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**France Invest's response to the European Commission's
Consultation on ELTIF review**

Established nearly 40 years ago, France Invest brings together venture capital, private equity, infrastructure and private debt teams based in France, as well as the associated professions which support them. Its membership currently counts 340 management firms and 170 associate members.

Venture capital and private equity support unlisted companies for a fixed period of time and provides them with the equity capital, through the acquisition of minority or majority stakes in their capital, needed to finance growth and transformation projects. It supports the creation of start-ups (venture capital), participates in the growth and transformation of many regional SMEs and mid-caps (growth capital) and contributes to the transfer of companies (replacement capital).

France Invest's members represent one of the main growth drivers for the French and European economy and support a significant portion of employment in France and Europe. In 2019, its members raised 41 bn EUR to finance companies, both through equity and debt, and infrastructure projects, over the coming 5 years. French venture capital and private equity is no1 in the EU27 in terms of funds raised, capital invested, and number of companies funded. About half of the funds raised by French venture capital and private equity players come from abroad, and European companies, in particular start-ups and SMEs, are the main recipients of their investments. In 2018, companies backed by French venture capital and private equity created 75,000 jobs.

France Invest is a member of Invest Europe and shares the views expressed in the Association's response to the Commission's consultation. Our response takes particular account of the specificities of the French market.

France Invest's top 5 priorities for the review of the ELTIF regulatory framework:

- **The development of ELTIFs should be promoted:** The venture capital and private equity industry is a substantial long-term investor in Europe's real economy and France Invest strongly supports the objective of building a world-leading label for long-term investment.
- **The structuration of ELTIFs' portfolios should be more flexible:**
 - ELTIFs should be allowed to invest in financial undertakings (other than "financial undertakings that exclusively finance qualifying portfolio undertakings");
 - ELTIFs should be allowed to invest into funds other than ELTIFs, EuVECAs and EuSEFs;
 - ELTIFs should have the option to be diversified into funds of funds;
 - The limitation to invest 10% maximum of the ELTIF's capital in a same company should be relaxed;
 - The definition of a "real asset" should be clarified;
 - The ban on co-investment should be removed.

- **Investor access could be widened:** Even though direct retail access appears to be on the lower end of the agenda from a pure venture capital and private equity perspective (ELTIFs are distributed to retail investors mostly through intermediaries), we are not against the participation from a wider range of investors and, in particular, the lowering of the minimum entry ticket for retail investors, provided this does not imply overly burdensome obligations. We call for the category of “professional investors” to be extended as it is in the EuVECA Regulation.
- **Implementation of the Regulation by Member States should be further harmonised:** National retail passporting practices for ELTIFs should be aligned and the layering of European and national obligations should be reduced.
- **The general attractiveness of ELTIFs for investors should be enhanced:** The prudential requirements applicable to institutional investors should be made appropriate to ELTIF’s long-term equity investment horizon. Disclosure requirements attached to ELTIFs marketed to sophisticated investors only could be eased. An attractive tax regime should be introduced. Education of retail investors on long term investments should be enhanced.

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		

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:

France Invest shares the EU’s objective of ensuring sustainable and adequate long-term financing in Europe. We believe that the ELTIF regime can contribute to the CMU objectives to foster investments in companies and long-term investment projects and to take part to smart, sustainable and inclusive growth.

The venture capital and private equity industry is, by definition, a substantial long-term investor in Europe’s real economy - the average length of an investment into companies (the “holding period”) is around 6 years - **and, as such, France Invest strongly supports the objective of building a world-leading label for long-term investment.** Against this background, we have a natural interest in ELTIFs and supported the creation of this regime.

Indeed, we believe that ELTIFs can improve the access to funding for SMEs and infrastructure projects and offer investors more investment opportunities in critical areas of the real economy. In our view, ELTIFs are an opportunity to encourage investors to commit their capital for the long term. In other words, **the development of ELTIFs as an attractive investment vehicle can both help underpin the economic recovery in Europe and allow a wider investor base to participate in the upsides of that economic growth.** However, in our members’ view, **the main benefit of ELTIFs is to reach sophisticated investors: any direct retail access appears to be on the lower end of the agenda from a pure venture capital and private equity perspective.** In any case, it should be noted that ELTIFs are distributed to retail investors mostly through intermediaries.

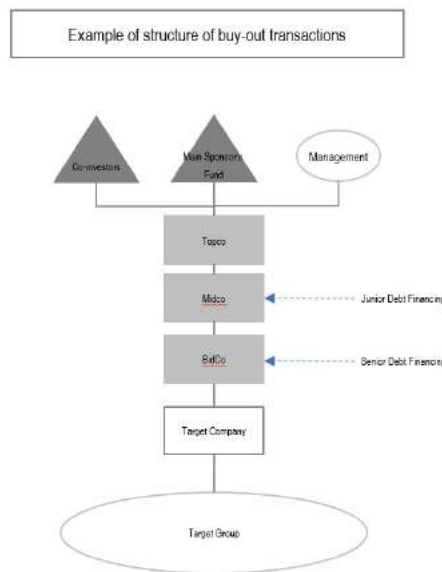
However, as for now, **we can only deplore that the ELTIF regime has been very slow to develop and has not fulfilled its ambitions** to raise and channel capital towards European long-term investments in the real economy. Indeed, **only 28 ELTIFs have been set up in the EU, with France recording the highest number (11) followed by Luxembourg (10). Only 8 French managers show on ESMA’s register.**

In our opinion, **the slow uptake of ELTIFs in the venture capital and private equity sector is mainly due to the scope of eligible investments, which does not include financial undertakings** other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”.

Indeed, very often, long term assets need to be 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 put in place to manage different guarantees,** corresponding to different risk levels, with a view to meet institutional investors’ constraints in terms of risk management.

Moreover, such financial undertakings also allow access to assets while isolating financial risk for investors. For example, ELTIF managers are 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 ensures additional investor protection and potentially higher returns.

Please see below an example of a structure of a buy-out transaction:



The fund undertakes the buyout of a target company through three levels of companies as follows: (a) a top company which receives funding in the form of equity subscription from the fund and from any co-investors invited to invest in the company (Topco); (b) a company which receives debt funding from one or more different sources (Midco); and (c) a company which purchases the target (Bidco).

Ultimately, the choice of the corporate structure used when undertaking a buyout is driven by multiple factors, including: (a) the tax requirements of the funds and the managers; (b) the size of the deal (for instance, on smaller deals a simple buyout structure is often used with only one company); (c) the requirements of the banks (on deals with multiple layers of debt, banks may require that the senior debt is lent to Bidco so that the junior debt is structurally subordinated to the senior debt).

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 health crisis, as it can be expected that investors will have to gather in order to finance vast projects. In other words, the derogation set out in article 11 paragraph 2 should be enlarged in order to allow **ELTIFs to invest in financial undertakings** other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”; this **would indeed lift a significant hindrance to the creation of ELTIFs by our members.**

Another reason explaining the slow development of ELTIFs is that investment into ELTIFs by institutional investors is constrained. In our opinion, **one of the main improvements required to make ELTIF a success is to make the prudential requirements applicable to institutional investors (e.g. pension funds and insurance companies) appropriate to ELTIF's long-term equity investment horizon.** For instance, the explicit recognition of ELTIFs in the Solvency 2 framework should encourage insurers' uptake in ELTIFs. In addition, it appears that institutional investors may not fully understand the functioning of ELTIFs and be fully aware of their potential benefits. Also, encouraging the use of the ELTIFs in unit-linked insurance products would be a way to widen the retail investor base further.

A third reason explaining the slow uptake of ELTIFs may be related to the **layering of obligations** (AIFMD, ELTIF Regulation and national requirements applicable to the fund, in particular in France). Indeed, this implies a layering of costs, which are in turn borne by investors.

Last, we believe that **disclosure requirements attached to ELTIFs marketed sophisticated investors only could be eased**, as they imply an additional burden for manager but not much added value to these investors.

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:

France Invest believes policy action is very strongly needed to:

- **Enlarge the derogation set out in paragraph 2 of article 11 in order to include financial undertakings** (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”) **in the assets eligible to ELTIFs’ portfolios**. As explained previously, we believe that the possibility for ELTIFs to invest in such financial undertakings would lift a significant hindrance to the creation of ELTIFs by our members, as the latter often use such vehicles to invest in portfolio companies.

Indeed, very often, long term assets need to be 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 put in place to manage different guarantees**, corresponding to different risk levels, with a view to meet institutional investors’ constraints in terms of risk management.

Moreover, such financial undertakings also allow access to assets while isolating financial risk for investors. For example, ELTIF managers are 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 ensures additional investor protection and potentially higher returns.

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 health crisis, as it can be expected that investors will have to gather in financing vast projects. In other words, **the derogation set out in paragraph 2 of article 11 should be enlarged to allow ELTIFs to invest in financial undertakings** (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”); this **would indeed lift a significant hindrance to the creation of ELTIFs by our members**.

- **Clarify the definition of a “real asset”**, to make it explicit that investments in small and medium-sized enterprises (SMEs) are eligible and refer to the European definition of SMEs.
- **Allow ELTIFs to invest into other funds than ELTIFs, EuVECAs and EuSEFs**, in order to allow investors to benefit from more diversified investments, including infrastructure, non-listed companies and other long-term assets. Indeed, funds are often set up based on the specific expertise of the teams which manage them. ELTIFs are likely to be focused in their investment behaviour on specific assets/geographical regions and hence, diversification into other assets/areas helps to reduce risk. This is especially important for retail investors.
- **Give ELTIFs the option to be diversified into funds of funds** by increasing the limit on investing in other ELTIFs, EuVECAs and EuSEFs to 100%. This would make ELTIFs more marketable, especially to retail investors, as it would allow a better spreading of risks. It would also result in more opportunities to provide returns to investors during the life of the fund as ELTIFs would be invested in more diversified and numerous underlying assets. The implied layering of fees may curb performance but are justified by the value-added service provided by fund of fund managers. In any case, fees should be disclosed to investors with the appropriate level of transparency.

- **Align national retail passporting practices for ELTIFs**, which currently rely on the AIFMD passporting rules (extended to retail) and are therefore subject to the discretion of Member States.
- As far as possible, **reduce the layering of obligations (AIFMD, ELTIF Regulation and national requirements applicable to the fund)**, which is burdensome and implies increased costs.
- **Relax the obligation to invest 10% maximum of an ELTIF's capital in a same company**, real asset or fund. Indeed, this does not make sense for venture capital and private equity. Also, it is particularly difficult to comply with this limitation throughout the life of the ELTIF, as its investments are progressive at the beginning and, in the case of closed ended funds, at the end of its life.
- **Address tax issues and incentivise investment in the long term.** The risk aversion of investors and the constraints attached to the illiquid nature of long-term investment should be compensated.

We believe policy action is needed to:

- **Balance the transparency needs of retail investors with those of professional investors:**

We believe that the current ELTIF regime ensures an appropriate level of protection and transparency vis-a-vis investors retail investors, as it sets out additional requirements applicable to ELTIFs marketed to retail investors, including obligations relating to the depositary.

Conversely, we are of the opinion that **disclosure requirements attached to ELTIFs marketed sophisticated investors only could be eased**, as they imply an additional burden for manager but not much added value to these investors.

More specifically, we think that policy action is needed to:

- **Exempt professional ELTIFs from the provisions on limits** in qualifying portfolio undertakings, limits on diversification and derivatives.
- **Remove the requirement for ELTIF managers to advise sophisticated investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF.** Such advisory requirements for professional investors are unnecessary and unwarranted as these investors possess the relevant expertise and experience in order to enable them to choose investment products suitable to their needs. These provisions require more disclosure to professional investors and increase the costs of the ELTIF and should therefore be removed.
- **Adapt cost disclosures to sophisticated investors.** In our opinion, cost disclosure is ill-suited to professional investors in stipulating the need to inform investors of the precise costs of an ELTIF. Moreover, it is difficult to determine an overall ratio of the costs to the capital of an ELTIF at the outset of its life, as these costs can change during its life. A more feasible and appropriate disclosure requirement for professional investors would see costs stated as a maximum amount.
- **Amend the rules for marketing units or shares of ELTIFs** by aligning Member States' requirements when passporting units or shares of ELTIFs to retail investors. It should be made explicit that Member

States may not add additional national requirements, to avoid gold-plating. This would significantly improve the “passportability” of ELTIFs.

- **Remove the ban on co-investment.** First and foremost, it should be noted that **ELTIFs are managed by AIFMs which are subject to the AIFMD rules on conflicts of interests, as well as to extensive soft law requirements.** We believe that a manager should be allowed to manage two different funds which are invested in a same asset, either through equity or debt (so that the interests of investors in the two funds are aligned). Furthermore, it should be clarified that a manager may invest some seed money or initial capital into an ELTIF, alongside other investors. Investment by managers in the funds they manage delivers an alignment of interest and is regarded by professional investors as one of the strongest protections. Last, co-investment will probably prove useful in a post crisis context whereby vast projects will have to be financed.
- **Make clear that the investment restrictions on size of listed company (EUR 500m) applies at the time of investment;** however, it is not a requirement to exit a successful investment when it reaches a particular size. In particular, this would help promote investment strategies that focus on young innovative companies.

In our opinion, policy action is desirable to:

- **Ensure that the EU Taxonomy for sustainable activities is taken into account in a consistent manner in the AIFM Directive and the ELTIF Regulation.** Indeed, ELTIF managers are AIFMs and, as such, are subject to the AIFMD.

This is a particular point of interest for France Invest members, as they have been committed to a responsible investment approach for long and are actively working to take into account non-financial issues into their practices as well as those of the companies they support.

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/ - TAXATION - CONSTRAINTS ON INSTITUTIONAL INVESTORS	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:

We believe that the following characteristics of the ELTIF framework have a positive impact on the economy:

- Long-term and illiquid nature of the investments of an ELTIF: **ELTIFs encourage the channelling of investments towards long term projects**. They are expected to be particularly useful in a post health crisis context.
- Validity of an authorisation as an ELTIF for all Member States: **the passport attached to ELTIFs allows to tap the potential benefits of the Single Market**.

In our opinion, the following characteristics of the ELTIF framework have a negative impact on the economy:

- **Restrictive definition of “professional investors”**. Venture capital and private equity funds admit as investors a number of high net worth and/or sophisticated individuals who have extensive experience that provides them with a sophisticated understanding of the specificities of investing into ELTIFs. These investors are however treated as retail investors as per MiFID2. In addition, members of the management team should be eligible to professional status. We believe that the category of “professional investors” should be extended as it is in the EuVECA Regulation.
- **Availability of ELTIFs to retail investors**: the aim of making ELTIFs available to retail investors to channel their savings towards long term savings is laudable, and we agree that an appropriate level of protection of retail investors should be ensured. However, in the end, the too burdensome and costly constraints weighing on ELTIFs (at EU level and at national level) result in an eviction of retail investors. It should be highlighted here that **ELTIFs are distributed to retail investors mostly through intermediaries**, which adds a layer of costs. Moreover, it seems that ELTIFs are not well understood by retail investors and that their education on long term investment should be enhanced.
- **Transparency requirements**: we agree that transparency requirements allow investors to make informed investment decisions. However, these requirements should be adapted to the type of

investors, retail or institutional. In other words, if additional safeguards to marketing to retail investors may be appropriate, transparency requirements in relation to professional investors are not adequate and should be alleviated.

- **Inconsistent implementation of the ELTIF passporting regime by national competent authorities:** the passport attached to ELTIFs aims at tapping the potential benefits of the EU single market and raise money from investors across Member States. However, to fulfil this objective, such passporting regime should be applied consistently throughout the EU, which is not the case currently. 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 should be deemed sufficient to begin distributing the product in each jurisdiction.
- **The absence of an appropriate tax regime** to compensate for the long term and illiquid nature of the investments of ELTIFs is a significant hindrance to their development. Member States should introduce tax incentives to encourage investors to commit their savings into ELTIFs.
- **Constraints on institutional investors.** In our view, one of the main reasons explaining the slow development of ELTIFs is that investment into ELTIFs by institutional investors is constrained. We believe that one of the main improvements required to make ELTIFs a success is to make the prudential requirements applicable to institutional investors (e.g. pension funds and insurance companies) appropriate to the long-term equity investment horizon of ELTIFs. For instance, the explicit recognition of ELTIFs in Solvency 2 should encourage insurers' uptake in ELTIFs. Encouraging the use of ELTIFs in unit-linked insurance products would thus be a way to widen the retail investor base further.

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.

No, the operating conditions of ELTIFs are not appropriate. Indeed, the layering 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.

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 believe that the ELTIF framework should be amended to enhance the use of the ELTIF passport, in particular with regards retail investors.

The passport attached to ELTIFs aims at tapping the potential benefits of the EU Single Market and raise money from investors across Member States. However, to fulfil this objective, **such passporting regime**

should be applied consistently throughout the EU, which is not the case currently. 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 should be deemed sufficient to begin distributing the product in each jurisdiction.

Regarding professional investors, one of the main advantages of ELTIFs over AIFs is that it is a product regulated at EU level (conversely, there are no specific rules on products in the AIFMD). As a consequence, it can be easily identified by investors as a long-term product, investing in the real economy (infrastructures, companies, real estate...).

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

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: investment s should be strongly discourage d	-1: investment s should be discourage d	0: no impac t	1: investment s should be encouraged	2: investment s 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.):

We strongly support the objective to build a world-leading label for long-term investment, offer investors more investment opportunities in critical real economy areas and improve the access to funding for SMEs.

In particular in a post health crisis period, we believe that investments by ELTIFs in innovative technologies, green, sustainable and/or climate related projects, post-COVID 19 recovery related projects, financial assets with long term maturities, digital assets and infrastructure and energy should be encouraged.

We strongly call for enlarging the derogation set out in paragraph 2 of article 11 in order to allow ELTIFs to invest in financial undertakings (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”): in our opinion, **the slow uptake of ELTIFs in the venture capital and private equity sector is mainly due to the scope of eligible investments, which does not include financial undertakings** (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”).

Indeed, very often, long term assets need to be 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.

Moreover, such financial undertakings also allow access to assets while isolating financial risk for investors. For example, ELTIF managers are 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 ensures additional investor protection and potentially higher returns.

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 in a post health crisis context, as it can be expected that investors will have to gather in order to finance vast projects. In other words, the derogation set out in paragraph 2 of article 11 should be enlarged in order to allow **ELTIFs to invest in financial undertakings** (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”); **this would indeed lift a significant hindrance to the creation of ELTIFs by our members.**

We agree that ELTIFs could also be - specifically but not exclusively - allowed to invest in any long-term projects that promote environmental, social and governance. Regarding investments in projects that classify as sustainable under the EU Taxonomy, we are concerned that, at this stage of the development of the EU Taxonomy, **positively encouraging investments in projects that classify as sustainable under this Regulation might have negative unintended consequences, and channel investments away from sectors which carry major economic stakes for the coming years.**

Indeed, communicating only on environmental issues might lead to serving certain sectors of economic activity that do not harm the environment without being aligned with one of the 6 objectives of the Taxonomy, such as the health sector or cyber security. In our opinion, all 3 factors - E, S and G - should be taken into consideration.

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?

Yes, we agree that some definitions used in the ELTIF Regulation should be revised.

In particular, **the definition of “real assets” should be clarified**. Introducing a reference making it explicit that investments in SMEs – as defined in an AIFMD context - are eligible would be useful.

In addition, **the definition of “sustainable” should be consistent with the concept of “just transition”**, in order not to take only into account environmental factors. In other words, all 3 factors - E, S and G - should be taken into consideration.

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.

France Invest’s members would welcome additional guidance in respect of the provisions related to investments in third countries.

In particular, we call for clarification of the notion of “benefitting the European economy”. It would also be useful to harmonise what minimum portion has to be invested in the EU to avoid different interpretations by national competent authorities.

In any case, **we would warn against setting up a framework which prevents ELTIF to invest in third countries, as the latter may also ultimately benefit the European economy and investors.**

More generally, regarding third countries, **it should be ensured that the ELTIF Regulation is consistent with the AIFMD**, as ELTIF managers are 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					

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:

In our opinion, policy action is strongly needed on the limitation on eligible investment assets to units or shares of ELTIFs, EuVECAs and EuSEFs, and the inability to invest in a financial undertaking.

As explained previously, **we think that the slow uptake of ELTIFs in the venture capital and private equity sector is mainly due to the scope of eligible investments, which does not include financial undertakings (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”).**

Indeed, very often, long term assets need to be 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 put in**

place to manage different guarantees, corresponding to different risk levels, with a view to meet institutional investors' constraints in terms of risk management.

Moreover, such financial undertakings also allow access to assets while isolating financial risk for investors. For example, ELTIF managers are 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 ensures additional investor protection and potentially higher returns.

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 health crisis, as it can be expected that investors will have to gather in order to finance vast projects. In other words, **the possibility for ELTIFs to invest in financial undertakings** (other than "financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10") **would lift a significant hindrance to the creation of ELTIFs by our members.**

Furthermore, we are of the opinion that **it should be allowed to use ELTIFs as funds of funds products.** This would drive greater cross-asset class exposure and limit the risk for the ultimate investor. Funds of funds managers are experienced in selecting and monitoring the appropriate underlying funds while this type of investment also offer an additional layer of screening (as managers of underlying funds already conduct research on initial investments). These funds also typically have lower volatility than direct investing funds. Particularly 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 mean that asset managers could invest on a broader basis in other funds, allowing for faster deployment of capital. The implied layering of fees may curb performance but are justified by the value-added service provided by fund of fund managers. In any case, fees should be disclosed to investors with the appropriate level of transparency.

Last, we believe that **ELTIFs should be allowed to invest into funds other than ELTIFs, EuVECAs and EuSEFs**, in order to allow investors to benefit from more diversified investments, including infrastructure, non-listed companies and other long-term assets. Indeed, funds are often set up based on the specific expertise of the teams which manage them. ELTIFs are likely to be focused in their investment behaviour on specific assets/geographical regions and hence, diversification into other assets/areas helps to reduce risk. This is especially important for retail investors.

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:

In our view, one of the main reasons explaining the slow development of ELTIFs is that investment into ELTIFs by institutional investors is constrained. We believe that **one of the main improvements required to make ELTIFs a success is to make the prudential requirements applicable to institutional investors (e.g. pension funds and insurance companies) appropriate to the long-term equity investment horizon of ELTIFs.**

For example, the method of calculation of the solvency capital requirements of insurance and reinsurance undertakings, as set out in Delegated Regulation (EU) n° 2017/1542 of 8 June 2017, is based on an

aggregation of all of the individual assets they hold. This method does not seem appropriate as, in practice, management companies do not know the complete breakdown of assets in the portfolios of these insurance or reinsurance undertakings.

In other words, we believe that the explicit recognition of ELTIFs in the Solvency 2 framework should 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.

Another key barrier to the development of the ELTIF market to institutional investments, which we consider reduce the attractiveness of the ELTIF for institutional investors, are inappropriate transparency requirements, which increase costs. Indeed, even though we agree that appropriate transparency requirements allow investors to make informed investment decisions, we believe that transparency requirements should be adapted to the type of investors, retail or institutional. In other words, if additional safeguards to marketing to retail investors may be appropriate, transparency requirements in relation to professional investors should be alleviated.

- **ELTIFs aimed at professional investors should also be exempt from the provisions on limits** in qualifying portfolio undertakings, limits on diversification and derivatives.
- Also, **the requirement for ELTIF managers to advise professional investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF should be removed**. Such advisory requirements for professional investors are unnecessary and unwarranted as these investors possess the relevant expertise and experience in order to enable them to choose investment products suitable to their needs. These provisions will require more disclosure to professional investors and increase the costs of ELTIFs.

An additional solution would be to extend the concept of professional client. Indeed, venture capital and private equity funds admit as investors a number of high net worth and/or sophisticated individuals who have extensive experience that provides them with a sophisticated understanding of the specific investment into an ELTIF. These investors are however treated as retail investors as per MiFID2. In addition, members of the management teams should be eligible for professional status. **We propose to enlarge the category of "professional investors" as per the EuVECA Regulation**.

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.

In our view, ELTIFs are an opportunity to encourage investors to commit their capital for the long term. In other words, **the growth of ELTIFs as an attractive investment vehicle can both help underpin the economic recovery in Europe and allow a wider investor base to participate in the upsides of that economic growth**.

However, in our members' view, the main benefit of ELTIFs is to reach sophisticated investors: **any direct retail access appears to be on the lower end of the agenda from a pure venture capital and private equity**

perspective. It should also be noted here that **ELTIFs are distributed to retail investors through intermediaries.**

All in all, we are not against the participation from a wider range of investors and, in particular, the lowering of the minimum entry ticket for retail investors, **provided this does not imply overly burdensome obligations.**

Finally, **another strong barrier to the development of the ELTIF market is of fiscal nature.** Investors need to be encouraged to invest in long term and illiquid assets and fiscal incentives to incite them to invest in ELTIFs would certainly help.

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

We propose to extend the category of “professional clients” and allow high net worth and/or sophisticated individuals and family offices who have extensive experience and sophisticated understanding of the specificities of investing into AIFs to choose to be treated as professional clients. More precisely, we propose to replicate the categorisation set out in article 6 of the EuVECA Regulation and include other investors that commit to investing a minimum of EUR 100 000.

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

c) Withdrawal period of two weeks

We agree that the provision on the withdrawal period of two weeks should be reviewed, as it is too difficult to manage in practice.

d) Possibility to allow more frequent redemptions for retail investors

Venture capital and private equity funds are closed ended funds which invest in illiquid assets and as a consequence cannot offer frequent redemption windows to investors, unless they retain enough liquidities to meet potential redemptions requests, which in turn would weigh on their performance.

In this respect, it might be helpful to better educate investors about the inherently illiquid nature of ELTIFs and explain that investing in such funds implies patience.

e) Procedures and arrangements to deal with retail investors complaints

f) Provisions related to the marketing of ELTIFs

The passport attached to ELTIFs aims at tapping the potential benefits of the EU Single Market and raise money from investors across Member States. However, to fulfil this objective, **such passporting regime should be applied consistently throughout the EU, which is not the case currently, in particular with respect to retail investors.** Despite the ELTIF regime 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 should be deemed sufficient to begin distributing the product in each jurisdiction.

g) Other provisions and requirements related to retail investors

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 explained previously, we are not against the participation from a wider range of investors and, in particular, the lowering of the minimum entry ticket for retail investors, **provided this does not imply overly burdensome obligations.**

We believe that the current ELTIF regime ensures an appropriate level of protection and transparency vis-a-vis retail investors, as it sets out additional requirements applicable to ELTIFs marketed to retail investors, including obligations relating to depositaries. Conversely, we are of the opinion that **disclosure requirements attached to ELTIFs marketed to sophisticated investors only could be eased**, as they imply an additional burden for manager but not much added value to these investors.

We would like to highlight here that, in most cases, the distribution of ELTIFs to retail investors is intermediated.

5. Conflicts of interest

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

Yes, mandatory disclosures under the ELTIF framework are sufficient for investors to make informed investment decisions.

Question 13.1 Please explain your position on your responses to question 13, including benefits and disadvantages of the potential changes as well as costs.

We would like to recall here that **ELTIFs are managed by AIFMs which are subject to the AIFMD rules on conflicts of interests, as well as to extensive soft law requirements.**

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:

We strongly call for policy action to balance the transparency needs of retail investors with those of professional investors. In particular, we suggest removing the requirement for ELTIF managers to advise professional investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF. Such advisory requirements for professional investors are unnecessary and unwarranted as these investors possess the relevant expertise and experience in order to enable them to choose investment products suitable to their needs. These provisions will require more disclosure to professional investors and increase the costs of the ELTIF.

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

No, some ELTIF rules on conflicts of interest are not appropriate and could be improved. In particular, the ELTIF regime should facilitate the ability of ELTIF managers to invest directly or through its affiliated ELTIFs into the same investment. Besides, we would like to underline that ELTIF managers are AIFMs and as such subject to the rules on conflicts of interest set out in this Directive.

Question 15.1 Please explain how you think how should such rules on conflicts of interest be amended. Please explain the benefits and disadvantages of the potential changes as well as costs, as well as how specifically such amendments could facilitate the effective management of conflicts of interests, co-investment strategies and indirect investment strategies:

We strongly call for policy action to remove the ban on co-investment.

Indeed, a manager should be allowed to manage two different funds which are invested in a same asset, either through equity or debt (so that the interests of investors in the two funds are aligned). For example, it should be allowed for an ELTIF to invest in the same company as an AIF which is set up by the AIFM in order to fulfil the specific needs of an investor.

Furthermore, it should be clarified that a manager may invest some seed money or initial capital into an ELTIF, alongside other investors. Investment by managers in the funds they manage delivers an alignment of interest and is regarded by professional investors as one of the strongest protections.

Co-investment is expected to be particularly useful in a context of post health crisis, in order to dilute risks.

Last, we would like to underline that ELTIF managers are AIFMs and as such subject to the rules on conflicts of interest set out in this Directive.

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:

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. As such, they are not typically leveraged and **do not use leverage** as that term is normally used at the level of the fund. Besides, **ELTIF managers are AIFMs, subject to the AIFMD, which includes provisions on leverage.**

In this context, **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.** It should be clarified that borrowing facilities (**or capital call facilities**) that are fully backed by undrawn commitments of investors should not be considered to be leverage or borrowing of cash within the scope of Article 16 of the ELTIF Regulation. Indeed, we believe that **ELTIF should be allowed to use a borrowing facility to manage cash flows from investors in the funds.** In fact, such borrowing does not increase investors' exposure by allowing the fund to invest more than its committed capital - i.e. it is not leverage - because the amount of borrowing is covered by commitments from investors that have not yet been called. In other words, the use of such borrowing facility should be seen as a tool of treasury management, not a source of additional risk.

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

As our members do not use leverage in the funds they manage, we are not in a position to answer this question.

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?

As our members do not use leverage in the funds they manage, we are not in a position to answer this question.

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?

As our members do not use leverage in the funds they manage, we are not in a position to answer this question.

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.

We would like to use this opportunity to reiterate that AIFMD liquidity management provisions should not apply to closed-ended funds with limited opportunities to borrow. Most venture capital and private equity funds are closed-ended funds which do not offer redemption windows.

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

Maintaining the current rules pertaining to the portfolio composition and diversification set out in the ELTIF regime intact

Other

We consider that **fewer regulatory requirements and more flexibility by ELTIF managers with respect to portfolio composition and diversification** would be the most appropriate policy choice pertaining to the ELTIF rules on diversification. This policy choice would be particularly relevant in respect of **non-listed assets**.

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?

Alleviating the burden on ELTIF managers and allowing more flexibility with respect to portfolio composition and diversification, in particular in respect of non-listed assets, would allow them to offer a wider range of products to investors.

We very strongly call for policy action to:

- **Enlarge the derogation set out in paragraph 2 of article 11 in order to include financial undertakings** (other than “financial undertakings that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10”) **in the assets eligible to ELTIFs**. As explained previously, we believe that the possibility for ELTIFs to invest in financial undertakings would lift a significant hindrance to the creation of ELTIFs by our members, as the latter our members often use such vehicles to invest in portfolio companies.
- **Allow ELTIFs to invest into funds other than ELTIFs, EuVECAs and EuSEFs**, in order to allow investors to benefit from more diversified investments, including infrastructure, non-listed companies and other long-term assets. Indeed, funds are often set up based on the specific expertise of the teams which manage them. ELTIFs are likely to be focused in their investment behaviour on specific assets/geographical regions and hence, diversification into other assets/areas helps to reduce risk. This is especially important for retail investors.

- **Give ELTIFs the option to be diversified into funds of funds** by increasing the limit on investing in other ELTIFs, EuVECAs and EuSEFs to 100%. This would make ELTIFs more marketable, especially to retail investors as it would provide better spreading of risks. It would also result in more opportunities to provide returns to investors during the life of the fund as ELTIFs would be invested in more diversified and numerous underlying assets. The implied layering of fees may curb performance but are justified by the value-added service provided by fund of fund managers. In any case, fees should be disclosed to investors with the appropriate level of transparency.
- **Relax the obligation to invest 10% maximum of the capital of an ELTIF in a same company**, real asset or fund. Indeed, it is difficult to comply with this limitation throughout the life of an ELTIF, as its investments are progressive at the beginning and, in the case of closed ended funds, at the end of its life.

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:

Yes, we consider that the minimum threshold of 70% is appropriate.

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:

Private equity funds are mainly closed ended funds. In general, these funds have a life cycle limited in time, between 10 to 15 years. In this context, investors do not have any redemption rights during the life cycle of the funds. Of course, investors are well aware that their investments are locked over this period. Nevertheless, French retail private equity and venture capital funds can provide redemption rights in specific cases of misfortune (death, unemployment, illness...).

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

In our opinion, it is not relevant to set a general threshold as maturities should be adapted to the nature of the investments considered.

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**

Our members manage mostly long term closed ended funds. As there are no redemption rights attached to PE/VC funds, we are not in a position to answer this question.

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 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. Nevertheless, French retail private equity and venture capital funds can provide redemption rights in specific cases of misfortune (death, unemployment, illness...).

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?

Yes.

There is interest in using evergreen or permanent capital structures with redemption opportunities through the life of the ELTIF. From that perspective, a consequence of requiring a fixed maturity is that ELTIF managers 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. However, this will increase the proportion of the fund's life during which investor capital is not fully invested, thus reducing the capital efficiency 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.

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?

France Invest shares the opinion of Invest Europe in this respect. We believe that 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.

As for listing of shares of ELTIFs, it is not widespread in France, due to the structural valuation haircut.

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?

PE/VC funds are closed-ended funds and do not issue any new units or shares during their life cycle.

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?

We believe that the ELTIF framework should be amended to enhance the use of the ELTIF passport.

The passport attached to ELTIFs aims at tapping the potential benefits of the EU Single Market and raise money from investors across Member States. However, to fulfil this objective, **such passporting regime should be applied consistently throughout the EU, which is not the case currently, in particular in respect of retail investors**. 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 should be deemed sufficient to begin distributing the product in each jurisdiction.

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

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?

PE/VC funds are closed-ended funds so this is not relevant to the funds managed by our members.

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, the effectiveness of the ELTIF framework is impaired by national legislation or existing market practices.

For instance, 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 should be deemed sufficient to begin distributing the product in each jurisdiction.

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?

We do not understand the requirement to have “facilities” in each Member State for making subscriptions, making payments to unit-holders or shareholders, repurchasing or redeeming units/shares and making information available. Indeed, we regard it as being sufficient to have such a facility only in the relevant ELTIF’s home Member State (and consistent with the cross-border provision of financial services in an internal market). Removing the local facilities requirement from the ELTIF Regulation would be consistent with broader policy towards the distribution of retail funds across 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?

We have no specific comment on this question.

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 focusing 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 (i.e. sub-threshold AIFMs) to have an incentive to market ELTIFs.

“Sub-threshold” managers have to be AIFMD compliant to be in a position to use the ELTIF passport. The EuvECA passport, which does not require full AIFMD compliance and allows for marketing to sophisticated investors under defined conditions, seems the most appropriate vehicle for venture capital and growth managers which will typically fall behind the threshold.

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:

We believe that one of the key success factors of ELTIF across EU jurisdictions is **certainty on their tax treatment**. In addition, a **favourable tax treatment across EU jurisdictions** would reinforce the attractiveness of the ELTIF.

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:

As explained previously, we believe that the capital requirements that apply to institutional investors when committing capital into long-term funds are an important piece of the puzzle that will need to be considered by the European Commission.

We acknowledge that measures have already been taken in the context of the Solvency II – although further work is underway to ensure insurers are truly in a position to use this long-term equity category. However, there is a significant risk that equity investments could become much less attractive for banks due to the future integration of Basel IV rules into EU law. EU policymakers should be careful that the many efforts undertaken to make the ELTIF framework are not entirely ruined by changes to the prudential frameworks.

Finally, we would like to highlight once again that insurers, pension funds and banks represent opportunities for retail investors to indirectly benefit from the ELTIF success, for example through unit-linked life insurance products.

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 will be happy to provide any additional clarifications or follow up input that the Commission services may require.

For further information, please feel free to contact Carine Delfrayssi, European and Regulatory Affairs at France Invest, at c.delfrayssi@franceinvest.eu or +33(0)1 47 20 99 79.
