Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Feedback Statement Consultation Paper 155:
Consultation on ELTIF chapter in the AIF Rulebook

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1. Introduction

Regulation (EU) 2015/760 on European Long-Term Investment Funds (ELTIF Regulation) came into effect on 9 December 2015 and established a new type of Alternative Investment Fund (AIF).

As part of the Capital Markets Union (CMU), ELTIFs are primarily designed as a retail accessible AIF with the aim of increasing the availability of non-bank financing to the real economy by facilitating investments in more long-term and illiquid assets such as infrastructure projects, real estate and listed and unlisted SMEs.

The availability of long-term financing is critical to the future development of Europe's economies. It supports jobs, growth and innovation while enhancing competitiveness and the overall resilience of the financial sector. ELTIFs can provide a steady income stream for their investors while complementing sources of more traditional sources of financing and mobilising capital markets to fill funding gaps.

Since it was first introduced in 2015, market take-up of ELTIFs has been low, leading to the 2020 review of the ELTIF Regulation by the European Commission. The Review resulted in a number of significant changes to the framework with the revised ELTIF Regulation addressing many of the restrictions that undermined the attractiveness of the original ELTIF by allowing for greater flexibility in the limits set down in the framework. This is intended to better position ELTIFs to play their role as part of the CMU and support greater investment in the real economy.

In light of the changes made at a European level and that the ELTIF Regulation is directly applicable in all EU Member States, the Central Bank carried out an assessment of the national framework for ELTIFs and identified the need for a standalone chapter in the Central Bank's AIF Rulebook that would support its implementation in Ireland.

Consultation Paper 155 ('CP155') set out the Central Bank of Ireland's ('Central Bank') proposal to introduce a new chapter in the Central Bank's AIF Rulebook to support the domestic implementation of the ELTIF Regulation and provide a pathway for ELTIFs seeking authorisation in Ireland.

The AIF Rulebook was introduced in July 2013 to support the implementation of the Alternative Investment Fund Managers Directive (AIFMD). It consolidated into a single document the conditions that the Central Bank imposes on authorised AIFs, their managers (alternative investment fund managers ('AIFM') or AIF management companies) and depositaries.

In determining its proposed approach to the new ELTIF chapter, the Central Bank had due regard to the provisions of the ELTIF Regulation and existing requirements for AIFs. The ELTIF chapter will be added as Chapter 6 of the AIF Rulebook and will include those requirements related to ELTIF specific restrictions, supervisory, prospectus, and general operational requirements and annual and half-yearly reporting.

Stakeholders were invited to provide observations and comments on the proposals for Chapter 6 of the AIF Rulebook with a closing date for comments of 13 December 2023.

Two responses were received and these are available at the following link: https://www.centralbank.ie/publication/consultation-papers.

The Central Bank has reviewed the submissions received from each of the respondents and the draft ELTIF Chapter has been further revised taking into account their feedback.

2. General Response

Overall, the respondents were supportive of the substance of the revised ELTIF Regulation 2023/606/EU, and welcomed the publication of the Central Bank's CP 155 with its proposal to include an ELTIF chapter in the AIF Rulebook while setting out a number of suggested clarifications and changes.

3. Specific Responses

Section I: ELTIF restrictions

Question:

Do you agree with the proposed rules under Section 1 of the ELTIF chapter of the AIF Rulebook?

If you have further comments, please refer to the specific provision of the AIF Rulebook and provide reasons for your answer.

Response:

The respondents broadly agreed with the provisions of Section 1 with suggested amendments to a number of specific elements.

a) General restrictions

In relation to the proposed restriction on an ELTIF acquiring shares carrying voting rights enabling it to exercise significant influence over an issuing body, respondents commented that this provision does not fully take account of the concentration and diversification limits that can be disapplied for professional-only ELTIFs.

The ELTIF Regulation sets out strict requirements in relation to concentration limits that also address the underlying risk and on this basis, the Central Bank has amended the ELTIF chapter to remove the restriction on acquiring shares carrying voting rights.

b) ELTIFs investing in venture capital, development capital or private equity

The respondents noted that the proposed rules for ELTIFs that invest in venture capital, development capital and private equity will not apply to non-Irish ELTIFs and may create regulatory complexity and an un-level playing field. Respondents called for these requirements to be removed from the ELTIF chapter and for ELTIFs to instead rely on the requirements within the ELTIF Regulation and AIFMD in this regard.

The Central Bank has considered the above feedback and has removed these provisions from the ELTIF chapter as the ELTIF Regulation does not distinguish between ELTIFs based on their investment strategies. The ELTIF Regulation sets out investment concentration limits and disclosure requirements applicable to an ELTIF's investments. In order to avoid unnecessary duplications between the ELTIF chapter and other regulatory requirements, the Central Bank has removed those provisions relating to risk disclosures for such ELTIFs within the ELTIF chapter.

c) Valuation

Respondents commented that requirements to calculate net asset value per share may not be suitable in certain ELTIF structures and suggested that ELTIFs offering limited redemption facilities during the life of the ELTIF are permitted to issue shares at a fixed price without the prior approval of the Central Bank and that this is provided for in the Central Bank's guidance on *Share class features of closed-ended QIAIFs*.

The Central Bank has determined that the ELTIF Regulation explicitly permits ELTIFs to issue units other than at net asset value subject to certain requirements and has removed those requirements from the chapter while incorporating the share class requirements as set out in the Central Bank's guidance on *Share class features of closed-ended QIAIFs* as these provisions are more appropriate to the structuring and operationalisation of an ELTIF.

d) Umbrella structures

The respondents recommended that the Central Bank consider establishing a provision for the establishment of dual-authorised ELTIF sub-funds within a RIAIF or QIAIF umbrella fund and that an AIF authorised as an ELTIF QIAIF be permitted to avail of the 24-hour fast-track approval process currently available to Irish QIAIFs.

Respondents noted that such provisions would enhance cost and distribution efficiency for fund managers with ELTIF RIAIFs being subject to the ELTIF chapter of the AIF Rulebook only, and ELTIF QIAIFs being subject to both the ELTIF chapter and limited relevant provisions of the QIAIF chapter.

The Central Bank has included provisions within the ELTIF chapter to allow the authorisation of ELTIF sub-funds under umbrella AIFs as this is compliant with the ELTIF Regulation. The use of an umbrella structure to establish ELTIF sub-funds will further support the establishment of ELTIFs in Ireland by offering ELTIFs the possibility to establish under a new umbrella or an existing umbrella and realise the benefits and efficiencies associated with such structures.

The Central Bank has provided definitions for three categories of ELTIF: (i) Professional Investor ELTIFs, (ii) Qualified Investor ELTIFs and (iii) Retail Investor ELTIFs. Where a Qualified Investor ELTIF meets the criteria set out in the definition within the ELTIF chapter, and provides for a minimum subscription of €100,000, the Central Bank will permit it to avail of the Central Bank's 24-hour approval process for QIAIFs and such ELTIFs will be subject to the retail requirements and limits set out in the ELTIF Regulation in the interests of ensuring appropriate investor protection.

e) Distinction between closed-ended ELTIF and those which are open-ended with limited liquidity

The Central Bank has included provisions setting out the distinction between, and determination of closed-ended ELTIFs and those that are open-ended with limited liquidity to provide clarity and support the application of the Central Bank guidance on *Share class features of closed-ended QIAIFs* that has been incorporated in the ELTIF chapter.

f) Investment through subsidiary companies

In respect of investments through subsidiary companies, respondents suggested that the provisions be removed, noting that the ELTIF Regulation directly provides for investment through intermediate holding entities by an ELTIF.

The Central Bank removed the requirements in relation to investment through subsidiaries throughout the ELTIF chapter to ensure there is no overlap with the ELTIF Regulation or duplicative requirements.

g) Side-pocket share classes

The Central Bank has extended the requirements in relation to the establishment of side-pocket share classes for assets that become illiquid or difficult to value to include assets that may become impaired. This provision will permit ELTIFs to create side-pocket share classes in exceptional circumstances where their assets become impaired or are otherwise no longer able to be held in the ELTIF's portfolio.

Section II: Supervisory requirements

Question:

Do you agree with the proposed rules under Section 2 of the ELTIF chapter of the AIF Rulebook?

If you have further comments, please refer to the specific provision of the AIF Rulebook and provide reasons for your answer.

Response:

Respondents broadly agreed with the proposed provisions with suggested changes to elements of Section II.

a) Offer period

The respondents noted that due to the potential for ELTIFs to invest in a broad range of asset classes and different investment strategies, there should be provision for differing approaches to subscriptions. Closed-ended or certain open-ended ELTIFs with limited liquidity should have greater flexibility in terms of the length of the initial offer period and the ability to issue shares at a price other than NAV in line with the guidance on *Share class features of closed-ended QIAIFs*.

One respondent commented that the provisions relating to offer periods should be not be applied to ELTIFs that are listed and traded on an EU regulated market as such ELTIFs could raise additional capital at any time.

The Central Bank considers that removing the provisions relating to offer periods is proportionate, given the overall liquidity profile of ELTIFs. This change is reflected through the incorporation of the Central Bank guidance on *Share class features of closed-ended QIAIFs* within the ELTIF chapter.

b) Directors of ELTIF investment companies

CP 155 includes a provision relating to the requirement for the Board or Chair of an ELTIF to form a view of the impact of the resignation of a director on the manager of the ELTIF. Respondents called for this provision to be applied only to self-managed ELTIFs. The rationale for this suggestion was that this provision may not be applicable to ELTIFs that appoint an external management company.

The Central Bank notes the comment seeking removal of the provision relating to the requirement for an ELTIF Board or Chair to form a view of the impact of the resignation of a director on the manager of the ELTIF. The Central Bank has retained this provision in the ELTIF chapter as it seeks to ensure good governance by the Board and is a proportionate investor protection requirement. This requirement also applies to QIAIFs and RIAIFs and the ELTIF provision ensures consistency between the chapters in the AIF Rulebook.

Taking account of feedback received, the provision has been amended to require an ELTIF (at Board or Chair level) to form a view as to the impact of the resignation of a director on the ELTIF itself and having regard to the current and prospective financial state of the ELTIF as well as any other relevant factors that should be taken into account arising from the resignation. The impact on the ELTIF itself is considered to be more relevant to safeguarding the interests of the investors.

c) Replacement of AIFM, management company, general partner or third party

Respondents commented that introducing a deadline for notification to the Central Bank of the replacement of the AIFM, management company, general partner or third party is additional to existing requirements for AIFs.

The Central Bank removed the deadline for notification to the Central Bank of proposals to replace the AIFM, management company, general partner or third parties, to ensure the requirements are in line with other AIFs. The Central Bank believes this amendment is proportionate as ELTIFs are required to notify and/or seek the approval of the Central Bank in advance of any proposal to replace the AIFM, management company, general partner or third party.

d) ELTIFs acquiring real estate

Respondents commented on the provisions regarding ELTIFs acquiring real estate and noted that the ELTIF Regulation allows investment in a range of "real assets" not limited to real estate. Respondents commented that valuation requirements for ELTIF investments are included in the AIFMD and called for provisions in the ELTIF chapter to be removed.

The Central Bank has considered the feedback and the provisions relating to ELTIFs acquiring real estate have been removed, as the ELTIF Regulation does not distinguish between asset types acquired by ELTIFs and the requirements related to valuation are already set down in the regulatory framework.

Section III: Prospectus requirements

Question:

Do you agree with the proposed rules under Section 3 of the ELTIF chapter of the AIF Rulebook?

If you have further comments, please refer to the specific provision of the AIF Rulebook and provide reasons for your answer.

Response:

Respondents generally agreed with the provisions of Section III subject to the following observations.

a) General requirements

One respondent commented that ELTIFs that are listed and traded on an EU regulated market should not be required to keep their prospectus up to date unless required to do so by other regulation applicable to such entities.

The Central Bank will not exempt ELTIFs that are listed and traded on an EU regulated market from the obligation to keep a prospectus up to date, as to do so may disadvantage investors.

b) Material changes to the ELTIF

In respect of changes of investment objective and/or investment policy, CP 155 included an obligation for the ELTIF to provide a reasonable notification period to enable unitholders to redeem their units prior to implementation of these changes. Respondents commented that the rules within Section xiii, titled *Changes to existing closed-ended ELTIFs* should be applied to closed-ended ELTIFs with no realistic liquidity provisions.

The Central Bank has amended the ELTIF chapter to specify that an ELTIF shall only change its investment objectives, or effect a material change to its investment policies, with the approval of at least 75% of votes cast at a general meeting. Reasonable notification period must be provided to unitholders to enable redemption of units prior to the implementation of these changes. This 75% threshold and reasonable notification period also apply in relation to increases in the maximum annual fee charges by the AIFM, management company and/or general partner of an ELTIF.

c) Dealing

In relation to proposals in respect of redemption in specie, respondents commented that the provisions should be deleted and the ELTIF should comply with the requirements of the ELTIF Regulation in this regard.

The Central Bank has removed the provisions relating to redemption in specie as requirements related to redemption payments are provided for in the ELTIF Regulation.

d) Risk disclosures

Respondents commented that the disclosure requirement for an ELTIF that invests in emerging stock exchanges and markets to include a recommendation in its prospectus for investors not to invest a substantial proportion of their investment in portfolio in the ELTIF may create confusion for investors when read in conjunction with the transparency requirements of the ELTIF Regulation.

The Central Bank considers it appropriate to remove the risk disclosure provision relating specifically to investment in emerging stock exchanges and markets, as existing ELTIF requirements already specify that investment in an ELTIF should form a small part of an investor's portfolio and such investments are subject to the MiFID suitability test.

e) Warehousing

Respondents did not object to disclosing the use of warehousing arrangements but asked for the removal of the requirement to pay no more than current market value as this was already provided for under the applicable AIFMD valuation rules.

The disclosure requirement in relation to warehousing has been amended to remove the requirement for an ELTIF to pay no more than current market value for the assets as the share class guidance incorporated into the ELTIF chapter addresses this issue and it duplicated requirements set down in AIFMD but such arrangements must still be disclosed to investors along with any associated costs or fees.

f) Distributions out of capital and charging fees and expenses to capital

Respondents commented that the proposed requirements in relation to distributions out of capital and charging fees and expenses to capital are additional to those imposed by the ELTIF Regulation.

Furthermore, they noted that these provisions may not be relevant to all ELTIFs, such as closed-ended ELTIFs. While the proposed requirements currently apply to RIAIFs, respondents commented that if retained, they should be disapplied to ELTIFs restricted to Qualifying Investors, in line with the requirements for QIAIFs in the AIF Rulebook.

The Central Bank has removed the requirements related to distributions out of capital as these are addressed by the distribution requirements set out in the ELTIF Regulation.

The Central Bank has retained limited prospectus disclosure requirements in relation to the charging of fees and expenses to capital to ensure investors are aware of the fees and expenses that may be charged to capital and the implications of charging such fees and expenses to capital so that investors clearly understand how they may affect their investment.

Section IV: General operational requirements

Question:

Do you agree with the proposed rules under Section 4 of the ELTIF chapter of the AIF Rulebook?

If you have further comments, please refer to the specific provision of the AIF Rulebook and provide reasons for your answer.

Response:

a) Dealing

Respondents requested that the provision limiting an ELTIF to retaining 10% or less of redemption proceeds be deleted from the ELTIF chapter on the basis of the various liquidity profiles permitted for ELTIFs under the ELTIF Regulation.

The Central Bank has removed the provisions limiting an ELTIF to retaining 10% or less of redemption proceeds, and prohibiting the issuing of units unless the equivalent of issue price is paid into the assets of the ELTIF to ensure alignment with the redemption requirements set out in the ELTIF Regulation.

b) Distributions out of and charging of fees and expenses to capital

Respondents called for the disclosure requirements in relation to distributions out of and charging of fees and expenses to capital to be deleted, noting that they are not included in the ELTIF Regulation.

The Central Bank has considered the feedback provided above, and has removed the requirements in relation to distributions out of capital to ensure alignment with the requirements of the ELTIF Regulation.

Section V: Annual and half-yearly reports

Question:

Do you agree with the proposed rules under Section 5 of the ELTIF chapter of the AIF Rulebook?

If you have further comments, please refer to the specific provision of the AIF Rulebook and provide reasons for your answer.

Response:

a) Annual and half-yearly reports

In relation to the publication of annual and half-yearly reports for umbrella ELTIFs, respondents noted that ELTIF ICAVs may produce accounts per sub-fund and requested that there is no differentiation between the accounts requirements for ELTIFs depending on structure (except that an ICAV can produce accounts per sub-fund).

Respondents further commented that as ICAVs are not subject to the statutory investment risk-spreading requirement, this provision should exempt ELTIF ICAVs.

The Central Bank has amended the provisions in the ELTIF chapter to account for the different requirements for ICAVs.

In relation to the disclosure of net asset value per share in both the annual and half-yearly reports, respondents commented that ELTIFs established as Investment Limited Partnerships may not have a net asset value per unit, and suggested adding “where applicable” to this requirement. A similar suggestion was also made in respect of the disclosure requirement in relation to the number of units in circulation.

The Central Bank did not change the provisions relating to net asset value per share, as the current definition of the term “unit” within the AIF Rulebook includes the interests of partners in Investment Limited Partnerships so such a change is not necessary.

Section VI: Marketing of ELTIF to retail investors

Question:

Do you agree with the proposed rules under Part II of the ELTIF chapter of the AIF Rulebook?

If you have further comments, please refer to the specific provision of the AIF Rulebook and provide reasons for your answer.

Response:

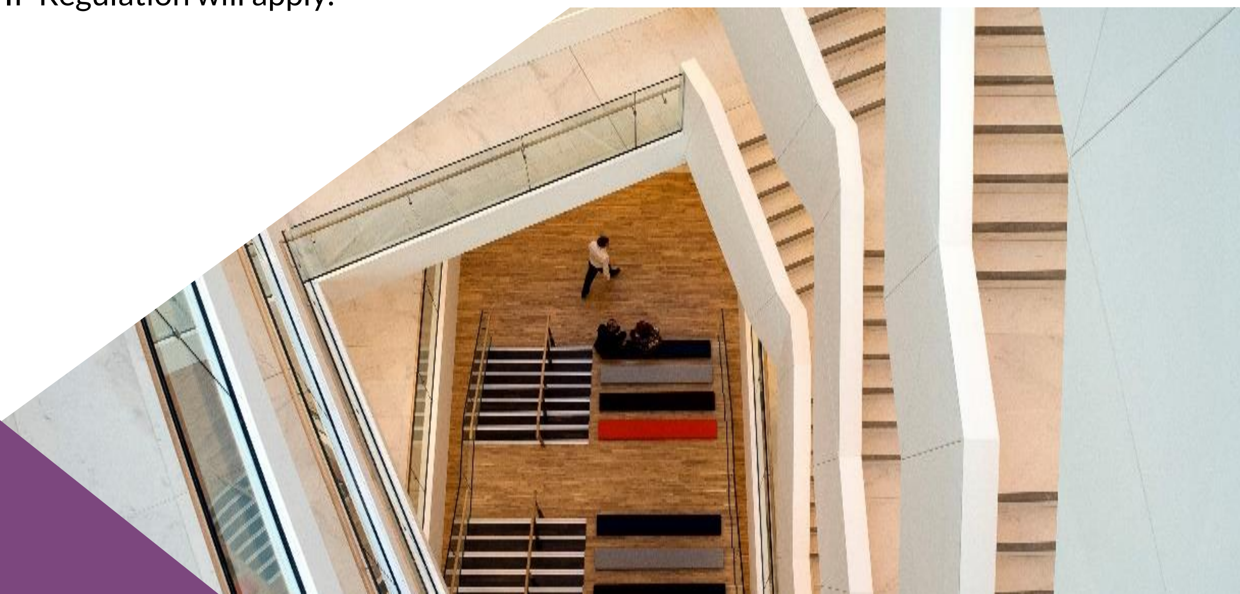
a) ***Marketing of ELTIFs to retail investors***

In relation to provisions outlining requirements for marketing of ELTIF to retail investors, respondents commented that this provision applies to ELTIFs that are not authorised in Ireland, and suggests adding wording to clarify that it applies to ELTIFs other than "Irish" authorised ELTIFs.

In relation to the requirement to disclose details of the facilities agent, respondents noted that as this requirement was removed in EU Regulation 2023/606, the provision should be deleted from the ELTIF chapter.

In relation to the requirement to submit annual and half-yearly reports to the Central Bank, respondents noted that semi-annual account should only be provided where relevant. They further noted that a KID would be required in addition to a prospectus for Irish retail investors.

The Central Bank have removed Part II of the ELTIF chapter as the cross-border requirements within the ELTIF Regulation will apply.



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