Amendments to the European Long-Term Investment Funds (ELTIFs) Regulation

2021/0377(COD) - 15/02/2023 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 492 votes to 109, with 27 abstentions, on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Objective of the Regulation

It is clarified that the objective of this Regulation is to facilitate the raising and channelling of capital towards long-term investments in the real economy, including towards investments that promote the **European Green Deal** and other priority areas, in line with the Union objective of smart, sustainable and inclusive growth.

Qualifying portfolio undertaking

According to the amended text, a qualifying portfolio undertaking should be an undertaking that fulfils, at the time of the initial investment, the following requirements:

(a) it is not a financial undertaking, unless: (i) it is a financial undertaking that is not a financial holding company or a mixed-activity holding company; and (ii) it has been authorised or registered more recently than five years before the date of the initial investment;

(b) it is an undertaking which: (i) is not admitted to trading on a regulated market or on a multilateral trading facility; or (ii) is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 1 500 000 000;

(c) it is established in a Member State, or in a third country provided that the third country: (i) is not identified as high-risk third country; (ii) is not mentioned in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.

Portfolio composition and diversification

An ELTIF should invest at least 55 % of its capital in eligible investment assets.

In the event that an ELTIF infringes the portfolio composition and diversification requirements or the borrowing limits, and the infringement is beyond the control of the manager of the ELTIF, the manager of the ELTIF should, within an appropriate period of time, take such measures as are necessary to rectify the position, taking due account of the interests of the investors in the ELTIF.

Borrowing of cash

It is stipulated that an ELTIF may borrow cash provided that such borrowing represents no more than **50 %** of the net asset value of the ELTIF in the case of ELTIFs that can be marketed to retail investors, and no more than **100 %** of the net asset value of the ELTIF in the case of ELTIFs marketed solely to professional investors.

The manager of the ELTIF should specify in the prospectus of the ELTIF whether the ELTIF intends to borrow cash as part of the ELTIF's investment strategy and, if so, should also specify therein the borrowing limits.

Redemption of units or shares of ELTIFs

Investors in an ELTIF should not be able to request the redemption of their units or shares before the end of the life of the ELTIF. Redemptions to investors shall be possible as from the day following the date of the end of the life of the ELTIF. The rules or instruments of incorporation of the ELTIF should clearly indicate a specific date for the end of the life of the ELTIF and may provide for the right to extend temporarily the life of the ELTIF and the conditions for exercising such a right.

By way of derogation, the rules or instruments of incorporation of an ELTIF may provide for the possibility of redemptions during the life of the ELTIF provided that certain conditions are met.

The life of an ELTIF should be consistent with the long-term nature of the ELTIF and should be compatible with the life-cycles of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF.

Investors should always have the option to be repaid in cash. Repayment in kind from the assets of the ELTIF should only be possible under certain conditions.

Specific requirements concerning the distribution and marketing of ELTIFs to retail investors

The manager of an ELTIF whose units or shares may be marketed to retail investors will be subject to the requirements set out in Directive 2014/65/EU on markets in financial instruments. Units or shares of an ELTIF may only be marketed to a retail investor if an **assessment of suitability** has been carried out in accordance with Directive 2014/65/EU and a statement of suitability has been provided to that retail investor in accordance with that Directive.

The **express consent** of the retail investor indicating that the investor understands the risks of investing in an ELTIF should be obtained where all of the following conditions are met:

- the assessment of suitability is not provided in the context of investment advice;

- the ELTIF is considered not suitable for the retail investor on the basis of the assessment of suitability;

- the retail investor wishes to proceed with the transaction despite the fact that the ELTIF is considered not suitable for that investor.

In order to avoid any misunderstanding by retail investors regarding the legal nature of, and the potential liquidity allowed for by, the secondary trading mechanism, the distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF should issue a **clear written alert** to retail investors that the availability of a matching mechanism does not guarantee the matching or entitle retail investors to exiting or redeeming their units or shares of the ELTIF concerned.

That written alert should be part of a single written alert that also informs retail investors that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment, where the life of an ELTIF offered or placed to retail investors exceeds 10 years.

Review of sustainability aspects of ELTIFs

No later than two years after the date of application of this amending Regulation, the Commission should carry out an assessment and submit a report to the European Parliament and to the Council accompanied, where appropriate, by a legislative proposal, regarding at least the following:

- whether the creation of an optional designation of **'ELTIF marketed as environmentally sustainable'** or 'green ELTIF' is feasible;

- whether there should be a general obligation for ELTIFs to comply in their investment decisions with the principle of 'do no significant harm', or whether that obligation should be limited to ELTIFs marketed as environmentally sustainable or green ELTIFs, in the eventuality that such an optional designation is considered feasible;

- whether there is any potential to improve the framework for ELTIFs by contributing more significantly to the objectives of the European Green Deal, without undermining the nature of ELTIFs.