

ELTIF EUROPEAN REGULATION

GUIDE OF EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIF)

Questions and answers European long-term investment funds - ELTIFs

This information guide is for educational purposes only and is not a policy document. It aims to guide fund managers¹ who would like one of their funds to be authorised as a European long-term investment fund (ELTIF). This document is intended for European AIFMs who wish to obtain ELTIF authorisation for a French fund, AIFMs who wish to use the passport procedure under the AIFM Directive to market a non-French ELTIF in France, and other ELTIF actors (distributors, depositaries, investors).

Given how important long-term financing is for growth in the EU, the regulation on European long-term investment funds (ELTIFs) aims to channel European savings into European long-term investments in the real economy. ELTIFs must procure long-term financing for a variety of infrastructure projects, unlisted companies, and listed small and medium-sized enterprises (SMEs) that issue equity or debt instruments.

Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds is directly applicable in national law to ensure uniform and consistent rules within the Union. It will therefore not be transposed into French law. However, Article 27 of the 2015 supplementary budget act (loi de finance rectificative, or LFR) authorises professional specialised funds, professional private equity investment funds and securitisation vehicles to grant loans from 1 January 2016, in accordance with the ELTIF regulation, and makes it easier for ELTIFs to qualify for equity savings plans for SMEs (PEA-PME).

In addition, for funds to be marketed in France (questions 11 to 15), AMF instruction 2014-03 on the procedure for marketing units or shares of AIFs also applies to funds authorised as ELTIFs.

Bear in mind that the ELTIF regulation applies only to funds authorised as ELTIFs and does not allow other AIFs to use the marketing passport to market to retail investors as defined in MiFID.

In France, securitisation vehicles, professional private equity investment funds (FPCIs), professional specialised funds (FPSs), including those set up as limited partnerships (sociétés de libre partenariat, or SLPs), and potentially professional real estate collective investment undertakings (OPPCIs) and real estate investment companies (SCPIs) seem to be the funds whose characteristics are the most compatible with the requirements of the regulation².

¹ Here and throughout the guide, the term “fund manager” means an EU fund manager within the meaning of Article 4, paragraph 1, point I) of Directive 2011/61/EU (AIFM). The manager of an ELTIF must be authorised as an AIFM in the European Union.

² See question 16 on the eligibility of real estate assets.

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1. Which French funds can apply for ELTIF authorisation from the AMF?

ELTIFs are closed-end funds (or funds that limit opportunities for redemption to a percentage of the fund's liquid assets³), whose manager is authorised under the AIFM directive and which may, under certain conditions, be eligible to market to retail investors using the marketing passport under Article 30 of the ELTIF regulation.

The generic term “fund” used in the European regulation and in this guide means AIFs set up as investment funds (fonds commun de placement) or as companies (SICAVs (open-ended investment companies), SPICAVs (open-ended real estate investment companies), etc.).

In accordance with European regulation 2015/760 on European long-term investment funds, **only an EU alternative investment fund (AIF)⁴ may request and receive ELTIF authorisation.**

To be eligible to apply for ELTIF authorisation, a French fund must first have a legal form under French law and may be an AIF “by nature” (i.e., a collective investment undertaking within the meaning of Article L. 214-24 of the Monetary and Financial Code, with the exception of UCITS) or be an “Other AIF” (a vehicle that is not explicitly included on the list in the Monetary and Financial Code but that is an AIF by object). **When it obtains ELTIF authorisation, the AIF retains its status under French law and remains subject to all relevant rules.**

For example, the following funds may apply for ELTIF authorisation from the AMF in direct application of the European regulation, provided they comply with both the rules of the national scheme and those of the regulation (for example, being a closed-end fund or limiting its redemptions, in accordance with Article 18 of the regulation):

- **“Other” AIFs** (or AIFs “by object”) if they are managed by a fund manager authorised in accordance with Directive 2011/61/EU (AIFM)⁵, in particular venture capital companies (SCRs, whose range of investments is similar to that of an ELTIF)⁶;
- **AIFs “by nature”**, i.e., AIFs in the French range, including professional private equity investment funds (FPCIs), professional specialised funds (FPSs), securitisation vehicles, professional real estate collective investment undertakings, funds open to retail investors (real estate collective investment undertakings (OPCIs), retail local investment funds (FIPs), retail private equity investment funds (FCPRs) and retail venture capital funds (FCPIs)), real estate investment companies (SCPIs) and forestry investment companies (SEFs).

2. How does a French fund (with a European manager) apply for ELTIF authorisation?

i. ELTIF authorisation for an existing French fund

The fund manager sends the AMF an application for ELTIF authorisation which includes, in accordance with the ELTIF regulation, the following:

a) the fund rules or instruments of incorporation, for example, the prospectus along with a change request, where applicable, so as to incorporate the regulation's specific requirements into the prospectus;

³ Article 18 (paragraph 2) of the ELTIF regulation describes the conditions that provide for the possibility of redemptions before the end of the life of the ELTIF.

⁴ Article 4 of the AIFM directive: “EU AIF”:

i) an AIF which is authorised or registered in a Member State under the applicable national law; or
(ii) an AIF which is not authorised or registered in a Member State, but has its registered office and/or head office in a Member State.

⁵ Obtaining AIFM authorisation also requires fund managers to comply with all of the obligations of the AIFM directive transposed in the Common Provisions of Book IV, Section 2, Subsection 1 of the Monetary and Financial Code, including the provisions in paragraph 2 relative to depositaries.

⁶ When they meet the definition of AIFs.

- b) information on the identity of the proposed manager of the ELTIF and its current and previous fund management experience and history;
- c) information on the identity of the depositary;
- d) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;
- e) the AMF's ELTIF authorisation application form (in the appendix) and the regulation compliance matrix.

The AMF shall send an acknowledgment of receipt following the submission of a complete application **and shall inform the applicant within two months whether authorisation as an ELTIF has been granted**. If a non-compliant or incomplete application is submitted, the AMF may return it to the sender with an explanation of the reasons for its return. The AMF may request additional information during the review process.

Any subsequent modifications to the documentation included in the application for authorisation shall be immediately notified to the AMF.

Note: In accordance with the AIFM Directive, any material change must also be communicated to the competent authorities of the fund manager's home Member State one month before implementing the change (Article 32.7 in the case of a passport and Article 31.4 in the case of marketing in the fund manager's home Member State).

ii. Creation of a French ELTIF

To be authorised as an ELTIF, the fund must be an existing French AIF. If the fund is an AIF "by nature" that needs to be authorised or declared, it will have to apply, at the same time as it applies for ELTIF authorisation, for authorisation or declaration from the AMF, in accordance with Book II, Part 1, Chapter IV, Section 2 of the Monetary and Financial Code. In that case, both applications will be processed simultaneously by the AMF and ELTIF authorisation will not be granted until French AIF authorisation has been obtained⁷.

3. What requirements apply to the manager of funds authorised as ELTIFs?

- i. The fund manager must be authorised in accordance with the AIFM directive but there is no specific authorisation for the manager of an ELTIF above and beyond verification of the compatibility of the programme of operations.

Only a manager of an AIF established in the European Union and authorised under Directive 2011/61/EU (AIFM) can manage an ELTIF.

A management company needs no additional authorisation to manage an ELTIF. However, when a fund applies for ELTIF authorisation, the AMF will verify that the ELTIF's investment strategies and target clientele are compatible with the management company's programme of operations. The management company must therefore have obtained prior authorisation to manage all the instruments in which it would like its ELTIF to invest.

Non-French fund managers whose AIFM authorisation was not issued by the AMF will have to provide the AMF with the following, if they wish to obtain ELTIF authorisation:

- a) the written agreement with the depositary;
- b) information, where applicable, on delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF;
- c) information about the investment strategies, the risk profile and other characteristics of AIFs that the EU AIFM is authorised to manage.

A non-French manager who wishes to manage a French fund will also first have to apply for a passport to manage an AIF established in another EU country, in accordance with Article 33 of Directive 2011/61/EU (AIFM)

⁷ Please refer to the AMF instruction corresponding to the type of fund set up for information on the legal deadline.

(either directly or by establishing a branch). This application is submitted to the home competent authority of the fund manager.

ii. Conflicts of interest

A fund manager may not invest directly or indirectly in the same assets as those held by an ELTIF it manages. Article 12 of the ELTIF regulation on conflicts of interest stipulates that an ELTIF shall not invest in an eligible asset in which the manager of the ELTIF has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs or EuVECA⁸ that it manages.

4. What assets are eligible for ELTIFs?

To ensure that it targets long-term investments, **an ELTIF must invest at least 70% of its capital in eligible investment assets**, namely:

- i. equity, quasi-equity or debt instruments issued by a qualifying undertaking, i.e., one that is not a financial undertaking and is not listed or has a market capitalisation of no more than EUR 500 million (see question 5 on eligible undertakings);
- ii. loans granted by the ELTIF to a qualifying undertaking with a maturity no longer than the life of the ELTIF⁹;
- iii. units or shares of one or several other ELTIFs, EuVECA and EuSEFs;
- iv. direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets with a value of at least EUR 10 million.

The time limit for meeting the 70% investment quota is defined in the ELTIF's prospectus or rules. In any case, it can be no later than either five years after the date of the authorisation as an ELTIF, or half the life of the ELTIF, whichever is the earlier.

The 70% investment quota ceases to apply once the ELTIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the ELTIF. It may be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months. In exceptional circumstances, the AMF may, upon submission of a duly justified investment plan, approve an extension of this time limit by no more than one additional year.

Units in AIFs that are neither authorised as ELTIFs nor approved as EuVECA or EuSEFs are not eligible assets for an ELTIF.

Article 11 of the ELTIF regulation which defines the qualifying portfolio undertakings for an ELTIF excludes collective investment undertakings within the European meaning of the term (mainly AIFs and UCITS) from qualifying portfolio undertakings for an ELTIF. Therefore, an ELTIF real estate collective investment undertaking (OPCI) may no longer invest in another OPCI (unless it is an ELTIF, EuVECA or EuSEF). Professional private equity investment funds (FPCIs) that wish to be authorised as ELTIFs may also no longer invest in AIFs that are not authorised as ELTIFs and will have to limit the use of derivatives to hedge their foreign currency or interest rate risk.

An ELTIF is allowed to invest in assets other than the above-referenced eligible investment assets as may be necessary to manage its cash flow efficiently, but only up to 30% of its capital and provided they are included on the list of permitted UCITS investments in accordance with Article 50 of Directive 2009/65/EC (for example, money-market instruments, securities admitted to trading on a regulated market) and transposed into Article L. 214-20 of the Monetary and Financial Code.

⁸ EuVECA stands for European Venture Capital Fund and EuSEF for European Social Entrepreneurship Fund.

⁹ By extension, ELTIFs should also be able to invest in unmatured debt that may be sold to them, like loan funds.

An ELTIF may also not undertake 1) short selling of assets, 2) taking direct or indirect exposure to commodities, 3) using securities lending or borrowing techniques on more than 10% of the capital of the ELTIF, and 4) using financial derivative instruments, except to hedge risks.

Important points:

- A fund authorised as an ELTIF is not exempt from the specific rules applicable to the French vehicle selected and remains bound by the programme of operations of its manager. A professional real estate collective investment undertaking (OPPCI) authorised as an ELTIF may therefore not invest heavily in non-real estate assets, as the rules of the OPPCI and the ELTIF apply, and a professional private equity investment fund (FPCI) authorised as an ELTIF may not invest more than 10% of its capital in debt. Similarly, an ELTIF may not pursue a strategy for which its manager is not authorised.
- When an ELTIF is made up of several investment compartments, each compartment is regarded as a separate ELTIF for the purposes of the investment policy (questions 4 to 7) but does not need a separate authorisation.

5. What types of undertakings can an ELTIF invest in?

Qualifying portfolio undertakings, i.e., undertakings in which an ELTIF must invest at least 70% of its capital, are undertakings that:

- Are not collective investment undertakings, within the European meaning;
- Are not financial undertakings;
- Are not admitted to trading on a regulated market or on a multilateral trading facility or are admitted to trading on a regulated market or a multilateral trading facility but have a market capitalisation of no more than EUR 500 million; and
- Are established in a Member State or in a third country not listed by the FATF (international Financial Action Task Force).

By way of derogation, a qualifying portfolio undertaking may be a financial undertaking that exclusively finances qualifying portfolio undertakings or real assets.

6. What are the portfolio's diversification requirements?

An ELTIF shall invest no more than 10% of its capital directly or indirectly in a single real asset or in loans or instruments issued by a single qualifying undertaking. However, a fund authorised as an ELTIF may raise the limit from 10% to 20% provided that the aggregate value of the assets it holds in qualifying portfolio undertakings and in the real assets in which it invests more than 10% of its capital does not exceed 40% of the value of the capital of the ELTIF.

An ELTIF shall not invest more than 10% of its capital in units or shares of any single ELTIF, EuVECA or EuSEF. Under these conditions, master/feeder structures between ELTIFs are not permitted.

The aggregate value of units or shares of ELTIFs, EuVECAs and EuSEFs in an ELTIF portfolio shall not represent more than 20% of the value of the capital of the ELTIF.

An ELTIF shall not invest more than 5% of its capital in liquid assets¹⁰, where those assets have been issued by any single body (or 25% for an investment in bonds of an EU credit institution).

The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 5% of the value of the capital of the ELTIF.

¹⁰ Referenced in Article 9, paragraph 1, point b) of the ELTIF regulation which refers back to eligible assets for a UCITS.

7. What are the concentration limits for an ELTIF's assets?

An ELTIF may acquire no more than 25% of the units or shares of a single ELTIF, EuVECA, or EuSEF.

An ELTIF's liquid assets (eligible assets in Directive 2009/65/EC (UCITS), see questions on assets) must comply with the concentration limits in Article 56 of the UCITS directive¹¹ transposed into Article R. 214-26 of the Monetary and Financial Code.

8. What is the life of an ELTIF?

In accordance with Article 18 of the ELTIF regulation, the rules or instruments of incorporation of the ELTIF shall clearly indicate a specific date for the end of the life of the ELTIF. This life shall be "consistent with the long-term nature of the ELTIF and shall be sufficient in length to cover the life-cycle 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" (Article 18, paragraph 3).

9. What are the conditions for redemption of units of an ELTIF?

The illiquid nature of most investments in long-term assets precludes an ELTIF from offering regular redemptions to its investors. ELTIF assets require commitments for a certain period of time and investors should not expect a liquid investment.

ELTIFs are therefore barred from any redemption of units or shares before the end of their life or, by way of derogation (Article 18.2), the overall amount of redemptions within any given period must be limited to a percentage of the liquid assets of the ELTIF referred to in point (b) of Article 9(1). In the case of a derogation, the fund manager sets out a redemption policy that i) clearly indicates the periods of time during which investors may request redemptions, ii) demonstrates that a liquidity management system is in place that is compatible with its long-term investment strategy and iii) guarantees that all investors are treated equally.

10. Can an ELTIF use leverage?

An ELTIF may borrow cash provided that such borrowing a) represents no more than 30% of the value of the capital of the ELTIF and b) serves the purpose of investing in eligible investment assets, except for loans granted, provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned. Borrowings must be contracted in the same currency as the assets acquired and have a maturity shorter than the life of the ELTIF.

11. Can an ELTIF be open to retail investors?

In general, funds that are authorised as ELTIFs will concurrently apply the rules of the French vehicle and those of the European regulation.

The AMF General Regulation could, in the future, allow professional specialised funds (FPSs), companies set up as limited partnerships (SLPs), professional private equity investment funds (FPCIs) and professional real estate

¹¹ The fund may acquire no more than:

- a) 10% of the non-voting shares of a single issuing body;
- b) 10% of the debt securities of a single issuing body;
- c) 25% of the units of a single UCITS or other collective investment undertaking within the meaning of Article 1(2)(a) and (b); or
- d) 10% of the money market instruments of a single issuing body.

collective investment undertakings (OPPCIs) that have obtained ELTIF authorisation to be open to retail investors under the conditions laid down in the ELTIF regulation¹², in particular in Article 30, paragraph 3:

“3. Where the financial instrument portfolio of a potential retail investor does not exceed EUR 500,000, the manager of the ELTIF or any distributor, after having performed the suitability test referred to in Article 28(1) and having provided appropriate investment advice, shall ensure, on the basis of the information submitted by the potential retail investor, that the potential retail investor does not invest an aggregate amount exceeding 10% of that investor's financial instrument portfolio¹³ in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is EUR 10 000.

The potential retail investor shall be responsible for providing the manager of the ELTIF or the distributor with accurate information on the potential retail investor's financial instrument portfolio and investments in ELTIFs as referred to in the first subparagraph”.

Units subscribed by members of the management company: The subscription and acquisition of units, shares or rights by members of the management company or by its group shall not be considered marketing to retail investors.

12. What are the additional requirements for marketing to retail investors?

If the fund is marketed to retail (or non-professional) investors, the ELTIF regulation stipulates:

- Additional transparency requirements (Articles 23 and 24) and the requirement to use the PRIIPs key information document (KID) (Regulation (EU) 1286/2014);
- The implementation, in each Member State where a fund intends to market its units or shares, of facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide (Article 26 of the regulation). As this requirement is modelled on Article 92 of Directive 2009/65/EC which was transposed into Article 411-135 of the AMF General Regulation, it may be met by designating a centralising correspondent established in France;
- That the manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which allow retail investors to file complaints in the official language or one of the official languages of their Member State (Article 30);
- Application of a specific internal process for the assessment of the ELTIF (Article 27);
- The establishment of a suitability test (Article 28) (or a questionnaire to assess the customer's knowledge);
- Specific conditions for the depositary (eligible entities that are permitted to act as depositaries in accordance with the provisions of the UCITS directive (2009/65/EC), no discharge of the depositary's liability, and the reuse of assets) (Article 29);
- The requirement to provide appropriate investment advice to retail investors (Article 30);
- That a manager of an ELTIF or a distributor must be authorised to provide the services referred to in points (a) and (b)(i) of Article 6(4) of Directive 2011/61/EU¹⁴, in particular investment advice;

¹² Articles 423-14, 423-27 and 423-49 of the AMF General Regulation respectively permit OPPCIs, FPSs and FPCIs to open the subscription and acquisition of their units or shares “To retail investors in accordance with Regulation (EU) 2015/760, provided the fund is authorised as a European long-term fund pursuant to said regulation. In particular, where the financial instrument portfolio of a potential retail investor does not exceed EUR 500,000, the manager of the ELTIF or any distributor, after having performed the suitability test and having provided appropriate investment advice, shall ensure, on the basis of the information submitted by the potential retail investor, that the potential retail investor does not invest an aggregate amount exceeding 10% of that investor's financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is EUR 10,000”.

¹³ A financial instrument portfolio shall be understood to include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral. In particular, the investor's real estate investments are not included in the financial instrument portfolio.

¹⁴ “4 (a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;
b (i) investment advice”.

- That the legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment;
- **That the prospectus shall provide that:**
 - o all investors benefit from equal treatment and no preferential treatment or specific economic benefits are granted to individual investors or groups of investors;
 - o retail investors shall be able, during the subscription period and at least two weeks after the date of their subscription to units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.

The fund manager (in conjunction with the distributor) will therefore have to specify a withdrawal period for retail investors whereby, during the subscription period, retail investors will have two weeks from the date on which they subscribe to units or shares of the ELTIF to request that their subscription be cancelled and to have their money returned without penalty.

13. What is the procedure for obtaining a passport to market an ELTIF in an EU country that is not the home country?

Under the regulation, funds authorised as ELTIFs may be marketed to eligible investors, whether professional or retail, in other EU countries, in accordance with the passport procedure provided for in Directive 2011/61/EU (AIFM). Articles 31 and 32 of this Directive specify that the application for the marketing passport be filed with the fund manager's home competent authorities which then send marketing notification to the authorities of the Member State where the AIF is expected to be marketed.

Under French law, these articles have been transposed into L. 214-24-1 and L. 214-24-2 of the Monetary and Financial Code. These articles therefore apply to ELTIFs, for which marketing is also made possible, through application of the ELTIF regulation, to retail investors within the meaning of the ELTIF regulation. Book IV, Title II, Chapter I, Section 1 of the AMF General Regulation sets out the notification procedures for an application for marketing with a passport.

i. Marketing in an EU country other than France of units or shares of a non-French ELTIF managed by a French manager.

The French asset management company shall submit to the AMF a notification in respect of each EU ELTIF that it intends to market in an EU Member State other than France in accordance with the AIF marketing procedure in Article 421-14 of the AMF General Regulation. Within 20 working days following receipt of a complete notification file, the AMF shall inform the fund manager whether it may start marketing. This AIF marketing procedure was initially reserved for professional investors but the ELTIF regulation uses the same procedure for marketing to retail investors.

ii. Marketing in France of units or shares of a non-French EU ELTIF

The fund manager shall submit a notification to its home authority (the AMF if the fund manager is French) in respect of each EU ELTIF that it intends to market in accordance with Article 32 of Directive 2011/61/EU (transposed into Articles 421-1 to 421-3 or 421-13 of the AMF General Regulation for a French fund manager). Within 20 working days following receipt of a complete notification file, the home authority shall inform the fund manager whether it may start marketing.

Note: Marketing in France of a French ELTIF must also be notified in accordance with AMF instruction 2014-03.

In the event of marketing to retail investors with a passport (which is not provided for in the AIFM directive or the AMF General Regulation), the fund manager shall include with its marketing passport application information that can be used to determine compliance with the specific requirements for this marketing. In particular, the application must contain:

- the fund's marketing materials. The AMF examines the marketing materials of AIFs distributed in France¹⁵ to ensure that the advertising and the prominent information on the illiquid nature of the ELTIF, as well as all other information required under Article 23.4 of the ELTIF regulation and included in question 15 of this guide, are clear, accurate and not misleading;
- translations, where applicable, into French of the prospectus, KIID and any other document intended to provide information to holders¹⁶;
- information about the facilities, provided for in Article 26 of the ELTIF regulation, available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide. As this requirement is modelled on Article 92 of Directive 2009/65/EC which was transposed into Article 411-135 of the AMF General Regulation, it may be met by designating a centralising correspondent established in France.

A fee is owed to the AMF under Articles L. 621-5-3 I 4 and D. 621-27 4 of the Monetary and Financial Code. Independent of the documents requested as part of the marketing procedure with or without a passport, proof of payment must be provided to the AMF for marketing in France.

If a centralising correspondent is used, it will have to pay the fee directly to the AMF.

14. What information should an ELTIF's prospectus contain?

In accordance with Article 23.3 of the ELTIF regulation, an ELTIF's prospectus must contain at least the following information:

- a) a statement setting out to what extent the ELTIF's investment objectives and strategy for achieving these objectives qualify the vehicle as long-term in nature;
- b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC (prospectus) and Regulation (EC) No 809/2004¹⁷;
- c) information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU (AIFM), transposed into Article 3 of AMF instruction 2014-02 (Disclosure to investors in unauthorised or undeclared AIFs) if it is not already covered under point (b) of this paragraph;
- d) a prominent indication of the categories of assets in which the ELTIF is authorised to invest;
- e) a prominent indication of the jurisdictions in which the ELTIF is allowed to invest;
- f) any other information considered by the competent authorities to be relevant for the purposes of paragraph 2.

15. What information should an ELTIF's marketing documents contain?

According to Article 23.4 of the ELTIF regulation, the prospectus and marketing documents shall prominently inform investors about the illiquid nature of the ELTIF. In particular, the prospectus and any other marketing documents shall clearly:

- a) inform investors about the long-term nature of the ELTIF's investments;
- b) inform investors about the end of the life of the ELTIF as well as the option to extend the life of the ELTIF, where this is provided for, and the conditions thereof;

¹⁵ Article 421-25 of the AMF General Regulation: "Advertisements from the AIF aimed at investors shall be clearly identified as such. They shall be accurate, clear and not misleading". Article 314-30 of the same regulation states that the AMF may require fund managers to submit their advertising to it prior to publication, distribution or broadcast and that it may require changes to the presentation or the content.

¹⁶ Article 421-26-III of the AMF General Regulation states that any person marketing units or shares of an investment undertaking whose rules or any other document intended to provide information to holders is written in a language customary in the sphere of finance other than French, shall direct its marketing particularly at investors in the professional customer categories. Furthermore, such persons shall ensure that the language used is understandable to investors.

¹⁷ In Directive 2003/71/EC, see in particular Annex XV: Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type (schedule)

- c) state whether the ELTIF is intended to be marketed to retail investors;
- d) explain the rights of investors to redeem their investment in accordance with Article 18 and with the rules or instruments of incorporation of the ELTIF;
- e) state the frequency and the timing of distributions of proceeds, if any, to investors during the life of the ELTIF;
- f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF;
- g) describe the hedging policy of the ELTIF, including a prominent indication that financial derivative instruments may be used only for the purpose of hedging risks inherent to other investments of the ELTIF, and an indication of the possible impact of the use of financial derivative instruments on the risk profile of the ELTIF;
- h) inform investors about the risks related to investing in real assets, including infrastructure;
- i) inform investors regularly, at least once a year, of the jurisdictions in which the ELTIF has invested.

16. What types of real estate investment are eligible assets for an ELTIF?

Eligible assets under the ELTIF regulation (Article 10) include real assets, which are defined in Article 2, paragraph 6 as “an asset that has value due to its substance and properties and may provide returns, including infrastructure and other assets that give rise to economic or social benefit, such as education, counselling, research and development, and **including commercial property or housing only where they are integral to, or an ancillary element of, a long-term investment project that contributes to the Union objective of smart, sustainable and inclusive growth**”. This conservative definition was introduced to prevent an ELTIF from being used for the purpose of real estate speculation¹⁸.

Investments in real property should be clearly documented so as to demonstrate the long-term commitment in the property in accordance with Article 10 of the regulation and whereas clause 17.

For example, whereas clause 19 lists the following eligible assets: “public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks, and waste management infrastructure such as recycling or collection systems”.

17. Liquidity in an ELTIF real estate collective investment undertaking (OPCI)

Real estate collective investment undertakings open to retail investors typically invest at least 60% of their assets in real estate (L. 214-37) and must have a large cash position given the redemption opportunities offered to retail investors. For an OPCI authorised as an ELTIF, the redemption opportunities will be much more restrictive and eligible retail investors will be limited in accordance with the regulation. Given the restriction that at least 70% of an ELTIF's eligible assets must be long term, the liquidity requirements for an OPCI authorised as an ELTIF and open to retail investors will potentially have to be strengthened.

18. What information should an ELTIF include in its annual report?

The annual report of an ELTIF shall contain the following: a) a cash flow statement; b) information on any participation in instruments involving Union budgetary funds; c) information on the value of the individual qualifying portfolio undertakings and the value of other assets in which the ELTIF has invested, including the value of financial derivative instruments used; d) information on the jurisdictions in which the assets of the ELTIF are located.

¹⁸ Whereas clause 18 of the ELTIF regulation states that “Investments in commercial property or housing should be permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth or to the Union's energy, regional and cohesion policies. Investments in such immovable property should be clearly documented so as to demonstrate the long-term commitment in the property. This Regulation is not seeking to promote speculative investments”.

The annual report shall be submitted to the AMF.

19. Where can the list of funds authorised as ELTIFs be found?

ESMA shall keep a central public register identifying each ELTIF authorised, the manager of the ELTIF and the competent authority of the ELTIF.

20. Can a French management company manage a fund authorised as an ELTIF that is domiciled in another Member State?

A French management company authorised under Directive 2011/61/EU (AIFM) may apply for authorisation to manage one or more AIFs established in another Member State, in accordance with Article 33 of that directive (“management passport”). This authorisation to manage an AIF in another Member State also applies to managing an ELTIF in another Member State. In that case, the management company must also apply for a product passport (Article 32) to market the ELTIF, even to market in the fund's home Member State.

Annex – Application for authorisation - ELTIF AIF in application of Regulation (EU) 2015/760

APPLICATION FOR AUTHORISATION - ELTIF AIF
In application of Regulation (EU) 2015/760

1. Has this application already been the subject of discussions with the AMF? ☐ no ☐ yes
2. Is the manager of the ELTIF a fund manager authorised in accordance with the AIFM directive (2011/61/EU)? ☐ no ☐ yes
3. Has the fund already been set up? ☐ no ☐ yes

Please note that ELTIF authorisation is irrevocable

4. If the fund has already been declared or authorized by the AMF, please provide the file reference number or the ISIN code:

5. Will the ELTIF be marketed to retail investors? ☐ no ☐ yes

If yes, is the ELTIF manager authorised to provide the services referred to in Article 6.4, points a) and b i), of Directive 2011/61/EU? ☐ no ☐ yes

6. Name:

7. Does the fund have compartments? ☐ no ☐ yes

8. Fund manager's name:
(if the ELTIF is self-managed, please specify)

9. If the fund manager is not a French fund manager:

Fund manager's home state:

Where applicable, the contact information of the person responsible for monitoring the fund manager at the fund manager's supervisory authority:

Regulation (EU) 2015/760 states that the AMF may ask the competent authority of the AIFM for clarification and information as regards the delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF, or an attestation as to whether ELTIFs fall within the scope of the AIFM's authorisation to manage AIFs

10. Name of depositary:

11. Statutory auditor:

12. If management is delegated:

Financial management:

Administrative management:

Accounting management:

TABLE OF THE ELTIF AIF'S COMPLIANCE WITH REGULATION (EU) 2015/760

This table needs to be filled in for each of the ELTIF AIF's compartments.

FOR ALL ELTIFS:

Information to be provided to investors (as specified in the European Regulation)	Indicate where this information can be found (document and page number)
Investment objective, policy and strategy Life Risks	
Specific life of the ELTIF and description of any extensions and the procedures therefor (Article 18)	
Date on which the fund will reach its quota for investments in eligible assets (Articles 13 and 17)	
Description of the objective, strategy and risks inherent in the investment (Article 23.2)	
Statement setting out how the ELTIF's investment objectives and strategy for achieving these objectives qualify the fund as long-term in nature (Article 23.3 a)	
Information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC and Regulation (EC) No 809/2004 (Article 23.3 b)	
Information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU, if it is not already included in the previous point (Article 23.3 c)	
Indication of the categories of assets in which the ELTIF is authorised to invest (Article 23.3 d)	
Indication of the jurisdictions in which the ELTIF is allowed to invest (Article 23.3 e)	
Information prominently disclosed to investors about the illiquid nature of the ELTIF (Article 23.4)	
Clear information about the long-term nature of the ELTIF's investments (Article 23.4 a)	

Clear information about the end of the life of the ELTIF as well as the fund manager's option to extend the life of the ELTIF, where this is provided for, and the conditions thereof (Article 23.4 b)	
Clear explanation of the rights of investors to redeem their investment (Article 23.4 d)	
Clear statement of the frequency and the timing of distributions of proceeds, if any, to investors during the life of the ELTIF (Article 23.4 e)	
Clear advice to investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF (Article 23.4 f)	
Clear description of the hedging policy of the ELTIF, including a prominent indication that financial derivative instruments may be used only for the purpose of hedging risks inherent to other investments of the ELTIF, and an indication of the possible impact of the use of financial derivative instruments on the risk profile of the ELTIF (Article 23.4 g)	
Clear information to investors about the risks related to investing in real assets, including infrastructure (Article 23.4 h)	
Clear and regular (at least once a year) disclosure to investors of the jurisdictions in which the ELTIF has invested (Article 23.4 i)	
The manner in which the annual report shall be available to investors (Article 24.3)	
Disclosure of whether or not the manager of the ELTIF intends to borrow cash as part of its investment strategy (Article 16.2)	
Description of the procedures for the redemption of units or shares and the disposal of assets. Clear statement that requests for redemptions by investors shall be honoured starting on the day following the date of the end of life of the ELTIF, except as provided for in Article 18.2 of Regulation (EU) 2015/760 (Article 18.1)	
Costs	
Costs of setting up the ELTIF (Article 25.1 a)	
Costs related to the acquisition of assets (Article 25.1 b)	
Management and performance related fees (Article 25.1 c)	

Distribution costs (Article 25.1 d)	
Other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs (Article 25.1 e)	
Overall ratio of the costs to the capital of the ELTIF (Article 25.2)	

IN ADDITION, FOR ELTIF AIFS MARKETED TO RETAIL INVESTORS:

Provisions set forth in the European Regulation	Provisions set forth by the manager of the ELTIF
Implementation of facilities ¹ available for making subscriptions to the ELTIF, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide (Article 26.1)	
The rules or instruments of incorporation of an ELTIF shall provide that all investors benefit from equal treatment and no preferential treatment or specific economic benefits are granted to individual investors or groups of investors (Article 30.4)	
The legal form of an ELTIF shall not lead to any further liability for the retail investor or require any additional commitments on its behalf, apart from the original capital commitment (Article 30.5)	
Retail investors shall be able, during the subscription period and at least two weeks after the date of their subscription to units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty (Article 30.6)	
The manager of the ELTIF has established appropriate procedures and arrangements to deal with retail investor complaints, which allow retail investors to file complaints in the official language or one of the official languages of their Member State (Article 30.7)	
A hard copy of the prospectus of the ELTIF is provided to retail investors upon request and free of charge (Article 24.4)	

¹ As this requirement is modelled on Article 92 of Directive 2009/65/EC which was transposed into Article 411-135 of the AMF General Regulation, it may be met by designating a centralising correspondent established in France

<p>Upon the request of a retail investor, the manager of the ELTIF shall provide additional information relating to the quantitative limits that apply to the risk management of the ELTIF, the methods chosen to that end, and the recent evolution of the main risks and yields of the categories of assets (Article 23.6)</p>	
<p>All the information provided to investors must have been translated into French (Article 421-26 of the AMF General Regulation)</p>	

CONTACTS

Fiche complétée par :

Nom du correspondant :			
Société :			
Numéro de téléphone :		Télécopie :	
Adresse courriel :			
Nom du responsable du correspondant :			
Fonction :			
Adresse postale de la société en charge du dossier :			
Complément d'adresse :			
Code postal :	Ville :	Pays :	
Numéro de téléphone		Télécopie :	
Adresse courriel :			

DOCUMENTS TO BE INCLUDED WITH THE APPLICATION

<p>For all ELTIFs:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The rules or instruments of incorporation (prospectus) of the fund <input type="checkbox"/> Description of the information to be made available to investors (including a description of the arrangements for dealing with complaints submitted by retail investors) <p>Documents to be included only for ELTIFs managed by a non-French manager:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Proof that the AIFM “management” passport has been obtained <input type="checkbox"/> A document (any format) containing information on the identity of the manager of the ELTIF and its current and previous fund management experience and history <input type="checkbox"/> The written agreement with the depositary <input type="checkbox"/> Information on delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF <input type="checkbox"/> Information about the investment strategies, the risk profile and other characteristics of AIFs that the fund manager is authorised to manage <p>Documents to be included only for ELTIFs intended to be marketed to retail investors:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A KIID prepared in accordance with the template in Regulation (EU) 1286/2014 <input type="checkbox"/> A description of the proposed marketing plan, as well as the procedures for subscribing and redeeming units or shares of an ELTIF <input type="checkbox"/> All the marketing information that is to be broadcast in France, regardless of the medium selected, prior to any broadcast (Article 314-30 of the AMF General Regulation) <p><i>or, in the absence of draft marketing information:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> A commitment signed by the legal representative of the ELTIF's manager that it will send the AMF any future draft marketing information prior to its broadcast 	<p>The following documents shall also be made available to the AMF and are therefore not sent:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Acceptance by any administrative delegate <input type="checkbox"/> Acceptance by any accounting delegate <input type="checkbox"/> The work programme of the auditor and the budget
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The AMF shall send an acknowledgment of receipt on the date of submission of a complete application **and shall inform the applicant within two months whether authorisation as an ELTIF has been granted**. If a non-compliant or incomplete application is submitted, the AMF may return it to the sender with an explanation of the reasons for its return. The AMF may request additional information during the review process.

Any subsequent modifications to the documentation included in the application for authorisation shall be immediately notified to the AMF.