contain certain provisions that appear to be preventing managers from pursuing a wider range of investment strategies. Making it easier for them to do so could help channel more financing into long-term investment projects. These provisions therefore seem to be impairing the functioning of the ELTIFs and making them less attractive for the investment manager than other competing fund structures. As a result, when choosing the ELTIF label for an investment vehicle, all AIFMs must comply with a 'one-size-fits-all' set of fund rules irrespective of the targeted client group, preferred investment strategy, and the risk profile of the underlying portfolio assets.

In this context, ESMA's technical advice to the Commission of 3 February 2021 recognised the underlying conflict of the ELTIF framework in trying to serve the needs of both professional and retail investors with a single rulebook. ESMA went on to recommend rules that more explicitly differentiate between ELTIFs marketed solely to professional investors and ELTIFs marketed to retail investors.

The evaluation of the ELTIF framework established that the same fund rules for both professional and retail investors are unable to meet the specific demands of two very distinct categories of investors with different time horizons, risk tolerance and investment needs and may be seen as preventing managers from offering tailored products[19].

3. Redemptions-related provisions and life-cycle of ELTIFs

ELTIF redemption policies are set out in Article 18 of the Regulation. The default fund rule is that investors in an ELTIF may not redeem their units or shares before the end of the ELTIF's life. To that end, the standard rule of the ELTIF legal framework in this area is that investors in an ELTIF would not be able to redeem their units or shares before the end of the ELTIF's life.

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[17] The 10% threshold is applied on an aggregate level. This means that the total (aggregate) amount allocated by retail investors to *any* ELTIFs should not exceed 10% of the investor's portfolio in ELTIFs.

[18] One could envisage a scenario where a retail investor with a financial portfolio of EUR 180 000 has acquired EUR 10 000 worth of shares or units of an ELTIF. Such an investor would be prevented by the current ELTIF rules from purchasing any other ELTIFs. That is because the investor may, in aggregate, purchase EUR 18 000 or 10% of its total portfolio of ELTIFs. However, by purchasing the first ELTIF, the investor would be prevented from allocating the remaining EUR 8 000 to purchasing another ELTIF due to the EUR 10 000 minimum investment ticket requirement.

[19] In addition, the participation of retail investors in an ELTIF may lead to higher administrative burdens and associated costs for marketing ELTIFs to retail investors compared to ELTIFs solely marketed to professional investors. While these burdens may appear to be administrative in practice (a requirement for a key information document, a 2-week withdrawal right without a penalty, extra procedures and staff to deal with any complaints by retail investors, etc.), the respective provisions were deemed to make ELTIFs solely marketed to professional investors less attractive.

Asset managers can insert derogations (typically in rules or instruments of incorporation) and provide for possible redemptions *before* the end of the ELTIF's life. However, such redemptions are rather an exception and only allowed if strict conditions are met[20].

A significant number of stakeholders raised the issue of investors not being allowed to redeem their fund before its end date. The stakeholders saw this as a potential weakness of the ELTIF framework and noted that it could be a constraint for investors. They called for more flexibility to allow early redemption during the life-cycle of an ELTIF to make the ELTIF more attractive as an investment vehicle.

However, the redemptions structure for ELTIFs resembles that of closed-end funds which, except in limited circumstances, only allow redemptions at the end of the fund's life. This limitation on redemptions is justified by the illiquid nature of the assets which an ELTIF is invested in and by the poor visibility into the fair value of the investments on a continuous basis. Normally, the fair value can only be determined at the time of the disinvestment.

The ELTIF Regulation also contains a provision on secondary market trading[21]. The purpose is to ensure that the life cycle lock-up and the lack of redemption rights before the end of the fund's life do not prevent an ELTIF from seeking admission of its units or shares to a regulated market or to a multilateral trading facility. The provision also allows investors to sell their units or shares before the end of the ELTIF's life on the secondary market.

Against this background, the provisions of the ELTIF Regulation contain a basis for allowing fund managers greater discretion in deciding to establish ELTIFs with or without redemption rights, according to the ELTIF's pre-defined investment strategy. Such investment strategies could also capitalise on the ELTIF provisions enabling secondary trading of shares or units of ELTIFs, such as the liquidity window mechanism matching subscription requests by new investors and redemption requests of exiting ELTIF investors.

4. MINIMUM THRESHOLD FOR ELIGIBLE INVESTMENT ASSETS

Article 13(1) of the ELTIF Regulation stipulates that an ELTIF should invest at least 70% of its capital in eligible investment assets. This threshold was put in place to ensure a clear focus on long-term investments and to ensure a continuous focus on retail investors who may otherwise be unfamiliar with less conventional investment strategies.

Some stakeholders regarded the 70% threshold as excessively high. Lowering the threshold would, in the view of many stakeholders, allow ELTIFs to pursue more differentiated investment strategies.

[20] See Article 18(2) of the ELTIF Regulation. To that end, ESMA is vested with the requirement to develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered sufficiently long to cover the life-cycle of each of the ELTIF's individual assets.

[21] Article 19(1) and (2) state that 'the rules or instruments of incorporation of an ELTIF shall not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility'. In addition, such 'rules or instruments of incorporation of an ELTIF shall not prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF'.

A minority of stakeholders considered the current eligible assets threshold to be appropriate. In their view, the objective of the ELTIF framework is to promote long-term investment and to focus on illiquid assets.

In this context, serious considerations should be given to the appropriateness of lowering and calibrating minimum thresholds for eligible investments in ELTIFs in order to promote the liquidity profile of ELTIFs and increase the flexibility of ELTIF managers in executing their investment strategies.

5. MARKETING OF ELTIFS BY SUB-THRESHOLD AIF MANAGERS

Article 37(1)(c) of the ELTIF Regulation requires the Commission to assess the extent to which ELTIFs are marketed in the Union, including whether the sub-threshold AIF managers (AIFMs) falling under Article 3(2) of the AIFMD might have an interest in marketing ELTIFs.

Several stakeholders were of the view that the ELTIF regulatory framework is *unlikely* to be appropriate for sub-threshold AIFMs. Such stakeholders supported their view, citing the complexity and operational requirements, including investor protection concerns, as well as the fact that it would require AIFMs to comply with full AIFMD requirements, which could prove to be too onerous for these managers.

Some stakeholders expressed the view that the EU rules on AIFMD below the Article 3(2) thresholds are not harmonised, which means that enhancing the passportability of AIFs or ELTIFs managed by AIFMs below these thresholds would pose significant problems for a level playing field and pave the way for regulatory arbitrage. In these stakeholders' opinion, facilitating the marketing of ELTIFs by AIFMs falling under Article 3(2) of the AIFMD should not at all be the priority.

6. ELIGIBLE ASSETS AND INVESTMENTS

The ELTIF rules on eligible assets and investments set out clear categories of assets that are eligible for investment by ELTIFs to ensure that funds do not engage in financial transactions that might give rise to risks that are greater than might be expected for a fund targeting long-term investments.

Furthermore, the provisions of the ELTIF Regulation provide a clear focus on long-term investments and define a set of conditions and limitations that prevent ELTIFs from engaging in investment strategies that would not be qualified as purely 'long-term', such as the prohibition to invest in financial derivative instruments other than for the purpose of hedging, the prohibition to invest in 'financial undertakings', the exclusion of commodities and 'speculative' investments.

Against this background, stakeholders have strongly advocated broadening the scope of eligible investment assets in a manner that is both suitable for the optimal execution of investment strategies by ELTIF managers and consistent with the underlying objectives of long-term sustainable growth.

Stakeholders have also called for more legal certainty and flexibility around the facilitation of the funds-of-funds strategies, criteria for investments in third-country undertakings, the inclusion of ‘financial undertakings’, a broader scope of ‘real assets’ and the calibration of certain numeric thresholds set out in the ELTIF Regulation, such as a EUR 500 million market capitalisation threshold for listed undertakings and the EUR 10 million threshold for real assets. In the view of a sizable number of stakeholders, a broarder scope and more legal clarity for the eligibility of assets and investments would make the ELTIF legal framework more appealing for asset managers.

Against this background, it appears appropriate to review the scope of the eligible assets and investments so that ELTIF managers can pursue a wider range of investment strategies tailored to market circumstances, investment expertise and investor demand.

7. DIVERSIFICATION AND PORTFOLIO COMPOSITION RULES

The ELTIF Regulation contains detailed requirements for the portfolio composition and diversification. Such rules were put in place to limit risk-taking by ELTIFs and to reduce counterparty risk by imposing clear diversification requirements.

Article 13(2) sets out that an ELTIF may not invest more than: 10% of the capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking; 10% of the capital directly or indirectly in a single real asset; 10% of the capital in units or shares of any single ELTIF, European Venture Capital Fund (EuVECA) or European Social Entrepreneurship Fund (EuSEF); and 5% of the capital in assets referred to in Directive 2009/65/EC relating to undertakings for collective investment in transferable securities (UCITS)[22] where those assets have been issued by any single body.

The aggregate value of units or shares of ELTIFs, EuVECAs and EuSEFs in an ELTIF portfolio may not exceed 20% of the value of the capital of the ELTIF. The Regulation also sets detailed rules to limit the discretion of the ELTIF managers in deviating from the diversification conditions and asset weightings.

Overall, stakeholders said they preferred fewer regulatory requirements and more flexibility for portfolio composition and diversification. In general, there was criticism of the requirement not to invest more than 10% of ELTIF capital in any other single ELTIF, EuVECA or EuSEF, preventing ELTIFs from pursuing fund-of-funds strategies. Stakeholders strongly argued that investing through a fund of funds would provide investors with higher levels of diversification, lower volatility and an additional layer of screening and diversification. Such stakeholders viewed access of ELTIFs to fund-of-funds investment strategies as a tangible advantage of the ELTIF framework and expressed the view that investor protection, e.g. against the possibility of the layering of fees, could be addressed in an effective manner.

There has been overall support for removing the concentration limits to fund-of-fund structures in order to promote a broader selection of investment styles for investors, without diminishing diversification of the underlying assets. The 10% capital limitation was deemed challenging, especially during the ramp-up period.

Importantly, the industry participants explicitly insisted on having no specific diversification requirements imposed on ELTIFs exclusively sold to professional investors. The majority of

[22] OJ L 302 17.11.2009, p. 32, as amended.

respondents proposed increasing the diversification limits to 20%. Furthermore, the 25% concentration ratio was also deemed too restrictive, given that asset managers sometimes adopt structures under which they might be the sole or anchor investor in another fund. Some stakeholders were of the view that the current diversification rules are appropriate for ELTIFs marketed to retail investors. Yet, they appear to be too stringent compared to other AIFs marketed to professional investors.

In this context, serious consideration should be given to the possibility of differentiating the portfolio composition and diversification requirements, as well as concentration limits, for those ELTIFs solely marketed to professional investors and ELTIFs marketed to retail investors.

8. BORROWING OF CASH

The majority of stakeholders called for increased leverage limits or deletion of the 30% leverage threshold and aligning the ELTIF legal framework with that of the AIFMD. They believe this increased flexibility will enhance ELTIF's capability to support the financing of assets (in particular those of SMEs) and improve fund returns. It has been argued that the 30% restriction on borrowing compares unfavourably with other retail funds (including the product-regulated UCITS, which can achieve a leverage of up to 100% of their assets).

Some stakeholders called for the total allowed leverage of ELTIFs to be increased to at least 100%, with ELTIFs available only for institutional investors to exceed this, provided they fulfill conditions related to investment strategy, governance, investor base and oversight.

Several stakeholders were of the view that even if the borrowing limits were increased, such an increased borrowing would not automatically equate to increased risks for investors.

In general, there has been substantive evidence that increasing the borrowing limits appears to be warranted and would not create any additional systemic risk, as the ELTIF has a long-term investment strategy and limited redemption opportunities.

9. CONCLUSIONS

The ELTIF regulatory framework was reviewed in view of the need to assess the low ELTIF uptake and to ensure that the functioning of the ELTIF's framework continously meets the objectives of the ELTIF Regulation. The ELTIF Regulation has a number of objectives, including channelling capital flows to real economy investments, providing an AIF product accessible to retail investors with long-term investment needs, and establishing an EU-wide passport for the marketing of ELTIFs. In this context, the Commission has carried out a detailed evaluation to assess the extent to which current ELTIF rules have met their principle objectives and in particular whether they have been efficient, effective, coherent, and relevant and have provided EU added-value.

To fund long-term investments in the European economy, governments and businesses need access to predictable long-term financing. The availability of such financing depends on the financial system's ability to channel the savings of governments, corporates and households safely and efficiently to the right investments through open and competitive markets. ELTIFs may have a crucial role to play in this area by providing a dedicated investment product to mobilise capital for the financing of projects in such areas as transport infrastructure, sustainable energy generation or distribution, social infrastructure (such as housing for seniors or hospitals) and the roll-out of new technologies and systems that reduce the use of resources and energy and further the growth of Europe’s SME sector.

The evaluation of the ELTIF regulatory framework has compiled sufficient evidence that policy intervention and the targeted review of the ELTIF Regulation are warranted to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects. This review would aim to increase the uptake of ELTIFs for the benefit of the Union economy and investors. This, in turn, would support the continued development of the CMU whose aim is also to make it easier for EU companies to access more stable and diverse long-term financing.