

Paris, 31 July 2023

Transparency register number: 270408511443-95

**France Invest's contribution to ESMA's consultation
on the draft RTS under revised ELTIF Regulation**

France Invest would like to thank ESMA for the opportunity to comment on its draft RTS under revised ELTIF Regulation.

ESMA's register dated 26 July 2024 shows that out of a total of 95 ELTIFs, 21 are domiciled in France and several of those are managed by our members. France also ranks among the largest markets in terms of volume placed.

We support the EU's objective of ensuring sustainable and adequate long-term financing in Europe. More specifically, we believe that the European Long Term Investment Fund (ELTIF) regime can contribute to the Capital Markets Union (CMU)'s goal to foster investments in companies and long-term investment projects and to take part to smart, sustainable and inclusive growth. In particular in a (post) health crisis period, we are of the opinion 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.

In our view, the ELTIF framework can contribute to the channeling of investments towards long term projects, and 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.

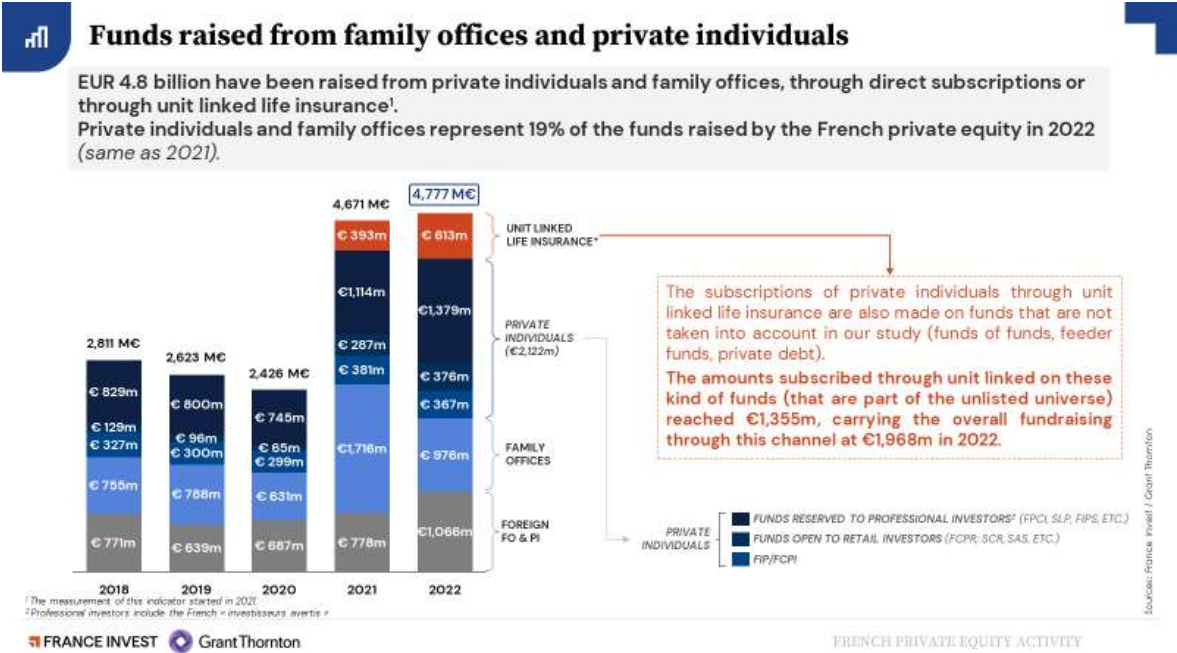
In this context, we warmly welcome the publication of the revised ELTIF regulation which in our view includes much welcome improvements and will represent an opportunity for our members to use the EU passport and offer their products more widely to EU retail investors.

Traditionally, the venture capital and private equity (VC/PE) industry markets to investors that are either institutional (pension funds, insurers, banks, sovereign wealth funds, fund-of-funds) or experienced (family offices, entrepreneurs). Situations where VC/PE managers market to individuals committing smaller tickets - and which are objectively retail clients - are at this stage rather rare. Furthermore, most sales of VC/PE funds to retail investors are intermediated and/or in the form of a packaged product.

In order to make long-term and active investments into unlisted businesses that require time to grow and evolve, VC/PE funds typically structure themselves as closed-ended funds with no redemption

rights, which favours illiquid and large commitments from investors who are in a position to make such investments.

The attractiveness of the VC/PE asset class and the desire from some investors to commit capital into start-ups and scale-ups is driving an increasing number of VC/PE funds to offer products that are directly available to retail clients. In 2022, our members raised EUR 4.8 billion from family offices and retail investors, whether directly or through life-insurance contracts. Family offices and retail investors thus represented 19% of the capital raised by our members in 2022.



France Invest’s general comments

- Transparency on costs:
 - In our view, transparency on costs should be adequate to the type of fund. In this respect, ELTIFs made available to retail investors, which comply with the obligations of the PRIIPs Regulation and have to produce a KID, and ELTIFs reserved to professional investors, which lie outside the scope of the PRIIPs Regulation and do not have to produce a KID, should be distinguished.
 - In relation to the numerator of the ELTIF cost ratio, we suggest disclosing an estimated maximum yearly average over the recommended holding period. As regards the denominator of the cost ratio, we suggest using the capital of the ELTIF gross of the fees, charges and expenses.
 - We would like to underline that, as far as VC/PE funds are concerned, costs of acquisition of underlying assets (mainly SMEs) are not fixed.
 - As proposed by ESMA, we support the inclusion of a specific grand-fathering clause in the RTS.

- Redemption policy:
 - In our opinion, it should be the responsibility of the AIFM to determine the minimum holding period on a case-by-case basis.
 - We would like to underline that, in practice, it will be difficult to warn national authorities in advance of redemptions requests in line with the redemption policy of the ELTIF which will not be met.
 - With regards the ELTIF redemption policy, a distinction should be made between information provided to retail investors and information provided to professional investors.
 - In our view, a maximum redemption frequency on a quarterly basis will not be suitable. It should be determined at the AIFM's discretion.
 - The notice period should be determined by the AIFM on a case-by-case basis. In addition, exemptions to the notice period, covering an amount of 5% of the fund's NAV, should be introduced.
 - We welcome the use on a non-exceptional basis of gates which are disclosed to investors.
 - When liquidity is 100% ensured by intermediaries, this should be taken into account in the overall assessment of the liquidity profile of the ELTIF.
- Matching mechanism:
 - We support the principle-based approach proposed by ESMA and generally agree with ESMA's proposals in relation to the transfer process, to the rules on how the requests will be dealt with and to the timing and the nature of the disclosure of information.
 - We would like to underline that, when the matching mechanism is not aligned with valuation dates, investors and potential investors should agree the exchange price among themselves; in other words, the AIFM should not be responsible for the determination of exchange prices. Conversely, we support ESMA's proposal to align the matching mechanism with the valuation dates of the ELTIF if the execution price is based on the NAV.

France Invest's detailed comments

Q1. Do you agree with the proposed approach in relation to the RTS under the abovementioned Articles 9(3), 21 and 26(2) of the ELTIF Regulation?

As a preliminary remark, we fully support transparency, in particular on costs, so that investors are able to make well informed investment decisions. It should be noted that discussions on cost disclosure are currently ongoing, in particular in the context of the Retail Investment Strategy and the AIFMD review, and it will be necessary to ensure consistency among all these new measures.

Yes, we agree with the proposed approach in relation to the RTS under articles 9(3), 21 and 26(2) of the ELTIF Regulation. More specifically, we agree that the RTS under Article 9(3) should remain unchanged, the RTS under article 21 should be updated and the RTS under article 2(2) should be removed.

This being said, in respect to the RTS under article 21, it would be useful to clarify that, in case the AIFM does not intend to redeem investors' units or shares after the end of the life of the ELTIF, it should only inform the authority of that intention.

More generally, we agree with ESMA's proposal to remove the Delegated Act published in 2018 and include all the different RTS under revised ELTIF Regulation in one delegated act. We believe that a single document including all the requirements will increase the consistency of the provisions included in the RTS and their legibility for market players.

TRANSPARENCY ON COSTS

Q2. Do you agree that the above-mentioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIF Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose?

Yes, we agree that the pieces of legislation and regulatory material mentioned by ESMA are relevant.

We would like to add that the PRIIPs Regulation and the AIFMD should be taken into account when developing RTS under the revised ELTIF Regulation. Indeed, ELTIFs are AIFs managed by AIFMs in the scope of the AIFMD. In addition, when made available to retail investors, they have to comply with the requirements of the PRIIPs Regulation. As regards work on cost disclosure under the UCITS Directive, we would like to underline that it should only be taken into account with respect of ELTIF aimed at retail investors and should be adapted to the specificities of VC/PE funds.

We would like to kindly warn ESMA against any redundancies of the provisions contained in these texts. In addition, a review of the PRIIPs Regulation and of the AIFMD is currently ongoing and it will have to be ensured that the RTS under the revised ELTIF Regulation are consistent with their final wording.

This being said, while the KID could serve as a basis for cost disclosure of ELTIFs made available to retail investors, it requires some fine tuning, as some information it contains is not relevant to retail investors (e.g. retail investors are mostly interested in the total cost of their investment, not necessarily in the breakdown of the different cost items) or not tailored to the specific nature of VC/PE funds (in particular, a clear distinction should be made in the breakdown of costs between carried interest and performance fees and an additional line introduced in the table, separate from the line on management and performance fees).

Q3: Do you agree with the abovementioned assumptions? In relation to the ELTIF cost ratio figures to be expressed as yearly percentages (of the capital of the ELTIF), would you see merit in expressing it instead in terms of maximum percentages (and, in the prospectus, only refer to the corresponding yearly figures included in the KID, or in the annual report of the ELTIF)?

We generally agree with the assumptions made by ESMA.

We would like to refer ESMA to the AIFMD, which includes in its article 23 on disclosure to investors "a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors".

We would also like to insist on the need to distinguish between ELTIFs made available to retail investors, which should comply with the obligations of the PRIIPs Regulation and have to produce a KID, and ELTIFs reserved to professional investors, which lie outside the scope of the PRIIPs Regulation and do not have to produce a KID. We support consistency between information disclosed in the prospectus and information disclosed in the KID in the case of ELTIFs made available to retail investors. However, for ELTIFs reserved to professional investors, some flexibility on the format of the information on costs should be allowed.

In the case of ELTIFs offered to retail investors, we raise ESMA's attention on the risk of redundancies between the prospectus and the KID. There is no need for investors to have the same information in two different places. This would probably confuse them or at least overload them.

In addition, the update of these documents will have to be synchronized so that information is identical in both documents. The prospectus has to be updated and, in particular in the case of closed ended funds, this will add to the burden of fund managers. It should be noted that information should be kept as constant as possible to avoid confusion, especially in the case of retail investors.

Beyond a distinction between ELTIFs offered to retail investors and ELTIFs reserved to professional investors, we would suggest distinguishing between closed-ended and open or evergreen funds.

In relation to the numerator of the ELTIF cost ratio, we suggest disclosing an estimated maximum yearly average over the recommended holding period. Indeed, exceptional costs should be accommodated. In this context, the recommended holding period and performance scenarios shown in the PRIIPs KID could be used to harmonize the way fixed costs, performance related fees and carried interest are taken into account.

As regards the denominator of the ratio, we suggest using the capital of the ELTIF gross of the fees, charges and expenses that are directly or indirectly borne by investors i.e. using the following definition of capital: 'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible.

Q4: Do you agree that the types of cost mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital? What are your views on the list of "other costs" referred to above in paragraph 31(b) which are suggested to be added, as compared to the list of "other costs" referred to in Article 25(1)(e) of the ELTIF Regulation?

From a general point of view, it is of utmost importance that consistency is ensured among the different presentations of the costs of the ELTIF included in the prospectus, in the KID and in other relevant documents to avoid confusing investors. For instance, we do not understand why "management and performance related fees" should be distinguished from "other costs". Indeed, "other costs" include administrative costs which might not be defined in the same way in the different Member States, which might lead to different results and make comparisons difficult or misleading. All these different costs are gathered in a single category in the KID, and we suggest adopting this approach also in the prospectus.

Furthermore, we believe it may be easier, given the importance of making a clear differentiation between a performance fee and a carried interest, to treat these in separate rows. As a reminder, carried interest is not a fee, it is a profit share mechanism typical to private equity, which aligns the interests of fund managers with those of investors. While carried interest is linked directly to the performance of the fund, there are several elements of the carried interest arrangement and its calculation, which makes it different from traditional performance related fees.

Q5: Do you agree that the types of cost mentioned in paragraph 32 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall cost ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio? Would you see merit in specifying what is to be meant by the "setting-up" of the ELTIF, as referred to in Article 25(1)(a) of the ELTIF Regulation? If yes, could you indicate which elements of the "setting-up" of the ELTIF should be clarified?

Considering the variety of ELTIFs (in particular, a closed-ended fixed-term fund and a semi-open evergreen fund may have different cost structures), a one size fits all approach to costs may not be

suitable. Indeed, it may not be appropriate to consider distribution costs and costs relating to the acquisition of assets as one-off costs for an evergreen fund, to the extent that these costs may rather be of a recurring nature and may be difficult to predict at inception.

This being said, we generally agree that fixed costs require an assumption on the duration of the investment or on the recommended holding period (in case redemptions are allowed during the life of the fund) in order to include them in the calculation of the yearly overall cost ratio.

Furthermore, we understand that “setting up costs” include the legal costs attached to the creation of a fund. Distribution costs vary depending on the channel use to distribute the fund. It should also be clarified whether distribution costs include any inducements.

Q6: Do you agree that the types of costs mentioned in paragraph 35 may be considered as fixed costs in the case of an ELTIF?

As far as VC/PE funds are concerned, costs of acquisition of underlying assets (mainly SMEs) are not fixed and vary depending on the relevant transaction. In other words, acquisition costs are specific to a transaction. Hence the need to calculate estimated maximum yearly averages over a period of several years (e.g. over the duration of the investment or over the recommended holding period, in case redemptions are allowed during the life of the fund).

We would also raise the issue of divestment costs in respect of VC/PE funds, as these costs are not covered in ESMA’s consultation.

Q7. Would you see merit in including a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand fathering clause provided for in Article 2 of Regulation 2023/606?

Yes, we support the inclusion of a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand fathering clause provided for in Article 2 of Regulation 2023/606.

REDEMPTION POLICY

Q8: Do you agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation?

Yes, we agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation, even though we would welcome further clarification on some of the criteria listed in the draft RTS (some of them appear somewhat redundant). We would also like to underline that we understand that the criteria to be taken into account are not cumulative.

Minimum holding period

Q9: Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation? What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the abovementioned minimum holding period?

Article 18 of the revised Regulation sets out that an ELTIF may provide for the possibility of redemptions during the life of the ELTIF provided that, among other conditions, redemptions are not granted before

the end of a minimum holding period.

As a preliminary remark, it should be noted that the capacity to provide liquidity to investors may be provided through one or more means, such as a liquid sleeve of assets or matching of investor demand (and can use a defined liquidity programme from the start of the fund, such as incorporating redemption limits and different notice periods. If the manager of an ELTIF can demonstrate it can ensure liquidity to clients through other means, the obligation to have a minimum holding period should be able to be waived.

Indeed, in our view, it should be the responsibility of the AIFM to determine the relevance and length of any minimum holding period, on a case-by-case basis, depending on the fund's specificities.

It should be noted that a minimum holding period will be difficult to monitor and create operational challenges (in particular, it will be impossible for ELTIFs to monitor a minimum holding period as the majority of their investors come through intermediaries/nominee accounts) and will not be practical in all circumstances. For instance, a minimum holding period will not be relevant for funds invested by insurers, as investors need to rebalance their portfolios (e.g. every 6 months or when investors approach retirement age), pay some fees or accommodate for specific cases of misfortune ("accidents in life" such as death, redundancy, disability...). In addition, we note that ELTIFs marketed to retail investors will be required to produce a PRIIPs Key Information Document. PRIIPs disclosures prescribe a "recommended holding period" rather than an MHP. Managers and supervisors should avoid confusing investors through the divergent use of these two concepts.

We therefore suggest removing paragraph 3 of article 3 of the draft RTS:

~~3. The minimum holding period referred to in paragraph 1 shall be, as a minimum, of X years, except if the manager of the ELTIF is able to justify that it could be shorter, taking into account the criteria set out in paragraph 1.~~

Even though we generally agree with the different criteria proposed by ESMA in relation to the determination of a minimum holding period, we would like to clarify that these criteria are not cumulative and do not have to be all considered. Indeed, some may be more relevant than others and the AIFM should not have to justify that it has considered each and every single one of them.

In particular, we believe that the minimum holding period should be consistent with the long-term horizon of the projects financed by the fund.

We therefore suggest clarifying the first subparagraph of paragraph 1 and paragraph 2 of article 3 of the draft RTS, as follows:

1. The criteria that the manager of an ELTIF shall take into account when determining the minimum holding period referred to in paragraph 2, first subparagraph, point (a) of Article 18 of Regulation (EU) 2015/760, **if relevant**, are **among** the following:
[...]

2. When setting the length of the minimum holding period referred to in paragraph 1, the manager of the ELTIF shall also consider the following criteria, **if relevant to the type of fund considered**:

We do not fully understand the criterion set out in letter d of paragraph 1 of article 3: "the valuation of the ELTIF's assets and the time needed to produce a reliable, sound and updated valuation of the investments". Indeed, we cannot make a link between a minimum holding period and the time needed

to produce a reliable valuation.

In the same way, the requirement set out in letter b of paragraph 2 of article 3 of the draft RTS does not make sense to us. Indeed, the minimum holding period is not linked to the valuation procedures and the redemption policy of the fund; the only link with the redemption policy is that the policy is not applicable during the minimum holding period, since the minimum holding period prevents any redemption.

In addition, it should be noted that, for VC/PE funds, the requirement that the minimum holding period should last at least until the ELTIF's aggregate capital contributions have been invested (ramp up period) is not appropriate. In other words, it should be clarified that redemptions are possible before the end of the ramp-up period. In any case, if a minimum period for all ELTIFs were to be introduced irrespective of their individual specificities (which we do not support), we would strongly suggest making an exhaustive list of situations ("accidents in life" e.g. death, redundancy, disability...) which automatically justify a shorter holding period. It should also be specified that such requirement would only apply to primary holdings.

Minimum information to be provided to the competent authority of the ELTIF

Q10: Do you agree with the proposed approach in relation to the minimum information to be provided to the competent authority of the ELTIF (referred to in point (b) of paragraph 2 - Article 18(6)(b) of the ELTIF Regulation)?

As a general comment, we would like to refer ESMA to the provisions of the AIFMD (currently under review) and to underline the need for consistency and for avoiding redundancies between the RTS under the revised ELTIF Regulation and the (future) requirements of the AIFMD (which is currently under review). The AIFMD, which includes some rules on notifications to national competent authorities and applicable notice periods, should serve as a basis for the requirements under the ELTIF Regulation. In this respect, it would be too confusing and complex for an AIFM to apply different rules to different funds.

Comment on letter b of paragraph 1 of article 4 of the draft RTS on the minimum information to be provided to the competent authority of the ELTIF (at the time of authorization)

The requirement to provide the national competent authority with "a description of the procedures used to prevent redemptions causing dilution effects for investors" is not very clear and not always appropriate in all circumstances.

For instance, the dilution effect should not be a main focus for VC/PE ELTIFs which have a liquid asset pocket allowing them to meet fund redemption requests, and which may also meet redemption requests with the proceeds of new subscriptions or borrowings, etc. Indeed, these funds will be able to meet redemption requests without selling any of their assets.

This being said, we acknowledge that, theoretically, in case some of the fund's assets have to be sold to meet redemption requests, any brokerage costs to divest UCITS-eligible assets should be charged to exiting investors. However, this is difficult to implement in practice (in case VC/PE assets have to be sold to meet redemption requests, it is difficult to charge any transaction costs to exiting investors as the sale process is typically longer than the redemption process).

We therefore suggest clarifying letter b paragraph 1 of article 4 of the draft RTS as follows:

1. At the time of the authorisation of the ELTIF, the manager of an ELTIF shall provide to the competent authority of the ELTIF at least the following minimum information:

[...]

(b) a description of how an adequate balance of the assets and liabilities of the ELTIF is maintained in case of redemptions, and, **if relevant**, of the procedures used to prevent redemptions causing dilution effects for investors;

Comment on letter g of paragraph 1 of article 4 of the draft RTS on the minimum information to be provided to the competent authority of the ELTIF (at the time of authorization)

We believe that the provision of information to the national competent authorities should be harmonized throughout the EU and that their requests for information should be clearly and explicitly set out in the RTS.

We therefore suggest removing letter g of paragraph 1 of article 4 of the draft RTS:

~~–(g) any other information considered necessary by the competent authority of the ELTIF to assess whether the redemption policy of the ELTIF as well as the foreseen liquidity management tools meets the requirements set out in Regulation (EU) 2015/760 and the delegated acts adopted on the basis of this Regulation.~~

Comment on the first subparagraph of paragraph 2 of article 4 of the draft RTS on the minimum information to be provided to the competent authority of the ELTIF (during the life of the ELTIF)

Regarding the obligation to provide the authority of the ELTIF with information during the life of the fund, we believe that the period of time allowed to provide updated information to the national authority should be set out in terms of business days, rather than calendar days.

Also, in our opinion, the requirement to provide updated information following a change that should have become known to the ELTIF manager is not realistic.

We therefore suggest clarifying the first subparagraph of paragraph 2 of article 4 of the draft RTS as follows:

During the life of the ELTIF, in case of a material change in the elements listed in paragraph 1, or material changes in any other elements that affect the redemption policy, including the results of liquidity stress tests conducted after the authorisation of the ELTIF, the implementation of the liquidity management tools after the authorisation of the ELTIF or the implementation of the derogation granted under Article 18(2), the ELTIF shall provide to the competent authority of the ELTIF the updated information, where possible, before the application of such material changes, and in any case not later than 10 **business** days from the date the respective material change became known ~~or should have become known~~ to the ELTIF manager.

Comment on letter a of paragraph 3 of article 4 of the draft RTS on the minimum information to be provided to the competent authority of the ELTIF upon request or via the AIFMD reporting (during the life of the ELTIF)

As explained previously, we would like to underline that the objective to prevent possible dilution effects for existing investors in the ELTIF is not appropriate in all circumstances. We welcome the wording “any possible dilution effects”.

Comment on letter b of paragraph 3 of article 4 of the draft RTS on the minimum information to be provided to the competent authority of the ELTIF upon request or via the AIFMD reporting (during the life of the ELTIF)

It should be clarified that the permanent cap on redemption referred in Article 18.2.d) of the new ELTIF Regulation is a “permanent” cap which applies on any windows and therefore is not part of the tools that need to be “activated”. For example, when an ELTIF offers quarterly redemption and it is clear in the ELTIF legal documentation that there is a Repurchase Limitation per quarter (e.g. maximum 5% of the assets referred in (b) of Article 9(1) (i.e. UCITS-eligible assets)), there should be no requirement for the ELTIF manager to disclose/report that repurchase requests which exceed such limitation have been unsatisfied.

Comment on paragraph 4 of article 4 of the draft RTS on the minimum information to be provided to the competent authority of the ELTIF (during the life of the ELTIF)

Here again, we would like to refer ESMA to the provisions of the AIFMD (currently under review) and the need for consistency and for avoiding redundancies between the RTS under the revised ELTIF Regulation and the (future) requirements of the AIFMD (which is currently under review). The AIFMD, which includes some rules on notifications to national competent authorities and the applicable notice periods, should serve as a basis for the requirements under the ELTIF Regulation. In this respect, it would be too confusing and complex for an AIFM to apply different rules to different funds.

In addition, we think that, in practice, it will be difficult to warn them in advance of redemptions requests in line with the redemption policy of the ELTIF which will not be met.

Last, it should be clarified that this only deals with repurchase requests which would be unsatisfied whereas they do not exceed the agreed permanent Repurchase Limitation. For example, in our example above, the ELTIF manager would only have the obligation to report if it is not able to repurchase up to 5% on a given quarter.

Information to be provided to investors

Q11: a) Do you agree with the proposed approach in relation to the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2) -Article 18(6)(c) of the ELTIF Regulation)?

As a preliminary remark, we would like to underline that transparency obligations should be consistent with article 23 of the AIFM Directive on information to be provided to investors.

As a more general comment, we would like to underline that asset, liability and redemption policies should be considered in a holistic manner and not independently from each other. A sound and reliable liquidity risk management relies on the correct articulation of these aspects along with the liquidity profile of the ELTIF. It is the articulation of all these different elements that matters and allow the manager to demonstrate to the competent authority that the redemption policy and the liquidity management tools are appropriate. For instance, the redemption frequency should not be solely assessed without knowing the liquidity profile of the ELTIF and the LMTs available and described in the fund documentation.

In our opinion, the draft RTS should take into account two forms of ELTIFs i.e traditional long-term closed-ended funds with no redemption rights and evergreen semi-liquid structures with rolling subscriptions and redemptions.

In the same way, a distinction should be made between information provided to retail investors and information provided to professional investors. For example, information concerning the possible suspension of fund redemptions reserved for professional investors does not need to be published on the AIFM website.

Comments on paragraph 1 of article 5 of the draft RTS

In general, the elements specified in the draft regulatory technical standards are elements that we would expect to include in an offering document of an open-ended fund. However, as noted above and in response to the following questions, it is important that the elements are not required to be applied in a prescriptive manner.

Comment on paragraph 2 of article 5 of the draft RTS

We agree that the redemption policy of the ELTIF should be outlined in the fund documents from a transparency perspective. The RTS should ensure that the ELTIF has the flexibility to manage subscriptions and redemptions while maintaining liquidity consistent with its redemption terms. This will differ among each ELTIF depending on its investment objective and strategy. Imposing restrictive timelines for redemption procedures will only be overly cumbersome on the ELTIF and increase costs, making it less of an attractive option for fund managers.

Such redemption policy is determined at the beginning of the life of the fund. As a consequence, it will be difficult to take into account the composition of the portfolio of the ELTIF and all of its assets. Rather, it is the investment strategy of the fund that should be considered.

We therefore suggest clarifying paragraph 2 of article 5 of the draft RTS, as follows:

2. The redemption policy of the ELTIF shall take into account the ~~composition of the portfolio of the ELTIF, all of its assets~~ **investment strategy of the ELTIF**, including assets referred to in Article 9(1)(b) of Regulation (EU) 2015/76, the life of the ELTIF, its liquidity profile and the documented process for the valuation of the assets of the ELTIF. The redemption policy of the ELTIF shall also consider the market conditions, and material events that may affect the possibility of the ELTIF to implement its redemption policy.

b) What are your views on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs, irrespective of their individual specificities, as suggested in paragraph 83?

No. In our opinion, the frequency of redemptions shall not apply to a traditional closed end ELTIF as redemptions during the term of the fund are generally not permitted in such structures.

, Setting of a maximum redemption frequency on a quarterly basis will not be suitable for open ended ELTIFs either, especially if the frequency of subscriptions is higher (e.g. monthly). Indeed, it may cause issues in the implementation of a matching mechanism where the proceeds of new subscriptions are used to redeem exiting investors. In other words, the frequencies of subscriptions and redemptions have to be consistent.

For instance, a maximum redemption frequency on a quarterly basis would not be suitable for evergreen ELTIFs invested by insurers, as the latter may request monthly or even weekly redemption dates.

We suggest allowing for the use of estimated monthly or even weekly valuations.

We therefore suggest amending letter a of paragraph 5 of article 5 of the draft RTS on the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, as follows:

the frequency of redemptions is consistent with the actual possibility to have a valuation of assets that

is reliable, sound and updated. ~~The frequency of redemption shall be, as a maximum, quarterly, except if the manager of the ELTIF is able to justify that it could be higher, taking into account the individual features of the ELTIF set out in paragraph 2;~~

c) What are your views on the setting of a notice period of Y months for all ELTIFs (with Y equal to 12, for example)? What are your views on the options 1 and 2, set out in paragraphs 87 to 90, in relation to the specific requirements/circumstances where the notice period could be less than one year, and the numerical values of the parameters 2(1) to 2(4), under option 1, and Y, under option 2?

As explained previously, asset, liability and redemption policies should be considered in a holistic manner and not independently from each other. A sound and reliable liquidity risk management relies on the correct articulation of these aspects along with the liquidity profile of the ELTIF. It is the articulation of all these different elements that matters and allow the manager to demonstrate to the competent authority that the redemption policy and the liquidity management tools are appropriate. For instance, the redemption frequency should not be solely assessed without knowing the liquidity profile of the ELTIF and the LMTs available and described in the fund documentation.

In our view, the notice period is one liquidity management tool that should be determined on a case-by-case basis and, if relevant (it might not be necessary in all instances, in particular in the case of closed ended ELTIFs), taking into account:

- The redemption windows offered by the relevant fund. In other words, the notice period should be shorter than the period of time between 2 redemption dates. For example, it could be 1 month if the period of time between 2 redemption dates is 3 months;
- The inherent liquidity of the underlying assets of the fund. For example, a fund with short term instruments should take into account the liquidity generated by the redemption of its assets. Also, the liquidity generated by distributions from the assets should be taken into account. In other words, the fund manager should be entitled to dimension the length of the notice period according to the intrinsic liquidity of the assets in the fund and to the liquidity management tools put in place.

We suggest introducing both options 1 and 2, to the discretion of the AIFM, which would use one or the other depending on the specific situation.

In our opinion, a notice period of 12 months for all ELTIFs would be too long. It should be possible to determine a notice period in terms of weeks (rather than months). This would allow investors to reduce the risk of a change in NAV between the time they give their notice and the time they actually redeem their shares or units.

In any case, exemptions to the notice period, covering an amount of 5% of the fund's NAV, should be introduced:

- to accommodate for "accidents in life": in such limited and specific situations, investors need to obtain the redemption of their shares or units within a very short notice period (a few days);
- to allow insurers to cover their fees: insurers may redeem some shares of the funds they invest into (e.g. evergreen ELTIFs placed in unit-linked contracts) in order to cover for their fees;
- to allow insurers to perform the periodic rebalancing of their portfolios: for example, in French "Plans d'Épargne Retraite", insurers proceed to semi-annual or annual rebalancing in order to reset the proportions of the fund portfolios to the split which has been agreed with the retail investor. For example, if a retail investor has elected a portfolio consisting of 80% of listed debt and 20% of private equity funds, the insurer will neutralize the evolution of the respective asset

classes every 6 months, by selling or buying small quantities of one fund or the other, in order to get back to the agreed split of 80%/20%.

d) In your view, how do these requirements on the redemption policy and liquidity management tools of the ELTIF would compare to those applying to existing long-term investment AIFs which would be similar to ELTIFs (e.g. in terms of eligible assets)?

Where possible, please support your answers by providing examples of current liquidity set-up for similar long-term funds marketed to retail investors, analyses of the data available to assess the value of ELTIF long term assets and the length of the valuation process.

As explained previously, asset, liability and redemption policies should be considered in a holistic manner and not independently from each other. A sound and reliable liquidity risk management relies on the correct articulation of these aspects along with the liquidity profile of the ELTIF. It is the articulation of all these different elements that matters and allow the manager to demonstrate to the competent authority that the redemption policy and the liquidity management tools are appropriate. For instance, the redemption frequency should not be solely assessed without knowing the liquidity profile of the ELTIF and the LMTs available and described in the fund documentation.

We emphasize the need to ensure that the redemption policy and liquidity management tools are flexible as different funds will have different approaches in terms of management liquidity and will have different asset classes which mean different tools will be used. In this context, we would like to underline that the liquidity management tools under the revised ELTIF Regulation should not differ from those under the revised AIFM Directive.

We particularly welcome the use on a non-exceptional basis of gates which are disclosed to investors. These mechanisms, as long as they are clearly disclosed to investors, should be viewed as proper liquidity management tools, as set out in the contract agreed with investors. For instance, the latter could specify the percentage of assets concerned. Such gates disclosed to investors would be different from any additional gates used in exceptional circumstances.

Furthermore, when liquidity is 100% ensured by intermediaries, such as insurance companies which sign liquidity letters in the context of fund shares placed in life-insurance wrappers, this should be taken into account in the overall assessment of the liquidity profile of the ELTIF. For instance, we can observe that the French regulator AMF has used such liquidity letters when authorizing “evergreen” retail vehicles with a high proportion of private assets.

Comment on paragraph 7 of article 5 of the draft RTS on the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools

The proposed revised AIFMD requires to select at least one liquidity management tool from a list which includes notice periods (please refer to Annex V) as well as the right to temporarily suspend redemptions. Therefore, it is not appropriate to introduce in the draft ELTIF RTS a requirement for both (i) notice period and (ii) one other “anti-dilution” tool.

Comment on paragraph 8 of article 5 of the draft RTS on the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools

We particularly welcome the use on a non-exceptional basis of gates which are disclosed to investors. These mechanisms, as long as they are clearly disclosed to investors, should be viewed as proper liquidity management tools, as set out in the contract agreed with investors. For instance, the latter could specify the percentage of assets concerned. Such gates disclosed to investors would be different from

any additional gates used in exceptional circumstances.

In other words, gates linked to “exceptional circumstances” are different from the permanent Repurchase Limitation set forth in Article 18.2.d) (i.e. the % of UCITS-eligible assets). In our view the cap set forth in Article 18.2.d) should work in any instances (normal or extraordinary) and would not need to be “activated” if expressly set in the fund legal documentation.

Minimum percentage of UCITS assets

Q12: Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) -Article 18(6)(d))?

We recognise that liquid assets on the fund balance sheet may be used as a tool for managing liquidity and generating liquidity for redemptions for open ended funds. This being said, liquid assets are often not the first source of cash and there are other levers that should be considered (borrowing, leveraged loans...). It should be recalled here that the ELTIF fund's pocket containing liquid instruments may not exceed 45%, by construction (since ELTIF funds should invest at least 55% of their assets in eligible assets). It should also be kept in mind that any pocket of cash or liquid assets shrinks the overall performance of the fund.

In our opinion, the maximum percentage will have to be determined on a case-by-case basis, according to the specific features of the fund concerned (including its open or closed ended nature and its investor base) and the content of its liquid pocket (the repurchase limitation should not be a % of specific types of assets of the fund i.e. this percentage should be a percentage of the fund's NAV applicable over a certain period of time e.g. quarter). Requiring a minimum level of liquid assets can often be restrictive and limit a manager's ability to properly implement a private markets investment strategy. In particular, this limit on the percentage of redemptions should not be required for closed end structures.

For example, when calculating the minimum proportion of liquid assets in the fund, the expected annual redemption flows from the assets and the distributions (coupons paid by debt instruments for example) should be taken into account.

In addition, when liquidity is 100% guaranteed by intermediaries, such as the insurance company through the signing of a liquidity letter between the AIFM and the insurance company (limiting the redemptions by the insurance company to a certain proportion of the fund), this should be taken into account in the overall assessment of the liquidity profile of the ELTIF. In addition, if the fund provides for a minimum holding period, the size of the liquidity pocket over the life of the fund should take into account the possibility of investors effectively exiting the fund.

Comment on paragraph 1 of article 6 of the draft RTS on criteria to assess the percentage of UCITS assets

As state previously, when liquidity is 100% ensured by intermediaries, such as the insurance company in the case of shares subscribed via a life-insurance contract, this should be taken into account in the overall assessment of the liquidity profile of the ELTIF.

Comment on paragraph 2 of article 6 of the draft RTS on criteria to assess the percentage of UCITS assets

In our view, there is no reason to prohibit the use up to 100% of the liquid asset pocket to meet redemption requests. Article 18 2 d) stipulates that the fund should define a redemption cap, which should be expressed as a percentage of the assets invested in UCITS-eligible assets but does not

stipulate (and this should not be the case) that in order to meet the redemption cap, the fund should draw first on these assets. For instance, in France, the AMF allows to use 100% of this pocket, provided that the manager undertakes to rebuild (with distributions from the portfolio, new subscriptions, etc.) this pocket up to the minimum percentage agreed in the legal documentation.

There is no reason to keep a pocket of liquid assets/cash if it cannot be used to meet redemption requests. This being said, the minimum size of this pocket should be commensurate so that, in principle, on each redemption window, there is no need to use it in its entirety to meet redemption requests.

Comment on paragraph 4 of article 6 of the draft RTS on criteria to assess the percentage of UCITS assets

We welcome the fact that the percentage of UCITS assets may vary over the life of the fund.

However, we suggest clarifying that the manager is not required to verify during the life of the ELTIF that the percentage originally defined (“date of assessment”) remains relevant. Indeed, it would not be appropriate to require the manager to constantly check this percentage before any applicable redemption date.

In addition, the percentage of Article 18.2.d) (which we understand as a permanent cap on redemption/frequency) should not be subject to any recalculation, deduction or otherwise. It should be a fixed percentage e.g. per quarter, which gives clarity/certainty to investors as to which maximum level of redemptions will be satisfied by the fund per quarter. If this percentage may change before any applicable redemption date, this would result in less certainty/predictability for investors.

Matching mechanism

Q13: Do you agree with the principle-based approach suggested above, in relation to the ESMA RTS under Article 19(2a)?

Yes, we agree with the principle-based approach suggested by ESMA. Indeed, it will allow sufficient flexibility to cater for national differences and specificities of ELTIFs, thus allowing AIFMs to establish matching mechanisms and exiting and potential investors to use them, while ensuring the required level of investor protection.

We welcome the introduction of the matching mechanism, both in relation to closed-ended and open-ended ELTIFs, where it could, depending on the type of investors (e.g. insurers), contribute to limiting the size of the liquidity pocket to be kept in the funds.

Q14: Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both exiting and potential investors, and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests?

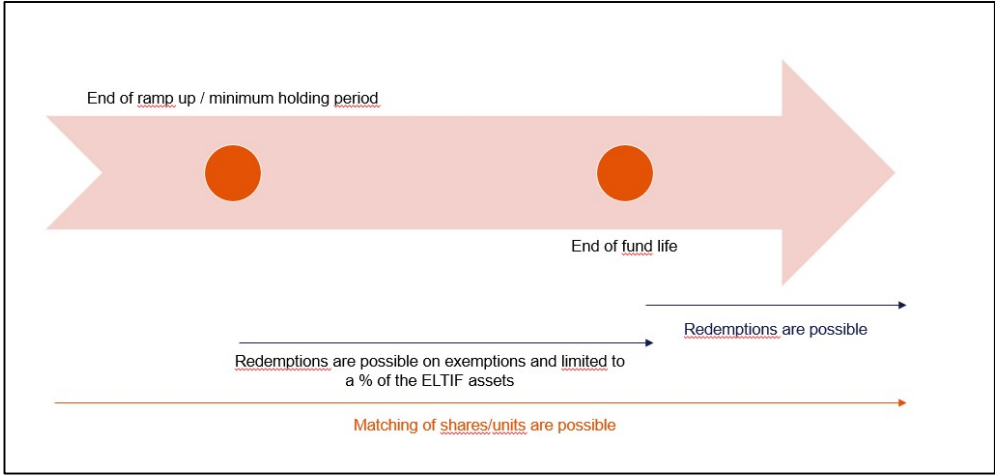
Yes, we generally agree with ESMA's proposals in relation to the transfer process. It is key that the AIFMs' responsibilities in this process are explicitly set out. In particular, it should be clear that AIFMs merely allow investors and potential investors to meet through the matching mechanism and that they are responsible for ensuring that the conditions for the good functioning of this mechanism are fulfilled, in particular in terms of transparency and fair treatment of investors. Conversely, it should be clear that investors and potential investors agree the exchange price among themselves and that AIFMs are not responsible for the determination of exchange prices.

We would like to refer ESMA to the system in place in France for “sociétés civiles de placement immobilier” (SCPI), which in our opinion would be an interesting source of inspiration for the matching mechanism applicable to ELTIFs.

We note that the ELTIF matching mechanism may represent marketing, in which case the notification procedure referred to in article 31 of the ELTIF regulation applies.

Q15: Do you agree with the proposed approach and corresponding draft RTS, in relation to the periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF? If both systems under Article 18(2) and 19(2a) coexist, how could the risk of arbitrage between different prices in the primary and the secondary markets be, in your view, mitigated? How could (retail) investors be ensured that the purchase or sale of shares on the secondary market will be executed at prices that reflect the value of the ELTIF?

Yes, we generally agree with ESMA’s proposed approach. We however suggest accommodating for cases of “accidents in life”.



To avoid any arbitrage between both systems (i.e. primary and secondary markets), we support ESMA’s proposal to align the matching mechanism with the valuation dates of the ELTIF if the execution price is based on the NAV and, conversely, to implement it outside the valuation dates of the ELTIF if it is not based on the NAV.

In any case, we appreciate the flexibility granted to ELTIF managers to choose between different options and agree that the rules determining the execution price should be disclosed in the rules or instruments of incorporation of the relevant ETLIF. As the case may be, the ELTIF manager may specify that the exchange price is determined between the exiting investor and the potential investor.

Q16: Do you agree with the proposals above and the corresponding draft RTS, in relation to the determination of the execution price and the proration conditions and the level of the fees, costs and charge, if any, related to the transfer process?

We would like to underline that, in our mind, the matching operation could take place between two parties, i.e. investors and potential investors, which do not ask for the ELTIF manager’s opinion. Through the matching mechanism, the ELTIF manager creates the conditions for exiting investors and potential investors to meet. Transaction prices should be agreed between exiting and new investors i.e. AIFMs should not determine transaction prices. An exchange of shares or units through the exchange mechanism is different from a redemption of shares or units.

Another way of setting up a matching mechanism is to consider that, instead of issuing new shares for subscription of new investors and, in parallel, redeeming shares from exiting investors, the manager could operationally compensate these orders to avoid or limit impact on the assets of the fund.

The costs that could be charged by the fund or the AIFM to the exiting and new investors for the use of those matching mechanisms are different. In the case the manager organizes a secondary market, the manager could charge operating costs to both parties. On the other side, when the manager uses the matching mechanism to compensate subscription and redemption orders, the costs charged to exiting and new investors should be those they should have paid in a redemption/ subscription without compensation.

In our mind, those two mechanisms are not inconsistent with each other. They simply do not take place at the same time: between two NAVs the first matching mechanism could be proposed as an alternative to the redemption process that is longer and capped. The second one is only an operational process of compensation of orders that will not directly impact investors who will subscribe or redeem their shares at the next NAV.

We would kindly ask ESMA to clarify circumstances whereby a NAV is “not reliable”. Indeed, in our mind, a NAV is by definition reliable.

We therefore suggest clarifying paragraph 1 of article 8 of the draft RTS as follows:

Rules or instruments of incorporation of an ELTIF shall set out the rules determining the execution price related to the transfer process. ~~In times and situations where the NAV may not be reliable or appropriate, the execution price may be determined using other tools, provided that the fair treatment of all investors, including exiting and remaining investors of the ELTIF, is ensured, especially when the ELTIF also allows for redemptions during the life of the fund according to article 18(2) of Regulation 2015/760.~~ In situations where the NAV is not used and the matching process agreed between an exiting investor and a new investor, the price is determined between them.

We generally agree with ESMA's proposals regarding the rules on how the requests will be dealt with to ensure the fair treatment of investors and the establishment of proration conditions attached to the transfer process.

Q17: Do you agree with the proposals above, and the corresponding draft RTS, in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions?

Yes, we generally agree with ESMA's proposals in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions.

In particular, we fully support transparency on any entry/exit costs attached to the transfer of shares or units.

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.

About France Invest

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 roughly 400 management firms and 180 associate members.

Private equity supports 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 2022, French private equity and infrastructure players invested €36 billion in 2,800 companies and infrastructure projects. They raised €42 billion from investors, half of which abroad (just under one third at EU level excluding France), which will be invested over the next 5 years¹. In addition to that, in 2022, private debt players (structures financing companies and infrastructure projects) invested €19 billion in 449 transactions and raised €12 billion that will finance new transactions in the coming years². European companies, in particular start-ups and SMEs, are the main recipients of our members' investments. Over the 2016-2021 period, over 280 000 jobs were created in companies backed by French venture capital and private equity³.

In particular, during the pandemic, the venture capital and private equity industry has demonstrated its adaptability, supporting existing portfolio companies as and when needed, while continuing to invest in new businesses that require capital and operational expertise to grow.

¹ www.franceinvest.eu/wp-content/uploads/2023/03/Etude-dactivite-2022_France-Invest_VDEF.pdf

² <https://www.franceinvest.eu/marche-de-la-dette-privee-en-2022/>

³ www.franceinvest.eu/wp-content/uploads/2022/12/CP_FranceInvest_Etudes_Impact_et_Creation_Valeur_14122022_DEF-1.pdf