

Amending the European Long-Term Investment Funds (ELTIFs) Regulation

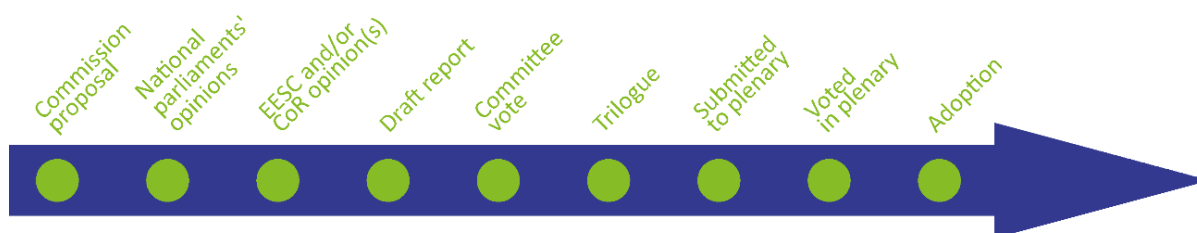
OVERVIEW

European long-term investment funds (ELTIFs) invest on a long-term basis in infrastructure projects, real estate, and small and medium-sized enterprises, among other things. While the legislative framework – the ELTIF Regulation – for these funds was adopted six years ago, their market remains small. For this reason, the Commission has proposed amending the ELTIF Regulation to make it more appealing to investors. The key mulled changes involve differentiating between ELTIFs marketed to professional investors and those to which retail investors can have access; removing barriers to retail investor access to ELTIFs; and establishing an optional liquidity window mechanism for redemptions, for cases where investors need to exit early.

The interinstitutional negotiations reached agreement on the text in October 2022. That text was then adopted by the Parliament in plenary on 14 February 2023, and thereafter by the Council. The new Regulation applies as of 10 January 2024.

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2021) 722 25.11.2021
<i>Rapporteur:</i>	Michiel Hoogeveen (ECR, the Netherlands)	2021/0377(COD)
<i>Shadow rapporteurs:</i>	Jessica Polfjärd (EPP, Sweden) Elisabetta Gualmini (S&D, Italy) Ondřej Kovařík (Renew, Czechia) Claude Gruffat (Greens/EFA, France) Gunnar Beck (ID, Germany)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	Regulation (EU) 2023/606 OJ L 80, 20.3.2023, pp. 1–23.	



Introduction

European long-term investment funds (**ELTIFs**) are a sub-category of EU alternative investment funds, whose managers are authorised in accordance with the 2011 Directive on alternative investment fund managers (**AIFMD**).¹ In 2015, the European Parliament and the Council adopted the ELTIF Regulation ([Regulation \(EU\) 2015/760](#)) spelling out specific rules on ELTIFs. As per [Article 37](#) of the regulation, the Commission was required to review how the regulation was being applied and consulted with [ESMA](#); the review was [completed](#) in February 2021. The Commission was also required to submit to the co-legislators a report assessing the contribution of the regulation to the completion of the capital markets union (CMU) and, if appropriate, present a legislative proposal.

In its November 2021 [report](#) to Parliament and Council on the functioning of the ELTIF framework, the Commission noted that the key problem drivers of the framework on the *demand-side* – i.e. the customers' demand – are the rules that impose restrictions and make it difficult to invest in ELTIFs. The Commission gave the example of the minimum initial investment of €10 000 and the 10 % limitation on aggregate investment for investors with a financial portfolio below €500 000. As for the *supply-side* – i.e. the supply of products – the key problem is the presence of restrictive fund rules that limit the available investment options, fund structures and investment strategies and – as a result – make it less attractive for asset managers to set up ELTIFs.²

To remedy these issues, the Commission has proposed amendments to the ELTIF Regulation that would alter the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules, and the requirements on the authorisation, investment policies and operating conditions of ELTIFs.

Existing situation

Collective [investment funds](#) are investment products created with the purpose of gathering investors' capital and then investing it collectively through financial instruments.³

Over the years, the EU has regulated investment funds extensively. Two important legislative texts of interest are the Directive on undertakings for collective investment in transferable securities ([UCITS](#)) and the Directive on alternative investment fund managers ([AIFMD](#)). While the UCITS Directive is older (the first UCITS Directive dates from 1985) and regulates mutual funds that account for around 75 % of all collective investments by small investors in Europe, the AIFM Directive is newer (2011) and regulates the managers of specific types of funds that were not regulated at EU level by the UCITS Directive until then.⁴

[Regulation \(EU\) 2015/760](#) of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (the ELTIF Regulation) established an EU framework for those alternative investment funds (AIFs) that make long-term investments in, e.g., infrastructure projects, real estate and small and medium-sized enterprises (**SMEs**), whether listed or unlisted on financial markets.⁵ ELTIFs were [conceived](#) as a financial instrument to address the lack of late-stage venture capital financing. The ELTIF Regulation established uniform rules on the authorisation, investment policies and operating conditions and marketing of ELTIFs to facilitate long-term investments in these types of assets by institutional and retail investors.

In its new [proposal](#) for a regulation, the Commission notes that, compared to the AIFs framework, the one governing ELTIFs presents certain advantages. First, the ELTIF label is a fully harmonised European label for financial products that allows for an EU-wide, passport-based distribution to both *professional and retail* investors. In comparison, AIFs can only be marketed to professional investors, while the marketing of AIFs to retail investors is subject to national rules. ELTIF rules can, due to their closed-ended nature and long-term orientation, also allow investors to withstand market volatility. They also give investors access to preferential national tax treatments depending on the applicable national tax laws. ELTIFs can also represent a safer pathway for investors interested in private equity investments, as they present a lower risk profile than pure private equity funds.

Nonetheless, despite those advantages offered by the ELTIF Regulation, there were only 57 ELTIFs operating in the EU as of October 2021, all of them domiciled in only four Member States (Luxembourg, France, Italy and Spain). Moreover, while the total size of the ELTIF market is [steadily growing](#) (from €1.5 billion in 2020 to around €2.4 billion in 2021), the size of the segment is trivial when compared to the [overall EU AIF market](#) (worth around €6.8 trillion at present).

Parliament's starting position

In a [resolution](#) of 26 February 2014 on the long-term financing of the European economy (i.e. before the adoption of the ELTIF Regulation), Parliament stressed the importance of linking ELTIFs to small and medium-sized enterprises (SMEs), since the latter constitute the backbone of growth and job creation in the EU. In this context, it called for SMEs to be given priority access to ELTIFs, and advocated for this access to be accompanied by a simplification of the application procedures.

In a 19 January 2016 [resolution](#) on stocktaking and challenges of the EU Financial Services Regulation, Parliament expressed its concern about the lack of available and attractive risk-appropriate long-term investments and cost-efficient and suitable savings products for consumers. Furthermore, it reiterated the need for diversity in investor and consumer choices, as investor confidence is key to more investment.

Preparation of the proposal

In June 2020, the High-Level Forum (HLF) on the Capital Markets Union (CMU) published its final [report](#) that contained 17 recommendations aimed at removing barriers in the EU's capital markets. Among other things, the report recommended that the Commission propose targeted amendments to the ELTIFs regulatory framework and that Member States simplify tax rules applicable to ELTIFs and/or apply preferential tax treatment for them. According to the HLF report, 'Targeted amendments to the ELTIFs' current legal framework ... will accelerate the take-up by investors – including some retail investors – with a long-term investment horizon that will offer a new source of long-term financing to companies'.

In its September 2020 revised CMU [action plan](#), the Commission stressed the need to further support investment vehicles that channel financing to long-term investment projects. Specifically for ELTIFs, the Commission noted that changes to their legislative framework and increased incentives to use them 'could promote the introduction of pan-European long-term investment funds and ultimately channel more funding, including from retail investors, into the EU's real economy'.

After reviewing the application of the ELTIFs legal framework and following the feedback received from stakeholders, the Commission concluded that the ELTIFs rules are too restrictive and retail investors have difficulty accessing them; this reduces the funds' utility, effectiveness and attractiveness. In the [impact assessment](#) that followed (and which accompanies the proposal), the Commission considered the merits of several policy options to address those issues. The preferred choices included:

- differentiating between ELTIFs marketed to professional investors and ELTIFs made accessible to retail investors;
- removing barriers to retail investor access to ELTIFs, by deleting both the minimum initial investment into an ELTIF and the 10 % aggregate investment amount for retail investors with less than €500 000;
- establishing an optional liquidity window mechanism for redemptions (in case of exit of ELTIF investors).

The changes the proposal would bring

Article 1(2) of the [proposal](#) would reiterate the **objective** of the ELTIF Regulation to 'facilitate the raising and channelling of capital towards long-term investments in the real economy'. In

comparison with the previous wording, there is no more reference to 'European long-term projects'. This is done to broaden the scope of eligible assets (which do not necessarily need to be located in the EU) and to provide legal certainty and flexibility in the geographic investment allocation of ELTIFs.

With regard to the **definitions**, Article 2, point 6 would define a 'real asset' as an 'asset that has an intrinsic value due to its substance and properties'. The change in the definition again seeks to broaden the scope of ELTIF investment strategies: according to the Commission, the broadened definition includes such varied assets as the environment, education, intellectual property, or various infrastructure projects. Article 2, points 14a and 14b would cross-reference the definitions of securitisation and 'group' them with the relevant regulations and directives. Moreover, two new definitions would be added: 'master ELTIF' and 'feeder ELTIF' (see also below, Articles 5 and 29).⁶

The revision of Article 3(3) of the ELTIF Regulation (authorisation and **central public register**) would increase the frequency of reporting (from quarterly to monthly) by the competent authorities to ESMA regarding information on authorisations granted or withdrawn and any changes to the information about the ELTIFs. The paragraph would further specify the information that needs to be included in the central public register.

Article 5(1) (**application for authorisation**) would include the obligation for providing information on the master-feeder structure of a prospective ELTIF in the application for authorisation. In addition, the description of the information to be made available to investors is now only valid for retail investors. As for Article 5(3), it would clarify that the national competent authority (NCA) responsible for authorising an ELTIF is solely responsible for the authorisation of *an ELTIF* and is not involved in the additional authorisation or 'approval' of an EU AIFM. Moreover, it would be specified that the authorisation of an ELTIF is not subject either to a requirement that the ELTIF be managed by an AIFM having its registered office in the ELTIF home Member State or that the AIFM pursue or delegate any activities in the ELTIF home Member State.

Paragraph 1 of Article 10 (**eligible investment assets**) would be amended in several points to ensure that ELTIFs may make minority co-investments in investment opportunities rather than be required to invest via or in 'majority-owned' subsidiaries. It would also allow ELTIFs to pursue fund-of-funds investment strategies and to invest in EU AIFs managed by EU AIFMs. In addition, it would allow investment in [STS securitisations](#) with specific underlying exposures. Lastly, it would allow investing in real assets (whereas before those assets had to be owned directly or via indirect holding through qualifying portfolio undertakings) and would lower the threshold from €10 million to €1 million.

Article 11(1) (**qualifying portfolio undertakings**) would raise the market capitalisation threshold (at the time of the initial investment) for listed qualifying portfolio undertakings from €500 million to €1 billion.

In Article 12 (**conflict of interest**), the scope of conflict of interest provisions would be expanded to include references to EU AIFs that can be managed by the ELTIF manager. The proposed article would also contain a new paragraph specifying that ELTIF managers and their affiliated entities (and staff) that belong to the same group, may invest in that ELTIF and in the same asset, provided that they have in place the necessary organisational and administrative arrangements to prevent conflicts of interest.⁷

Article 13 relates to the **composition and diversification of an ELTIF's portfolio**. Previously, the rule was that an ELTIF must invest at least 70 % of its capital in eligible investment assets and have 10 % maximum exposure to a range of recipients.⁸ The amendment would decrease the minimum threshold to 60 % and increase the maximum exposures to 20 %, while providing for additional possible recipients of investment. The article would set that the total value i) of units or shares of specific funds⁹ cannot exceed 40 % of the value of the capital of the ELTIF and ii) of STS securitisations may not exceed 20 % of the value of the capital of the ELTIF. Given the change in

required exposures, the previous paragraph 5 of the point would be deleted. Lastly, a paragraph would be inserted, stipulating that the investment thresholds would not apply when the ELTIF is marketed only to professional investors.

The proposed amendment to Article 15 (**concentration**) would increase the maximum threshold from the current 25 % to 30 %, while also broadening the scope of the possible recipients by adding UCITS and EU AIFs managed by an EU AIFM. As in the case of Article 13, an additional paragraph would specify that the concentration limits may not apply where ELTIFs are marketed solely to professional investors.

Article 16 (**borrowing of cash**) would enable ELTIFs to increase their borrowing of cash up to 50 % (if marketed to retail investors) instead of 30 % previously, and up to 100 % of the value of the capital of the ELTIF (if marketed to professional investors). In addition, those borrowing arrangements that are fully covered by investors' capital commitments would not be considered to constitute borrowing. Lastly, ELTIF managers would be required to provide a detailed presentation of the ELTIF borrowing strategy and limits.

Article 18 would stipulate that investors in an ELTIF are not able to request the **redemption of their units** or shares before the end of the life of the ELTIF. The article would be further amended to task ESMA with developing draft regulatory technical standards further specifying the circumstances for redemptions under limited circumstances, as well as the information that ELTIFs need to disclose to investors.

Article 19 (**secondary market**) would enable ELTIF managers to include the possibility for a secondary market liquidity mechanism in the rules or instruments of incorporation of the ELTIF. This mechanism would aim – under specific cumulative conditions – to enable the matching of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with subscription requests by new investors before the end of the ELTIF's life (liquidity window).

Article 21(1) would modify the provisions on **disposing of ELTIF assets**, by requiring the ELTIF manager to inform the national competent authority (NCA) of the orderly disposal of the assets for the redemption of investors. If the NCA of the ELTIF requested so, the ELTIF would be obliged to submit to it the itemised schedule for the orderly disposal of the assets.

Article 26 (**facilities available to investors**¹⁰) would be deleted to facilitate the marketing (especially cross-border) of ELTIFs. Article 28, which contains **specific requirements concerning the distribution of ELTIFs to retail investors**, would also be deleted.

Article 29 (provisions concerning the **depository of an ELTIF marketed to retail investors**) would contain two additional paragraphs, relative to the master-feeder structure. It would add the obligation for a master-feeder agreement, according to which the master ELTIF would provide the feeder with all necessary information and documents to meet the requirements of the regulation. In the case where the master and feeder had different depositaries, those depositaries would enter into an information-sharing agreement to ensure the fulfilment of the duties of the depositaries.

Article 30 would be amended in several respects. First, the title would change from requirements for marketing to retail investors, to '**distribution and marketing**'. Moreover, the first point would set the obligation for an assessment of suitability to be carried out, in line with Article 25 of the Markets in Financial Instruments Directive (MiFID) II. In addition, in case of an investment exceeding 10 years, the manager or distributor would be obliged to issue an alert to retail investors. An additional point 4 would specify the information that must be contained on the prospectus of a feeder ELTIF, in case of a master-feeder structure.

Finally, Article 37(1) would be modified to expand the **review** of the ELTIF regulatory framework: both the provisions and their application would be expanded, as well as whether they need to be updated.

Advisory committees

At the European Economic and Social Committee, the file was examined by the Section for Economic and Monetary Union and Economic and Social Cohesion (Rapporteur: Pierre Bollon, Employers - Group I, France). The [opinion](#) was adopted during the plenary session of 23 March 2022.

National parliaments

The deadline for the submission of [reasoned opinions](#) on the grounds of subsidiarity was 29 March 2022. No subsidiarity concerns were raised.

Stakeholder views¹¹

The European Fund and Asset Management Association (EFAMA) firmly [supported](#) the European Commission's proposal to revise the ELTIF Regulation. EFAMA noted that the draft proposal broadens the scope of the current eligible asset universe, thus allowing for more diverse investment opportunities. It noted further that easing restrictions and allowing retail investors to commit lower amounts to an ELTIF would increase its contribution to the funding of the real economy. EFAMA also welcomed the lower restrictions on real asset holdings and higher market capitalisation thresholds, arguing that they would allow ELTIF managers to include more companies as well as smaller but potentially valuable projects into the ELTIF. At the same time, the association noted that further clarifications are needed regarding the proposed more frequent redemptions, especially the proposed liquidity window mechanism (secondary market).

In a December 2021 [speech](#) at the annual conference of the European Capital Markets Institute (ECMI), the CEO of private capital providers' association InvestEurope also noted that the association was pleased with the changes proposed to the ELTIF framework, as they would make it less complex to market ELTIFs in several jurisdictions; easier to set up ELTIF fund-of-funds; and clearer that fund managers can co-invest alongside the fund.

Lastly, the Alternative Credit Council (ACC) [noted](#) that the Commission's proposal reflected the majority of amendments requested by the ACC and other stakeholders.

Legislative process

In Parliament, the dossier was assigned to the Committee on Economic and Monetary Affairs (ECON); the rapporteur was Michiel Hoogeveen (ECR, the Netherlands). ECON adopted its [report](#)¹² on 20 June 2022, and the decision to enter interinstitutional negotiations was confirmed in plenary on 6 July 2022. Among other things, Parliament requested to amend the Proposal by including a recital (Recital 3a) in the preamble stating that 'promoting independent financial literacy is fundamental in order to make ELTIFs more accessible and popular among individual investors.' It also says that it is preferred that a majority of ELTIF assets should be located 'in the EU, although some activities that benefit the EU such as subsea fibre optic cables, will 'unavoidably' be located outside the EU (Recital 4). The amendments also emphasise the energy and climate targets and the role played by ELTIFs as a 'suitable instruments to match investors' demand for sustainable products (Recital 8b), to establish a new ELTIF category as 'environmental friendly'. ELTIF marketed as environmental friendly would invest only in 'eligible investment assets that meet taxonomy requirements'.¹³

In order to encourage private capital flows towards more environmentally sustainable investments, the report clarifies that ELTIFs should be able to invest in green bonds to be issued under the prospective regulation based on the [Commission proposal](#) on European green bonds.

Finally, Parliament proposes to increase the market capitalisation of the listed firms in which ELTIFs can invest from €500 million to €2 billion, and ELTIFs marketed to retail investors would be allowed to borrow up to 70 % of the net asset value of the ELTIF, instead of 50 % as proposed by the Commission.

The Council [announced](#) that it had adopted its [position](#) on 24 May 2022 where it highlights three priorities. The first priority is to channel further financing to SMEs and long-term projects. For this purpose, existing constraints on the portfolio composition of ELTIFs, especially for those distributed solely to professional investors, could be removed. The second priority is to enhance the role of retail investors by making ELTIFs more attractive to them, and by lifting the barriers to entry which did not take into account the profile and objectives of each investor. The third priority is to maintain a high investor protection standards and provide retail investors with all the relevant information so that they can take informed decisions.

Provisional agreement

On 22 October 2022, a provisional agreement was [announced](#). The co-legislators agreed that ELTIFs should better channel long-term investments and help finance the green and digital transitions. ELTIF are an important vehicle for channelling financing to SMEs and long-term infrastructure projects in domains such as transport and sustainable energies. In order to remove supply-side and demand-side barriers, the co-legislators clarified in particular the scope of eligible assets and investments, the portfolio composition and diversification requirements, the conditions for borrowing and lending of cash and other fund rules, including sustainability aspects. The package also includes rules to make it easier for retail investors to invest in ELTIFs while ensuring strong investor protection.

The text was approved in ECON on 12 January 2023, and adopted at first reading in plenary on 15 February 2023. After its adoption by the Council, the final Regulation was published in the [Official Journal](#) on 20 March. It applies as of 10 January 2024.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Angelos Delivorias, [European long-term investment funds](#), 'At a glance' note, EPRS, European Parliament, March 2015.

OTHER SOURCES

[Amendments to the European Long-Term Investment Funds \(ELTIFs\) Regulation](#), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

- ¹ Along with the review of the ELTIF Regulation, the Commission published in November 2021 a review of the AIFM and the UCITS Directives. Therefore, for more information on the AIFMD, please see the parallel EU Legislation in progress briefing on [the review of the AIFM Directive](#).
- ² See the issues regarding redemptions, the ELTIFs life cycle, the scope of eligible investment assets and the relevant minimum threshold.
- ³ Those include stocks, bonds and other securities.
- ⁴ The category includes funds such as hedge funds, private equity funds, real estate funds, as well as numerous other institutional funds.
- ⁵ Given the inter-linkages of the ELTIF Regulation with the AIFMD, the Commission is also reviewing the AIFMD (see the parallel EU Legislation in progress briefing on [the review of the AIFM Directive](#)).
- ⁶ A master ELTIF is defined as an ELTIF (or one of its investment compartments), in which another ELTIF invests at least 85 % of its assets. A feeder ELTIF stands for an ELTIF (or one of its investment compartments) that has been *approved* to invest at least 85 % of its assets in units of another ELTIF or investment compartment of an ELTIF.
- ⁷ The Commission notes that such co-investments may be a necessary part of the co-investment strategies pursued by AIF managers and in some cases can represent a standard industry practice.
- ⁸ For investments in loans, for any single real asset, or for specific investment funds (ELTIF, EuVECA or EuSEF).
- ⁹ ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by an EU AIFM.
- ¹⁰ Namely 'facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its manager are required to provide'.
- ¹¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.
- ¹² See also the [summary](#) of the report provided by the European Parliament.
- ¹³ The Article 9 would refer to the taxonomy requirements laid down in the delegated acts adopted pursuant to Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment.

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