THE VOICE OF PRIVATE CAPITAL
VENTURE CAPITAL
PRIVATE EQUITY
INFRASTRUCTURE
LONG TERM INVESTORS

19 January 2020

On behalf of the Public Affairs Executive (PAE) of the EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY

Response to European Commission Consultation on the ELTIF review

1. Introductory questions

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

	Fully Disagree	Somewhat Disagree	Neutral	Somewhat Agree	Fully Agree	No Opinion
The ELTIF framework has been successful in achieving its objective of raising and channelling capital towards European long-term investments in the real economy	X					
The scope of the ELTIF authorisation is appropriate	X					
The costs of launching and operating an ELTIF, and the regulatory and administrative burdens are appropriate		X				
The ELTIF regime is relevant to the needs and challenges in EU asset management	X					
The existing ELTIF regime is consistent with the CMU objectives				X		

Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20
F +32 2 725 07 04
www.investeurope.eu
info@investeurope.eu
VAT: BE 0424.557.716
IBAN: BE33 3300 5785 0046
BIC/SWIFT: BBRUBEBB
European Transparency Register: 60975211600-74

The ELTIF regime has brought added value to investors in and the financing of long-term projects		X				
The ELTIF investor protection framework is appropriate		X				

Question 1.1 Please explain your position on your responses to question 1, providing key arguments to support your answers:

Although the ELTIF take-up has increased in the past few months, it is hard at this stage to consider that the product has been a success and is incentivising long-term investments. This is especially true when the low take-up is compared to the growing demand for investment strategies that fit with the ELTIF overall objectives. Today, the ELTIF product is only offered in a handful of countries, sometimes for the only reason that it is subject to tax advantages in these jurisdictions.

Nonetheless, the recent take-up also demonstrates that the ELTIF framework, if not currently successful, has the potential to become a relevant tool in the future if it appropriately takes into consideration market needs, which may vary from one market player to the other.

The private equity asset class, being composed of closed-ended and unleveraged funds investing into unlisted businesses for the long-term (on average 5 years), may be seen as having a particular interest for the ELTIF product. While this is true, it is only the case under certain conditions – and those are the very nuances that the Commission will have to consider in its upcoming review.

For **venture capital as well as for growth managers**, both of which represent the majority of the AIFM sub-threshold community, **EuVECA remains the most relevant label**. Would the Commission's objective be to further develop late-stage venture, appropriate changes to the EuVECA regime – including a change of name to make it clear it also cover growth funds - would be the most appropriate route. EuVECA indeed has the important advantage, compared to ELTIF, that it does not require venture funds to be AIFMD authorised and that it recognises the sophisticated nature of experienced long-term investors, such as high net worth individuals or successful entrepreneurs, which are most likely to invest in these long-term products.

ELTIF, on the other hand, could be attractive for any other type of private equity funds, but only in as such as it offers them the ability to market across the EU to investors currently not classified as professionals. In other words, for the private equity asset class, ELTIF is first and foremost a retail marketing passport.

These funds are also **not marketed to any type of retail investors**: the key target for these funds are investors with a high to medium degree of sophistication, i.e. "mass affluent" investors. ELTIFs will also mostly be distributed to these investors through intermediaries.

The primary challenge limiting greater ELTIFs take-up lie in the restrictive operating requirements which make ELTIFs economically unattractive to managers in comparison to other investment fund structures. ELTIFs are today simply not yet seen as sufficiently efficient for investors seeking exposure to this type of product. Targeted changes to the scope, to some of the funds' operating requirements and to the investment universe will undeniably help enhance the attractiveness of the ELTIF product. ELTIFs should also be opened to new types of funds, in particular fund-of-funds which, despite offering great diversification opportunities, are effectively excluded from the ELTIF community.

Overall, we suggest for five specific changes to be at the centre of the review:

1) requirements on eligible assets and the ELTIF's investment strategy should not be overly prescriptive and restrictive;
2) the conflicts of interest rule in Article 12 should not preclude investment in or alongside the ELTIF by the ELTIF manager (the so-called "co-investment" model);
3) borrowing limits should be carefully drafted and adapted to the ramp-up period
4) local facilities requirements should be removed in order to create a level playing field; and
5) prudential requirements applicable to institutional investors and national tax treatment should be determined to incentivise – or at the very least not to disincentivise – the use of the ELTIF label

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

	No action needed	Policy action could be considered	Policy action desirable	Policy action needed	Policy action very strongly needed	No opinion
General principles and definitions used in the ELTIF Regulation					X	
Market capitalisation threshold defining an SME equity or debt issuer			X			
Authorisation requirements				X		
Operational conditions				X		
Passportability of ELTIFs					X	
Rules pertaining to eligible investments					X	
Clarification and/or practical guidance on the eligibility requirements, notably in relation to investments in real assets					X	
Rules pertaining to the prohibition to undertake certain activities				X		
Rules concerning the qualifying portfolio undertakings					X	
Conflict of interests related rules, including the ban on co-investment					X	

Portfolio composition and diversification rules and their application					X	
Concentration limits					X	
Rules and limitations related to the borrowing of cash			X			
Redemption related rules and life-cycle of ELTIFs			X			
Rules concerning the disposal of ELTIF assets						x
Transparency requirements			X			
Prospectus-related provisions				X		
Cost disclosure related rules			X			
Rules pertaining to the facilities available to investors for making subscriptions			X			
Requirements concerning the marketing and distribution of ELTIFs to investors					X	
Specific provisions concerning the depositary of an ELTIF marketed to retail investors						x
Provisions and rules pertaining to the marketing of ELTIFs to retail investors			X			
Provisions integrating the EU Taxonomy for sustainable activities into the ELTIF framework	X					
Inconsistent or duplicative application of the ELTIF related requirements by Member States					X	
Issues arising from the supervisory practices within Member States					X	
Cross-border marketing related challenges					X	
Excessive reliance on distribution networks to market ELTIFs						x
Excessive costs of setting up and operating ELTIFs				X		
Competition from existing national fund structures		X				
Taxation related issues					X	
Other aspects						X

Question 2.1 Please explain your position on your answer to question 2, providing your arguments, and where appropriate, concrete examples and data to support your answers:

As can be seen above, we believe that policy action is either necessary or desirable on nearly all aspects of the ELTIF in order for the voluntary passport to fulfil its purpose.

In terms of priority, the core objective should be to facilitate the take-up of ELTIFs by reforming the framework's operating requirements in Articles 9 to 11 (e.g. eligible assets, fund-of-fund prohibition, qualifying portfolio undertakings, obligation to invest 10% maximum of an ELTIF's capital in a same company). These are the most likely to have a significant impact on the ELTIF take-up.

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

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

Question 3.1 Please explain your position on your answer to question 3, providing your arguments, and where appropriate, concrete examples and data to support your answers:

As explained in our response to Question 2, a broader scope of less prescriptive eligible assets under the ELTIF regime is desirable and should have a very positive impact on the ELTIF's attractiveness.

The current ELTIF regime is too restrictive and limits the ability of ELTIF managers to invest in a broad scope of assets, leading to a situation where most fund managers ultimately decide that an ELTIF is not worth setting up. This is particularly true as access to “mass-affluent” investors (to which an ELTIF would be distributed through an intermediary) are not typically at the heart of the fund managers’ strategy and it is therefore easier for managers to decide to either not market to these individuals or to only market to these individuals within one country. The immediate consequence of this is that European mass affluent/retail investors will typically remain unable to have access to such types of funds, limiting their overall investment choice.

2. Scope of the ELTIF authorisation and process

Question 4. Is the scope of the ELTIF authorisation and operating conditions appropriate? Please explain your answer.

We believe that the ELTIF authorisation process is appropriate but current operating conditions are not. The multiplicity of obligations, set out in the AIFMD and the ELTIF Regulation as well in national texts applicable to the fund, imply cumbersome operational conditions and a layering of costs. We detail these in the relevant sections of this response.

Regarding the authorisation process, if ELTIFs were conceived as a financial instrument to address the lack of late-stage venture capital financing, as has been hinted in some preparatory papers, an obvious flaw of the regime in place would be that it does not allow fund managers marketing their funds under the EuVECA passport to become ELTIF managers. Most venture capital managers, including most late-stage ones, will indeed prefer using the EuVECA passport than to opt-in to the onerous AIFMD requirements due their size.

Authorising managers of EuVECA funds to become ELTIF managers could make it possible for smaller fund managers which are outside the scope of the AIFMD – but whose fund structure is regulated at EU level under EuVECA – to offer this product. However, our understanding is that there is limited interest from EU venture managers to market to individuals that are neither professional nor “sophisticated” (as defined in EuVECA). The ELTIF regime would therefore bring little added value to these managers. In other words, potential improvements to the EuVECA regime are of most relevance for any sub-threshold managers from the venture managers’ perspective.

More importantly, and as the Commission is very well aware, a voluntary passporting regime that is not applied consistently throughout the EU will be of little value to managers. Despite the ELTIF Regulation having direct effect in each Member State, a number of national competent authorities have in practice imposed additional local requirements for distribution to retail investors. Satisfying multiple cross-jurisdictional marketing registration and notification procedures substantially increases time to market, costs for investors and burden on fund sponsor. We recommend disallowing the imposition of additional local rules. Compliance with the ELTIF Regulation (and of course AIFMD) should be deemed sufficient to begin distributing the product in each jurisdiction.

Finally, it should be ensured that the enhanced ELTIF passporting regime remains consistent with the AIFMD regime in the context of its current review.

Question 5. Should the ELTIF framework be amended to enhance the use of the ELTIF passport? Please explain how you think the ELTIF framework should be amended to enhance the use of the ELTIF passport.

Yes.

We agree that the ELTIF framework must be amended to improve its attractiveness and act as an effective cross-border passport.

The main interest of the ELTIF framework from the perspective of our members is the ability of non-venture funds to market cross-border to investors that are not deemed professional under EU law (and marketing to which is not authorised at EU level under the AIFMD). As we explain in further detail in our response to question 11, the main target of ELTIF managers would be "mass-affluent" clients and not typical retail investors.

While the long-term nature of the ELTIF product may be relevant for other asset classes, it has no impact on its attractiveness for private equity funds as all of these funds already have long-term features (a typical private equity fund is a ten-year closed-ended structure).

For private equity, the appetite for the ELTIF product will therefore directly be correlated to the efficiency at which fund managers will be able to market to non-professional investors under the framework, in conjunction with existing fund products.

We detail in the relevant sub-sections of this response the changes that are necessary to make the ELTIF the vehicle of choice for long-term strategies and investments in Europe.

3. Investment universe, eligible assets and qualifying portfolio undertakings

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

	-2: investments should be strongly discouraged	-1: investments should be discouraged	0: no impact	1: investments should be encouraged	2: investments should be strongly encouraged	Don't know ; No opinion ; Not applicable
Investments in innovative technologies					X	
Investments in green, sustainable and/or climate related projects					X	
Investments in projects that classify as sustainable under the EU taxonomy for sustainable activities				X		
Post-COVID 19 recovery related projects					X	
Any financial assets with long-term maturities					X	

Investments in digital assets and infrastructure					X	
Investments in social infrastructure and social cohesion					X	
Investments in energy infrastructure and energy efficiency					X	
Any real estate assets, including commercial and residential real estate without a perceived economic or social benefit under the Union's energy, regional and cohesion policies					X	
The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be further expanded to other areas and asset classes					X	
The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be more restricted or limited to a narrower set of assets/investments	X					
Other types of assets and investment targets, and/or other regulatory approaches should be pursued						X

Question 6.1 Please explain your position on your responses to question 6, including the benefits and disadvantages as well as potential costs thereof, where possible.

In particular, please indicate if you consider that any changes in the ELTIF regime are necessary, and if so which ones, and why? Should you be of the opinion that investments in certain eligible assets be

strongly encouraged, please provide further details on the possible definitions and scope of such different assets (e.g. references to existing or new legal definitions, examples, etc.):

All of the investments listed above can be categorised as, or contribute to, long term real economy investments in Europe. We would therefore strongly encourage the eligibility of all investments listed above, either by extending the current concepts or by creating new concepts, to create a broad investment universe for the ELTIF.

In particular, we consider the following changes would be most helpful:

1. <u>Broadening the definition of eligible assets</u>

The definition of eligible assets in Article 10 is too narrow and compares unfavourably with other fund structures that can be used to finance SMEs or investment in infrastructure. The Commission should allow any investments in all kinds of UCITS or AIF structure that is managed by an EU-regulated AIFM or UCITS manager to be eligible, provided the investment meets the overall objective of the ELTIF. We would not suggest listing particular national structures.

There should be no downsides to this extension: allowing investments in these types of CIUs would increase diversification opportunities for the ELTIF portfolio and lower volatility and any costs associated with these investments would be disclosed to investors as part of the cost disclosure requirements in the ELTIF regulation.

[It could be envisaged to add also a reference that securitisation vehicles within the meaning of the Regulation (EU) 2017/2402 would also be included.]

2. <u>Broadening the definition of qualifying portfolio undertakings</u>

There are two potential changes that would be of relevance: (1) removing the €500 million market cap, hereby allowing ELTIFs to achieve greater scale by building sectoral portfolios that mix SMEs, lower and upper- mid marker corporates ; (2) allowing certain types of financial undertakings to be eligible

3. <u>Allowing fund of fund structures</u>

The 10% restriction to ELTIF, EuVECA and EuSEF, as well as the issues related to definition of eligible assets and of qualifying portfolio undertakings described above, also prevent private equity fund of fund structures to be set up as ELTIFs, despite these offering investors higher levels of diversification and lower volatility. As can be seen by the small numbers of ELTIFs in existence, existing AIFMs are unlikely to establish bespoke investment origination capabilities specifically for the ELTIF product. The fund of fund structure would offer ELTIF investors the full benefit of the managers capabilities in an efficient manner by facilitating the ELTIF investing in a closed end AIF. This can be particularly appealing for retail investors and increase sums of money invested in the European economy.

Fund-of-fund fees should not pose an issue to end investors based on the cost disclosure requirements in Article 25. Based on these requirements, ELTIF managers are required to disclose information to end investors in the prospectus on the costs that will be borne directly or indirectly by the investors. As part of that disclosure, ELTIF managers would need to include fees charged to the ELTIF by underlying funds, for example which would qualify as a "*management and performance related fee*" (Article 25, 1(c)) or "*costs related to the acquisition of assets*" (Article 25, 1(b)) and as part of the overall costs ratio (Article 25, 2).

Question 7. Should some of the definitions related to the investment universe of ELTIFs and eligible assets used in the ELTIF Regulation, such as "long-term", "capital", "social benefit", "debt", "sustainable",

“energy, regional and cohesion policies” and “speculative investments” be revised to enhance the clarity and certainty around the application of the ELTIF regime?

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

We would suggest to delete references to “social benefit”, “sustainable”, “energy, regional and cohesion policies” in the definition of “real asset” for the following reasons:

- this would follow the approach taken for the other eligible asset classes which are neutral on the asset side (e.g. qualifying portfolio undertakings);
- this would avoid any conflicting definitions with the ESG regime.

The ELTIF Regulation aims to allow for retail marketing of AIFs and this objective should not become mandatorily subject to ESG related aspects. The intention should be to broaden the scope for “real asset” under the ELTIF Regulation and to classify – as a second step and following the standard regime for ESG disclosures for AIF products – under the ESG regime.

With respect to “capital” (defined in art. 2(1) of the ELTIF Regulation), for the purpose of increasing the flexibility whether in some cases throughout the ELTIF Regulation, existing references may be replaced by a variable benchmark such as NAV or GAV (notably when it comes to the limits for the borrowing section, i.e. art. 16 of the ELTIF Regulation).

Question 8. Is the ELTIF framework appropriate in respect of the provisions related to investments in third countries? Please explain your answer. In particular, please describe in detail any necessary adjustments to enhance legal certainty, for instance, with respect to the proportion invested in EU Member States with a view to benefit the ELTIF market, their managers and the broader European economy.

The majority of institutional investors in private equity have a global investment reach and our understanding is that a lot more managers would be interested in setting up an ELTIF **provided it allows them to include some of their global investing strategy in the portfolio**.

In light of this, we would warn the European Commission against adjusting the framework to prevent ELTIFs investing altogether in third countries. Imposing tough geographic restrictions on ELTIF portfolios could ultimately be harmful to the ability of managers to set these portfolios in an appropriate and thoughtful way. This would in turn raise the risk of investing in ELTIFs as the less portfolios are globally diversified, the less likely these are to be risk-resilient. In that context, our members feel that the current system generally allows for sufficient flexibility.

Our members however find that there would be some benefits in harmonising the concepts of “benefitting the European economy” or to clarify “what is a minimum proportion to be invested in EU Member States”. Leaving national competent authorities with too much flexibility may create unnecessary uncertainty for managers which invest over the long term. Given the international structure, organisation and operations of many businesses, some further flexibility would afford comfort and protection to ELTIF managers against inadvertent breaches.

More generally, regarding third countries, it should be ensured that the ELTIF Regulation is consistent with the AIFMD, as ELTIF managers are in all cases regulated AIFMs.

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

	1 (no policy action needed)	2 (policy action could be considered)	3 (policy action desirable)	4 (policy action needed)	5 (policy action very strongly needed)
A size requirement of at least EUR 10 000 000 for eligible real assets investments			X		
A condition for an exposure to real estate through a direct holding or indirect holding through qualifying portfolio undertakings of individual real assets		X			
Limitation on eligible investment assets to units or shares of ELTIFs, EuVECAs and EuSEFs, as opposed to other potential fund categories					X
Inability to invest in a “financial undertaking”					X
EUR 500 000 000 market capitalisation threshold set out in the ELTIF Regulation for investing in listed issuers					X
Rules related to investments in third-country undertakings		X			
Other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings			x		

Question 9.1 Please provide your assessment of the adequacy and effectiveness of the ELTIF framework with respect to the execution of fund-of-fund investment strategies, real assets investment strategies and any restrictions on investments in other funds throughout the ELTIF’s life.

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

The slow uptake of ELTIFs in the venture capital and private equity sector is in our view mainly due to the scope of eligible investments assets and of qualifying portfolio undertakings.

Eligible investment assets

The portfolio composition requirements should be adapted for ELTIFs to become a suitable product for funds of funds. FoFs are a common and effective way of rapidly obtaining exposure to illiquid assets (especially real assets). Allowing these structures to be ELTIF-eligible will undeniably make the regime more appealing to such managers and increase the sums of capital being invested in the European economy through that channel.

Advantages would be numerous.

- **Greater cross-asset class exposure**, which in turn will mean a lower risk for the ultimate investor: as FoF managers are experienced in selecting and monitoring the appropriate underlying funds.
- **Additional layer of screening**: as managers of underlying funds already conduct research on initial investments.
- **Lower volatility**
- **Enhanced access** to the managers full sourcing capabilities and investment opportunities

In the context of fully paid-in capital structures, granting accessibility to fund-of-fund strategies (at least during the portfolio ramp-up period) would also mean that asset managers could invest on a broader basis in other funds, allowing for faster deployment of capital.

In order to allow fund-of-fund structures to be eligible:

- Article 10 should list any CIUs as one of the categories in which an ELTIF can invest.
- The restriction in Article 13, paragraph 3 limiting investments in other funds at 20% of the capital of the ELTIF should be removed (and no such aggregate restriction should apply to investment in other collective investment schemes).

Regarding the latter, diversification would still be achieved by the 10% single issuer limit in Article 13, paragraph 2, point c, which should be amended to reference CIUs more broadly.

Furthermore, we note that the requirement to invest 70% of capital in eligible investment assets within 5 years of authorisation or half the life of the ELTIF, whichever is earlier, could also be problematic for FoFs. While a FoF will typically make investment commitments to underlying portfolio funds during the first five years of the life of the ELTIF, the pace of investment activity by the underlying portfolio funds (when capital is actually contributed to underlying investments) will be dictated by the underlying portfolio funds and typically would occur between years 1-8 of a traditional fund of funds. We would therefore also suggest changes to Article 17.1 to take this into consideration.

Qualifying portfolio undertakings

The possibility for ELTIFs to invest in certain financial undertakings would lift a significant hindrance to the creation of ELTIFs by our members.

First, the ELTIF regime should allow for investments to be made, potentially up to a maximum threshold, into financial start-ups which provide new services to their clients and which can contribute to growth in the fintech sector. There is no reason to make a distinction between this type of innovative businesses and others active, for example, in the biotech sector. The ELTIF could allow investments in companies that qualify as “fintech” based on: (i) the company meeting the definition of an “SME”, and (ii) the company’s objective to improve and automate the delivery and use of financial services. According to Invest Europe data for the year 2019, 8% of all private equity investments (12.5% for growth investments only) are made in financial undertakings.

Second, long term assets are often acquired, and their subsequent holding structured, using holding companies, as several different layers/groups of investors/shareholders with differing rights could be invested in the underlying asset alongside an ELTIF. Intermediate financial undertakings are thus set in place to manage different guarantees, corresponding to different risk levels, with a view to meet institutional investors’ constraints in terms of risk management. Such financial undertakings will also allow access to assets while isolating financial risk for investors.

For example, ELTIF managers will be keen to provide finance to large infrastructure projects without the danger of putting the entire ELTIF at wider risk of incurring liabilities, should that project perform unfavourably. This ultimately drives up returns and, most importantly, increase investor protection. While not every ELTIF will engage in this route, we believe that it is a highly valuable tool to have in the investment kit of the ELTIF manager and should not be prohibited, especially post Covid-19 crisis, as it can be expected that investors will have to gather in order to finance vast projects.

Finally, we would like to provide our full support an increase of the market capitalisation threshold set out in the ELTIF Regulation for investing in listed issuers to an amount of EUR 2 000 000 000.

4. Types of investors and effective investor protection

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

For the private equity managers we represent, the main interest of the ELTIF passport is to market to clients that are (currently) not categorised as professional investors. Nonetheless, due to the wide investor base of a typical private equity fund, it is likely that private equity ELTIFs will always welcome institutional investors alongside those non professional ones.

Consequently, the prudential requirements applicable to institutional investors (e.g. pension funds, banks and insurance companies) should be made appropriate to the long-term equity investment horizon of ELTIFs. For instance, the parameters of the long-term equity category – and the ability of insurers to set these up and include ELTIFs within them - will encourage insurers’ uptake in ELTIFs. Fostering the use of the ELTIFs in unit-linked insurance products would be a way to widen the retail investor base further, as in most cases the distribution of ELTIFs to retail investors is intermediated.

Differentiating the treatment of investors who require additional protection and those that have a deep understanding of what a private equity investment entails is a necessary step for the ELTIF to become a success. While high standards of protection have to be put in place for less knowledgeable investors, through mass standardised information, requesting such information for marketing to experienced investors has disincentivised the use of ELTIFs by managers.

We have long argued that the current EU investor categorisation is not sufficiently developed and we are very much in favour of a revision, within MiFID or AIFMD, of the definition of professional investors. This definition should in the future also cover long-term investors with a deep experience of the market but which are excluded from the category because their level of sophistication differs from that of day trader. The frequency criteria of the MiFID test, for example, is highly discriminatory towards long-term investors (see our response to Q11b which details this issue in more depth). Small family offices or high net worth individuals investing regularly in venture capital are typical examples of such professional investors which do not fit the current MiFID definition.

In general, attempting to attract both truly retail individuals and professional investors into the same ELTIF always risks discouraging the latter from investing in the proposed funds because of all the requirements, such as prospectuses, which are necessary for the protection of retail investors but bear little value for them (and the cost of which they ultimately have to pay).

While a full double regime is certainly not of interest, it would make sense for some provisions of Chapter IV to be differentiated for ELTIFs marketing solely to professional (and potentially to semi-professional investors) and those also marketing to less experienced individuals ("pure retail" ones). ELTIF requirements for professional investors should ultimately be more closely aligned to AIFMD than to the current text.

Question 11. Should any of the following provisions of the ELTIF legal framework be amended, and if so how, to improve the participation and access of retail investors to ELTIFs?

Please explain which of the following provisions should be amended and give specific examples where possible and explain the benefits and disadvantages of your suggested approach, as well as potential effects and costs of the proposed changes.

a) Amendment of the size of the initial minimum amount for retail investors, and net worth requirements

We find that the current rules may be too prescriptive for the objective they set to achieve and may limit the ability of investors to commit capital into ELTIFs. In particular we believe that there is no need to set an initial minimum amount of €10.000 (although our understanding is that clients investing in private equity ELTIFs will typically commit larger amounts).

The most crucial factor from an investor protection perspective is the level of diversification, both within the ELTIF and within the investor's portfolio. Highly diversified structures, such as fund-of-funds represent a (very) limited risk for the investor. It would logically make sense to specifically set up more flexible criteria for investments in FoFs ELTIFs, which are by nature more diversified. Indeed, the number of underlying companies a client has exposure to through a FoF ELTIF is sufficiently high to ensure that the risk of loss is extremely limited. The rule that an aggregate amount must not exceed 10 % of that investor's financial instrument portfolio seems in particular to be too stringent for an investment in a FoF.

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

Feedback from our members is that the appetite for the ELTIF product is directly correlated to the ease at which fund managers will be able to market to non-professional investors under the ELTIF. ELTIFs are generally perceived as an useful tool to market to three types of clients:

1. **Clients that are already deemed professional under EU law** (i.e.: under the definition set in Annex II of MiFID II) e.g.: pension funds, insurers, banks, sovereign wealth funds

While managers marketing solely to these clients are unlikely to be interested by the ELTIF product, these clients will likely represent a significant part of the investor base of any private equity fund.

2. **Clients that have extensive experience of the private equity markets but are not yet deemed professional under EU law** e.g.: experienced high net worth individuals, smaller family offices and mass-affluent clients and entrepreneurs depending on their degree of knowledge

While having a level of experience and expertise that is equivalent to professionals, these investors have typically been categorized as "retail" investors under Annex II of MiFID II, either because it can be difficult for many of them to satisfy the existing "elective professional investors" tests or because these clients require a certification from an investment firm that is hard to obtain for an asset manager.

They include, for example, (ultra)-high net worth individuals investors committing more than €100.000, family offices as well as executives, directors or employees involved in the management of an ELTIF when they co-invest in said ELTIF.

The current "investor categorisation" system is inherently discriminatory for experienced investors investing directly large sums of capital in long-term and illiquid funds as:

- the existing "frequency test" is calibrated for participants in liquid markets such as those for exchange-traded equities (while not even the most seasoned institutional investors make as many as 10 commitments per quarter to private equity funds)
- to our knowledge, only investment firms are authorised to certify that a client can be professional "upon request"(and investment firms do not necessarily have incentives to certify products that they are not selling)

A review of the MiFID Annex II – or of the way it is translated in various EU laws – needs to be undertaken to better take into consideration the nature of long-term investors.

From a broader CMU perspective, our understanding of the market leads us to believe that, if the Commission's objective be to increase the level of long-term investment in unlisted businesses such as start-ups and scale-ups, the **reconsideration of the investor categorisation should be its overarching priority**. This would allow typical private equity funds to market cross-border to their usual investors (and would also ensure that investors deemed as "sophisticated" in EuVECA do not comply with rules, such as KID, that are not suited to their level of sophistication). While undeniably helpful, any change introduced to the ELTIF regime, even significant, is likely to have a smaller impact than an investor recategorisation from a private equity perspective.

3. **Mass-affluent investors**

On top of the previous two categories, asset managers considering establishing an ELTIF will typically look to raise capital from “mass affluent” investors rather than pure retail clients. They will design their systems and processes according to this investor base. While these clients may not always be eligible to the professional status, most of them will typically be more experienced that non-advised clients (the true retail customers) and will be in a position to commit capital over the long-term into ELTIF products. Contrary to investors listed in point 2, distribution to these investors will be made through intermediaries.

Although it is important to stress that the majority of private equity fund managers typically do not market to these individuals, it is even more worthwhile restating that those that are interested to offer their products to these clients see the ELTIF as the right framework to do so (and, perhaps most importantly, see this as the main value of the ELTIF product). ELTIF is therefore in our eyes the perfect vehicle for these investors to access the benefits of the asset class while remaining subject to an appropriate level of investor protection.

The safeguards that have so far accompanied the distribution of ELTIFs to these investors created additional operational complexities which typically required ELTIF managers to partner with wealth managers or private banks in order to meet these safeguards. This has increased the costs associated with operating an ELTIF, making it an unviable proposition for some asset managers.

There is hence merit in developing a two-tier ELTIF structure to accommodate both these ‘mass-affluent’ clients and non-advised clients (i.e. “retail clients” under MiFID). This would help to meet market demand for both types of client while ensuring that any operating requirements on the ELTIF manager are proportionate to their ELTIF structure and target market. Would the Commission accept such logic, the ultimate result would be the creation of a ‘semi-professional client’ category in the ELTIF framework.

c) Withdrawal period of two weeks

The provision on the withdrawal period of two weeks should be clarified, as it is too difficult to manage in practice. To the extent that the ELTIF follows a subscription approach, the kick-off moment of the “cooling off” period seems to be moment when the retail investor **subscribes the shares/units**. In practice, where the retail investor will first have to make the payment and then the retail investor will technically subscribe for the shares/units, this means that the cash paid in by the retail investor would need to be kept at least 2 weeks on the account of the ELTIF in order to anticipate any repayments/redemptions and the ELTIF may not immediately make investments in the full cash amount. From a practical perspective, the wording could be clarified in the sense that the “cooling off” period will be kicked-off as of the **date of the subscription agreement**. This would have the advantage that the ELTIF would wait simply for two weeks prior to requesting the settlement of the subscription price and that a cancellation within the “cooling off” period would not trigger any further actions to be undertaken by the ELTIF.

The provision is even less clear when it comes to ELTIFs which follow a commitment approach. If we follow the wording, there may be a risk that a retail investor argues that “cooling off” period will start each time the ELTIF makes a new drawdown, as the retail investor will subscribe to units/shares at this occasion. In order to avoid any doubts, the wording could be clarified in the sense that the “cooling off” period will be kicked-off as of the **date of the initial commitment agreement**.

d) Possibility to allow more frequent redemptions for retail investors

Venture capital and private equity funds are typically closed-ended funds which invest in illiquid assets and do not offer frequent redemption windows to investors. This is to avoid having to maintain a portion of liquid assets within the fund portfolio to meet potential redemptions requests, which in turn would weigh on their performance.

On that basis, we are not in favor of introducing a right of redemption in the context of a closed-ended fund whose strategy is investing in illiquid assets, although there may be specific exceptions which we detail in Question 23 and 27.

e) Procedures and arrangements to deal with retail investors complaints

N/A

f) Provisions related to the marketing of ELTIFs

We would like to reiterate here the comments made in our answer to Question 4 regarding issues with the use of the marketing passport due to undue local requirements for distribution. We strongly believe that compliance with the ELTIF Regulation should be deemed sufficient to begin distributing the product in each jurisdiction.

g) Other provisions and requirements related to retail investors

N/A

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

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

As mentioned in our response to Question 10, the investor protection regime should be tailored to the specific needs of the clients. Given private equity managers market to either professional investors (whether or not they are recognized as such under MiFID) and to “mass affluent” investors, as opposed to pure retail clients, their systems and processes will be designed accordingly.

Would changes be introduced to the ELTIF liquidity profile, it will be essential that no additional requirements are introduced for those ELTIFs that are set up as closed-ended funds with limited redemptions rights.

On a more specific note, many asset managers and distributors have raised questions about the investment advice requirements, particularly when the intent is to market the shares/units of an ELTIF to employees of the initiator who have been involved in the product development. An investment by employees of an asset manager into an ELTIF, which is essentially made to align the interest with the interest of investors, should not be regarded as an investment by a retail investor, as we explain in more details in our response to Question 15.

5. Conflicts of interest

Question 13. Are mandatory disclosures under the ELTIF framework sufficient for investors to make informed investment decisions? Please explain your position on your responses to question 13, including benefits and disadvantages of the potential changes as well as costs:

Yes.

We agree that disclosures of conflicts as part of the ELTIF framework should be sufficient for investors to make informed investment decisions.

Question 14. Which elements of mandatory disclosure requirements, if any, should be tailored to the specific type of investor? Please explain your position, including benefits and disadvantages of the potential changes as well as costs:

Asset managers spend a considerable amount of time and resource preparing suitable disclosures for fund investors based on the features of the fund. We would not recommend amending the framework to impose additional disclosure requirements on ELTIF managers beyond those already required under existing rules.

Question 15. Are the ELTIF rules on conflicts of interest appropriate and proportionate? Please explain how you think how should such rules on conflicts of interest be amended. Please explain the benefits and disadvantages of the potential changes as well as costs, as well as how specifically such amendments could facilitate the effective management of conflicts of interests, co-investment strategies and indirect investment strategies:

No.

The ELTIF regime should facilitate the ability of ELTIF managers to invest directly or through its affiliated ELTIFs into the same investment, subject to appropriate disclosure on the manager's allocation policy / ability to manage conflicts of interest. As ELTIF managers are AIFMs ,and as such subject to the rules on conflicts of interest set out in this Directive, it is unclear why specific conflict of interest rules need to be set up in an ELTIF context.

The current drafting of Article 12 and Recital (25) of the ELTIF Regulation presents challenges for managers that invest their own capital in the funds that they manage. This mechanism, known as co-investment, is typically negotiated between investors and the manager at the onset of the fund, structured as a limited partnership, to promote alignment of investor interests. "Co-investment" allows the investment team to have "skin-in-the-game". By allowing the manager to invest in the fund, investors ensure that it has every incentive to take all actions for the fund to be successful (as opposed to a manager that would only enjoy a flat management fee). Because they are so common in a private equity context, not ensuring co-investments are possible greatly diminishes the ability of private equity managers to invest into ELTIF products.

Managers of an ELTIF will typically already have an established European investment process in place, including a flagship investment fund. It is imperative that the ELTIF can invest alongside pre-existing or other fund products to ensure that the ELTIF is gaining access to the preeminent investment opportunities that the manager identifies.

Currently, it is unclear whether current provisions preclude ELTIF manager (or its staff) or its affiliated funds to invest in or alongside the ELTIF (what is called in a private equity context the "GP commitment"). Article 12 is also likely to prevent other funds or clients managed or advised by the Manager (or its affiliates) to participate in the same portfolio investment as the ELTIF, either directly or indirectly through an SPV in which ELTIFs and other clients participate.

In order for Article 12 of the ELTIF Regulation to be read as allowing an asset manager to manage two or several funds investing in the same asset, we suggest the following amendments:

1. adding a clarification that Article 12 of the ELTIF Regulation does not prohibit asset managers to manage several other funds investing in the same asset
2. including a mitigation procedure for potential conflict of interests which do not have any negative impact on the investors

The latter could take the form of a clarification in the text that investors may also waive this investor protection provision provided that:

1) the manager discloses the setup to the investor in the prospectus and in the regular reporting
2) it ensures investors are not materially affected

On a separate note, larger managers that have different types of businesses (for example private equity and credit) may also face issues with the current conflict of interest rules. In typical private fund structures, this issue is easily dealt with by way of market practice private placement memorandum (PPM) disclosures but the regulatory oversight applying to an ELTIF has caused a number of managers to be wary of launching such a structure. Conflicts should rather be managed internally by the AIFM pursuant to its regulatory obligations outside of the ELTIF regulation without additional requirements or mandatory prescriptions under the ELTIF regime.

6. Borrowing of cash and leverage

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

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

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

As was made clear in other parts of this paper, private equity funds are closed-ended funds, which are often structured as limited partnerships. Institutional and sophisticated investors make a contractual, binding commitment to the fund, which is drawn down when needed, to be invested in businesses.

Leverage in finance is meant as borrowing to <u>increase the potential return</u> on the investment – it is rightly deemed problematic from a regulatory perspective as it consequently involves investors taking on extra risk beyond the capital they have committed. However, when a private equity fund uses a borrowing facility to manage cash flows from investors in the fund, this does *not* increase investors' exposure by allowing the fund to invest more than its committed capital. The reason for this is that the amount of borrowing is covered by commitments from investors that have not yet been called. In other words, as there is no increase of the amount of "capital at risk" from an investor perspective, the use of debt in this way must be seen as a tool of treasury management, not a source of additional risk.

Unfortunately, some of the existing technical tools used to measure leverage - such as the gross method used in AIFMD – can lead to the conclusion that some private equity funds are modestly leveraged even though their activities pose no risk to the financial system. To avoid this, it should be clarified in the ELTIF framework that **subscription facilities that are fully backed by undrawn commitments of investors should not considered to be leverage** within the scope of Article 16 of the ELTIF Regulation.

Borrowing thresholds should also be based on total ELTIF size rather than to 'Capital' - which can be hard to calculate on a projected basis for an ELTIF's life for certain fee structures. In general for the ELTIF regime, references to 'capital' instead of total fund size / commitment of an investor make calculations/disclosure to investors cumbersome. The use of borrowings should also be extended for all working capital purposes (incl. payment of fees and expenses).

Finally, the current limit on "unencumbered assets" in Article 16 (1) (e) raises the cost of financing because the lender can argue it has a very limited access to the assets of the borrower (the ELTIF) to secure its financing. We would suggest removing such a limit. At the very least, the limit should in any case be clarified. Indeed, the current provision may trigger the question, in case of credit lines to be secured with future claims, whether a pledge of the commitments qualifies as an "encumbrance" of assets or not. Our understanding is that commitments do not fall within the scope of assets for this purpose but a clarification in the text would be welcomed as there may be other interpretations of such article.

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

As we hinted in our response to Question 16, from a private equity perspective, the debate should not so much be about raising the maximum threshold of net leverage allowed than about **appropriately defining what use of debt and derivatives actually pose a systemic risk**.

Private equity funds are indeed by default unleveraged but may be considered leveraged if the definition is not tailored properly (see again our answer to Question 16). Making it clearer that the use of debt backed by uncalled commitments does not increase the funds' exposure and cannot therefore be deemed leverage would go a long way in allowing private equity funds to set up ELTIFs from the leverage requirements perspective.

Overall, we are not opposed to an overall increase of the threshold provided it does not lead to additional requirements for funds that are not using leverage.

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

Which safeguards are particularly relevant and appropriate, and why?

Fair rules on leverage should apply indistinctively to all types of investors.

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

Yes. Our members would welcome the possibility to borrow also in a different currency than the currency of the assets to be acquired with the borrowed cash. In certain circumstances, it is more efficient for an ELTIF to borrow in another currency, so the current rules impose limitations on the ELTIF manager's ability of delivering capital to investments. Greater flexibility during the ramp up period would make it easier for ELTIF managers to establish the investment strategy and deliver better returns from investors at the outset.

Question 20. Please explain which regulatory safeguards, if any, you deem appropriate to ensure the effective management of liquidity, subscriptions and the financing of assets in the investment portfolio. In addition, please explain if you consider it appropriate to provide for any alternative regulatory approach for the borrowing of cash rules specifically during the ramp-up period in the ELTIFs' life:

The ELTIF regime should not restrict the use of borrowed funds for the purposes of managing liquidity, subscriptions and the financing of assets in the investment portfolio. Relevant disclosure should provide appropriate safeguards.

We also support the idea that borrowing limits could be disapplied during the ramp-up period to allow an ELTIF to get to scale without breaching borrowing limits.

7. Rules on portfolio composition and diversification

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

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

Question 21.1 Please explain your response to question 21 with the description of the advantages and drawbacks of your preferred policy approach. In particular, should you consider that the diversification and portfolio composition related rules under the ELTIF Regulation need to be amended, please explain, to what extent and why?

Current portfolio composition criteria are too narrow and make it generally unappealing or unviable for fund managers, and particularly fund-of-funds managers, to set up ELTIFs.

As mentioned in our response to Question 9, to allow fund-of-fund structures to be eligible, Article 10 should list any CIUs as one of the categories in which an ELTIF can invest in order and the restriction in Article 13.3 limiting investments in other funds at 20% of the capital of the ELTIF should be removed. This would allow fund-of-fund structures with portfolio compositions which meet the aims and objectives of the ELTIF to be eligible to the framework while increasing diversification and lowering volatility.

Moreover, and with the same overall objective, concentration rules should be modified to ensure ELTIF are in a position to acquire more than 25 % of the units or shares of a single fund. There should not be any issue for an ELTIF fund-of-fund to acquire the entirety of another fund provided there is a sufficiently diversified investment strategy.

Finally, and as explained above, the requirement to invest 70% of capital in eligible investment assets within 5 years of authorisation is also an issue for FoFs. An amendment could be introduced to Article 17.1 to ensure that the limit is pushed to 10 years for FoFs ELTIFs to better reflect their typical investment plans. Moreover, the test could be reconfigured for the measurement to be by reference to the amount of capital **committed to be invested** and not the amount of capital actually invested.

We have explained in responses to previous questions why such a development would allow for ELTIFs to be more diversified and would ultimately lower the risk of these portfolios, hence lowering the additionality brought by retail suitability rules, whose main purpose is the financial protection of retail clients. We believe there is ultimately no reason for ELTIFs to only be open to direct vehicles - as fund-of-fund vehicles are actually much more suited to the needs of mass-affluent clients which are likely to be the key target of managers setting up ELTIFs.

Question 22. Do you consider the minimum threshold of 70% of eligible assets laid down in Article 13(1) of the ELTIF Regulation to be appropriate? Please explain your position by assessing the advantages and drawbacks of your preferred policy option pertaining to asset diversification rules:

Provided the scope of eligible assets is expanded according to our suggestions in our response to Question 9, we do not believe that the 70% threshold in itself poses an issue. It would however be important to clarify to the maximum extent possible what are the remaining 30% of assets (i.e. UCITS eligible assets).

8. Redemption rules and life of ELTIFs

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

A typical private equity will be structured as a closed-end vehicles with a minimum life-span of 10 years, in order to enable the underlying companies in which investments are made to have the time and potential to grow and develop. As such, these are funds that are not designed to be traded like a liquid asset or for investors to be able to redeem their investment during the life of the fund. Indeed, redemption during the life of the fund will often be expressly excluded by the legal agreement which governs the management of the fund.

However, there is a strong argument for allowing ELTIFs to also exist as an ‘evergreen’ vehicle, with no fixed maturity and redemptions permissible during the life of the fund, provided the ELTIF manager adopts appropriate liquidity management procedures. Indeed, the UK Government has committed to a UK version of this vehicle - the “Long Term Asset Fund” (LTAF) – being up and running by the end of 2021. An ‘evergreen’ version of the ELTIF could be modelled on the proposal for the LTAF, whereby redemption opportunities are designed by the fund manager based on the liquidity profile of the fund’s underlying investments. For example, ELTIF managers could offer quarterly/six-monthly/yearly/biennial redemption windows and determine the length of any notice period required for submitting a redemption request.

We would not recommend amending the ELTIF Regulation to include prescribed liquidity management tools and procedures for managers operating an 'evergreen' version of the ELTIF: these should be determined by the manager based on the particular investment strategy and liquidity profile of the fund's assets.

Offering an 'evergreen' version of the ELTIF would broaden the investment opportunities for ETLIF managers that would be no longer limited to invest only in those assets which reached maturity before the end of the fixed term of the ELTIF. This would better accommodate the policy objectives behind the ELTIF regulation of stimulating growth in the European economy by way of long-term investments and attract further investment from an investor base looking for more redemption opportunities other than at the end of the life of a fund.

For example, an 'evergreen' ELTIF might be a suitable vehicle for an infrastructure investment fund with very long-term underlying assets, paying out yields over the course of the life of the fund to pay redeeming investors if applicable.

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

Shorter maturity of between 5 to 10 years
Maturity of 5 years and more
Only investments with a maturity +10 years
Only investments with a maturity + 15 years
Other possible maturity
Don't know / no opinion / not relevant

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

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

Question 26. Do you consider that "mid-term" redemption should be allowed? Please explain your position on your responses to question 26 and provide for advantages and disadvantages of your policy choice from the perspective of ELTIF managers, ELTIF liquidity and risk profile, returns of investors, and other regulatory aspects:

It is extremely difficult to allow for any form of redemption at the election of investors within a closed ended vehicle solely targeting illiquid investments. The vehicle would need to carry significant balances of liquid assets in order to manage the liquidity. This would in and of itself drag performance of the ELTIF and defeat the purpose of encouraging investment in illiquid asset classes. In other words, a mandatory requirement in ELTIF to offer redemption at the initiative of the investors could exclude any private equity funds from the scope of the framework.

We are not however opposed for ELTIF managers to run an open-ended evergreen structure provided that the requirements that could apply to them do not spill over to other ELTIF managers operating closed-ended structures.

From that perspective, we would suggest that it is better to give ELTIF managers complete discretion over the redemption policy (as described in our response to Q23) and focus instead on making sure that the redemption policy and any liquidity management tools are appropriately disclosed.

Question 27. Do you consider it appropriate to allow for regular redemptions or an "evergreen" vehicle approach (no maturity)? How frequent should ELTIF redemptions be, and if so, which additional safeguards would you consider necessary to cater for the illiquidity, redemptions and other fund cycle related aspects of the ELTIF framework?

In the vast majority of cases, private equity funds will be set up as closed-ended structures. They will offer no redemption rights and only have in their investor base investors which are either institutional or sufficiently sophisticated to commit large amount of capitals without being faced with liquidity needs.

Private equity ELTIFs are likely to be slightly different, in part because ELTIF managers are interested to use the ELTIF passport to market to "mass-affluent" investors which will have different characteristics.

While it will not be the case of every private equity ELTIF manager, some ELTIF managers may also be interested in launching evergreen or permanent capital structures with redemption opportunities through the life of the ELTIF. This type of vehicle appeals to a broad range of investor, including institutions, high-net-worth-individuals, and family offices, all of whom may appreciate the convenience of an evergreen structure together with the possibility for redemptions.

As mentioned in our response to Q23, a natural and practical consequence of requiring a fixed maturity is that the fund manager will seek investments with a sufficiently short duration prior to the end of the life of the ELTIF in order not to inadvertently breach the fixed maturity requirement. This will thereby increase the proportion of the fund's life during which investor capital is not fully invested, reducing the capital efficiency of the ELTIF. Different redemption frequencies may therefore be appropriate for these vehicles. For example, using the model of the LTAF, redemptions could be offered quarterly/six-monthly /yearly/biennial, provided sufficient notice (e.g.: six months) is given as determined by the manager.

Additional safeguards would not need to be put in place to ensure the viability of an 'evergreen' model. In summary, the ELTIF manager should be required to adopt and disclose to investors liquidity management tools that are appropriate to the strategy and liquidity profile of the ELTIF.

Question 28. Is it appropriate to provide for any alternative regulatory approach with respect to the redemption rules or portfolio composition, diversification rules, etc. for ELTIFs during the ramp-up period in the ELTIFs' life-cycle? Please explain your position and provide for advantages and disadvantages of your policy choice.

Yes, we are of the opinion that it would be appropriate to provide for an alternative regulatory approach with respect to the redemption rules or portfolio composition, diversification rules, etc. for ELTIFs during the ramp-up period in the ELTIFs' life-cycle.

Rules on portfolio composition and diversification should not apply at the beginning of the life of an ELTIF - while investments are being made - nor towards the end of its life, when it is selling assets, having regard to the particular characteristics of its assets. In addition, borrowing limits should be disapplied during the ramp-up period to allow ELTIFs to achieve scale.

9. Secondary market and issuance of new units or shares

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

It would be helpful for the ELTIF regulation to clarify what is considered a "material change" in the value of an asset (which needs to be disclosed in the periodic report). Otherwise, we find that Article 20 is sufficiently broad in allowing the issuance of units to be dealt with in the ELTIF constitutional documents, and that the current pre-emption rights are reasonable.

Question 30. Are the limitations of the ELTIF Regulation regarding the issuance of the new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors clear and appropriate?

The requirement for units to be issued at a price not below NAV makes sense in the context of an open ended vehicle where the value of the underlying assets may easily be mark-to market but does not work and is not market practice for either fixed life closed-ended vehicles, in which all investors have an indirect share in the underlying assets from inception (subject to equalisation calls and payment of catch up interest etc.).

However, to the extent that an ELTIF is structured as a vehicle to which investors are able to make investments over the course of the life of the fund, a restriction on issuing at a discount to NAV may be relevant (rather than equalised commitments being made by investors during a limited initial fundraising period). These restrictions would also be in line with other equivalent corporate vehicles.

Overall, we believe there should be sufficient flexibility for different types of business model. One possibility would be to differentiate:

a) the typical PE Fund model where the interest in the fund is simply a function of the cash contributions (regardless of NAV);
b) other models where the units acquired are a function of the cash contributed relative to the NAV of the fund (and for which it is reasonable to consider that units should not be issued at a discount)

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

N/A

10. Marketing strategy for ELTIFs and distribution related aspects

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

The requirement that ELTIF shares/units must be freely transferable raises a number of structural problems, including:

- a risk of triggering registration requirements in other jurisdictions, such as the US: e.g. US investors that do not meet the criteria for "Qualified Purchaser" acquire Units (if it is not possible to impose the usual US securities type transfer restrictions).
- credit risks associated with the transfer of partly paid units.

The typical private equity model involves a capital commitment that is gradually paid in (i.e. drawn down) over time. Conceivably, structural solutions may be possible, e.g. (i) full payment of the entire commitment at inception (although the manager may not yet have identified any assets to acquire, so this could have an impact on performance) or (ii) a commitment to subscribe for new units from time to time, as called by the manager.

Income and capital profits on realization of an asset currently may be distributed to investors provided they are not required to fund future commitments of the ELTIF. This would appear to preclude the typical model in a private equity fund of making distributions to investors before the time when their commitment is fully funded.

Suitability assessments requirements, and in particular the need to partner with a wealth manager or private bank in order to complete those assessments, are also typical limitations for distributing ELTIFs. Finally, satisfying multiple cross-jurisdictional marketing registration and notification procedures substantially increases time to market, costs for investors and burden on the fund sponsor.

Question 33. Do you consider that review of the ELTIF rules related to the equal treatment of investors is warranted? Please explain your position on your answer

No. ELTIF managers are already subject to the full range of AIFMD rules in relation to treating investors fairly, and these are subject to investor and supervisory oversight. We are not aware of any detriment to investors owing to deficiencies in this framework which would warrant including this rule on equal treatment in the ELTIF regime.

Question 34. Is it necessary to clarify the ELTIF framework with regard to the application of the principle of equal treatment of investors at the level of individual share classes, and any other specific arrangements for individual investors/group of investors?

N/A

11. Miscellaneous

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

Yes.

As for any other EU labels, the ability of managers to use the ELTIF as a true European product without being hindered by national requirements is one of the most important factors of success of the cross-border passport. No European label is truly functional if its passporting benefits are limited in effect. While the Commission has undertaken significant efforts to improve cross-border marketing of funds, close attention should be given to specific marketing conditions of ELTIFs in Member States to avoid any bottlenecks.

An example of "goldplating" or the effectiveness of the ELTIF framework being impaired based on national restrictions relates to the local facilities requirements. In our experience, there is some discrepancy among different jurisdictions as to how to comply with the requirements of Article 26, which creates an unlevel playing field and an overly burdensome regime for ELTIF managers. Removing the local facilities requirement from the ELTIF Regulation would be consistent with broader policy towards the distribution of retail funds across Europe.

A specific example of this relates to the requirement in Germany for local facilities agents to be a German credit institution. Based on the RTS, the equivalent UCITS provisions appear to apply, many of which were put in place some time ago and have since been amended. Local facilities requirements have since been removed from the UCITS regime, but the requirement for local facilities agent for an ELTIF, and therefore a German credit institution in Germany, remains.

Question 36. Are you aware of any national practices or local facility requirements for ELTIF managers or distributors of ELTIFs that require a local presence or otherwise prevent the marketing of ELTIFs on a cross-border basis?

As explained in our answer to Question 35, we would consider policy action desirable here to remove the requirement for ELTIF managers to set up local facilities in each member state where it intends to market the ELTIF. As investors expect such facilities through online channels, this approach is no longer relevant. The requirement has also been interpreted and applied in different ways as between Member States, increasing the operational and compliance burden on the ELTIF manager. The onerous requirement for certain local investor facilities has recently been removed for UCITS funds. Removing this requirement in the ELTIF regulation would therefore bring the regime in line with broader policy towards retail funds in Europe.

Question 37. Which features of the current ELTIF framework, if any, should be defined in more detail and which should be left to contractual arrangements?

N/A

Question 38. Which specific provisions in the ELTIF framework could be amended, and how, in order to lower costs and reduce compliance, administrative or other burdens in a manner that would not lead to an increase in material risks from the perspective of effective supervision or investor protection?

Article 26 of the ELTIF Regulation should be revised to specify that facilities for retail investors can be provided via digital channels and that Member States are not required to impose local facility requirements on ELTIF managers, or at the very least not to impose those to ELTIFs focussing solely on institutional or semi-professional investors.

Question 39. Please elaborate on whether and to what extent the current ELTIF regime is appropriate for the AIFMs falling under Article 3(2) of Directive 2011/61/EU (*NB: i.e. sub-threshold AIFMs*) to have an incentive to market ELTIFs.

The issue for "sub-threshold" managers is not so much with the ELTIF operating conditions but with the requirement that they have to be AIFMD compliant to be in a position to use the ELTIF passport. We have long argued that the AIFMD requirements, for example in terms of reporting, are burdensome for smaller market players, which rarely have a broad European strategy and which naturally prefer to rely on national private placement regimes.

As we explained above, the EuvECA passport, which does not require full AIFMD compliance and allows for marketing to sophisticated investors under defined conditions, is by far the most appropriate vehicle for venture capital and growth managers which will typically fall behind the threshold.

From a private equity perspective, any change to the current AIFMD threshold would have a very damaging impact on the ability of smaller fund managers to operate private equity funds and to make long-term investments. The downside of such an approach would far outweigh the potential future benefits of ELTIF, irrespective of the changes that would be brought to the framework.

Question 40. Please provide examples of any national taxation regimes towards long-term investment funds that are either discriminatory or that you deem materially reduce the relative attractiveness of the ELTIF framework vis-à-vis other (national) fund vehicles, also taking into account the interaction with foreign tax systems? Please provide specific examples of such cases:

Coupled with **tax certainty**, a **favourable tax treatment** to ELTIFs across EU jurisdictions will undeniably be the best tool to boost their attractiveness.

While in some countries, such as Italy, the tax regime is the main - and arguably only with the current law - interest of the ELTIF product, in others the particular tax situation of ELTIFs sometimes reduces the attractiveness of them vis-à-vis other national fund vehicles. This is for example the case in Spain where ELTIFs are disadvantaged against Spanish UCITs or private equity funds, amongst other national investment vehicles

In the Spanish situation, the main reason for this is that relevant uncertainties exist with regard to the tax regime that should be applicable to Spanish ELTIFs and to their investors. Particularly, it remains unclear if Spanish ELTIFs are subject or not to Spanish CIT and, even if they were subject to Spanish CIT, if the special tax regime provided for Spanish UCITs/AIFs or for Spanish private equity funds would apply.

The above explains why, up to this date, no ELTIFs have been registered in Spain. In this sense, it is worth highlighting that the two ELTIFs that figure as Spanish ELTIFs in the "ELTIF REGISTER" provided by ESMA; namely, "FONDO DE INNOVACIÓN, FILPE" and "TALDE DEUDA ALTERNATIVA, FILPE", were registered in the Historical Territory of Biscay, which, from a tax perspective, has a legal system independent from the rest of the Spanish territory that includes legislative powers which have been used to adapt its tax legislation to tax Biscayan ELTIFs as Biscayan UCITs.

We acknowledge that the EU does not have legislative powers regarding direct taxation to force EU jurisdictions to adapt their tax system to impose direct taxes in a particular way to this or to any other investment vehicle, as such legislative adaptation depends, ultimately, on the decision of the Member States involved. However, an efficient approach to try to prevent issues like the above would be to promote by means of a Recommendation the legislative adaptation of the Member States' tax system for eliminating uncertainty about the tax regime applicable to ELTIFS.

Further to this, pressure could be directly applied on Member States by other institutions, public and private, to ensure that tax rules make the ELTIF attractive would go a long way in ensuring the ELTIF becomes more attractive.

Question 41. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been adequately covered. Please elaborate, more specifically, which amendments of the ELTIF framework could be beneficial in providing additional clarity and practical guidance in facilitating the pursuit of the ELTIF strategy. Please include examples and evidence on any issues, including those not explicitly covered by the questions raised in this public consultation:

While this issue cannot as such be solved in the ELTIF Regulation, it should not be forgotten that the capital requirements to which institutional investors are subject to when committing capital into long-term funds are an important piece of the long-term puzzle.

On the positive side, measures have already been taken in the context of the Solvency II to promote long-term investments. Further work is also underway to ensure insurers are truly in a position to use this long-term equity category – the success of that review will play an important role in the success of ELTIFs.

On a more negative note, equity investments will soon become much less attractive for banks as a result to the integration of Basel IV rules into EU law. EU policymakers should be mindful that the many efforts undertaken to make the ELTIF framework more attractive may be entirely ruined by such types of changes to the prudential frameworks.

Insurers, pension funds and banks also present products that give retail investors indirect opportunities, such as unit-linked life insurance products, to benefit from the ELTIF success.

Question 42. Would you be willing to provide additional clarifications or follow-up input upon a direct request from the Commission services? Please specify under which conditions you would be willing to provide additional clarifications or follow-up input upon a direct request from the Commission services:

Yes.

We would be thrilled to meet with the European Commission in the coming weeks to express our views in more details.

Contact

For further information, please contact Martin Bresson (martin.bresson@investeurope.eu) or Christophe Verboomen (Christophe.verboomen@investeurope.eu) at Invest Europe.

About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members' role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry's professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 25 employees in Brussels, Belgium.

For more information please visit www.investeurope.eu.