MAPLES GROUP

UPDATE

ELTIF 2.0 - European Commission Adopts RTS Delegated Regulation

The European Long-Term Investment Fund ("ELTIF") is an EU fund product regime designed to provide long-term stable returns by investing primarily in long-term investments, such as loans, infrastructure and private equity. ELTIFs can be marketed to retail or institutional investors across the European Union. The new and improved ELTIF regime amending the European Long-Term Investment Fund Regulation[1] ("ELTIF 2.0") is in effect since 10 January 2024.

On 19 July 2024, the European Commission published its adopted regulatory technical standards as a delegated regulation ("RTS"). The RTS are based on the draft regulatory technical standards submitted to the European Commission by the European Securities and Markets Authority ("ESMA") following a public consultation undertaken by ESMA.

While the RTS are now subject to a three-month scrutiny period by the co-legislators, their publication is a major milestone towards full implementation of ELTIF 2.0 and gives managers considering a semi-liquid ELTIF more certainty on the parameters within which such entities will need to operate.

Background

As noted in our previous client update, ESMA was required under ELTIF 2.0 to develop regulatory technical standards specifying, among others:

(a) the circumstances in which the use of financial derivative instruments solely serves hedging purposes;
(b) the circumstances in which the life of an ELTIF is considered compatible with the life cycles of each of the individual assets of the ELTIF;
(c) the criteria to determine any minimum holding period (if applicable) before redemptions may be granted;
(d) the minimum information to be provided to the competent authority of the ELTIF to demonstrate that the ELTIF has an appropriate redemption policy and liquidity management tools in place;
(e) the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools;
(f) the criteria to assess the percentage of the ELTIF's assets to which redemptions may be limited; and
(g) the circumstances for the use of the 'matching mechanism' and information to be disclosed to investors in this regard.

ESMA's draft RTS published in December 2023 were considered by the European Commission in part to be overly prescriptive and the Commission requested ESMA to take a more proportionate approach, particularly regarding the calibration of redemptions and liquidity management tools.

Following the Commission's request, ESMA revised the draft RTS and returned them to the Commission for consideration in April 2024.

[1] EUR-Lex - 02015R0760-20240110 - EN - EUR-Lex (europa.eu)

These have to a large extent now been adopted by the Commission as the final adopted RTS.

Adopted RTS – Key Take Aways

Consistent with its request to ESMA, the RTS adopted by the European Commission:

(a) make application of a minimum holding period optional;
(b) do not provide for the controversial mandated 12-month notice period for redemptions;
(c) provide important flexibility to ELTIF managers when calibrating the maximum size of redemptions on a redemption day;
(d) no longer require ELTIFs to maintain a minimum bucket of UCITS eligible assets in all instances; and
(e) better align the costs disclosure under ELTIF 2.0 with the PRIIPs, MIFID II and AIFMD requirements.

The RTS also address the other key areas mandated under ELTIF 2.0 including use of derivatives and matching of orders, which we do not address in this update.

Minimum Holding Period

The RTS recognise that ELTIF 2.0 does not require the application of a minimum holding period nor specifies the length of time where one is applied. Accordingly, the application of a minimum holding period is at the option of the ELTIF manager.

Notice Period for Redemptions & Calibration of Redemptions

The RTS do not impose a minimum notice period for redemptions. The ELTIF manager is however required to calibrate the maximum size of redemptions based on one of two options, set out in *Annex I* or *Annex II* of the RTS (included in the Appendix to this update).

This calibration is undertaken by reference to (i) the sum of UCITS-eligible assets at the redemption date and (ii) the expected cash flow, forecasted on a prudent basis over 12 months (which does not include new subscriptions).

Under *Annex I*, the maximum size of redemptions is based on the redemption frequency and notice period. Under this option, the longer the redemption notice period, the greater the percentage of UCITS-eligible assets that can be used to meet redemptions. *Annex I* also provides further optionality on the aggregation of redemptions on either a one-month or two-month basis.

Under *Annex II*, the maximum size of redemptions is based on the redemption frequency and the minimum percentage of UCITS-eligible assets. Under this option, depending on the redemption frequency, a certain minimum percentage of UCITS-eligible assets must be maintained and out of this percentage a maximum percentage of UCITS-eligible assets can be used to meet redemptions. The longer the time between redemptions (redemption frequency), the greater the percentage of UCITS-eligible assets that can be used.

Minimum UCITS-Eligible Assets

The *Annex I* model does not mandate the maintenance of UCITS-eligible assets at all times. This allows ELTIF managers flexibility to maintain lower levels of UCITS-eligible assets outside the relevant redemption days.

Alternatively, the *Annex II* model requires ELTIF managers to maintain a minimum percentage of UCITS-eligible assets outside the redemption days. Where such assets fall below the relevant threshold, the ELTIF manager is required within an appropriate period of time to reconstitute the minimum percentage of UCITS-eligible assets, while maintaining the ability of investors to redeem their shares and taking due account of the interests of investors.

Shorter Notice Periods

Where an ELTIF proposes to operate a notice period of less than three months, the ELTIF manager is required to inform the ELTIF's competent authority of this intention and provide reasons for such shorter notice period, together with how it is consistent with the individual features of the ELTIF.

Liquidity Management Tools

The drafting of the RTS reflects the fact that the recently agreed amendments to the EU's Alternative Investment Fund Managers Directive ("AIFMD 2.0") includes detailed provisions on the operation of liquidity management tools, applicable to all AIFMs, including ELTIF managers. Accordingly, the adopted RTS clarify that the operation of liquidity management tools (including anti-dilution levies, swing pricing and redemption fees in the context of redemptions from ELTIFs) is at the discretion of the ELTIF manager, and their operation is not specifically mandated by the RTS.

Timing

The adoption of the RTS by the European Commission now begins a three-month scrutiny period for co-legislators, which is expected to end in mid-October 2024 (unless extended by a further three months), allowing for the RTS to enter into force in Q4 2024.

What does it mean for your ELTIF project?

While the adoption of the RTS provides welcome clarity, it is not expected to immediately impact the manner in which existing ELTIF projects continue to proceed in Luxembourg or Ireland.

Luxembourg

At this stage, if you consider submitting an ELTIF file for approval to the Luxembourg regulator, the *Commission de surveillance du secteur financier* (the "CSSF"), you may already take the RTS into consideration. However, you are not obliged to do so at present. The CSSF currently accepts submissions that are solely and entirely based on ELTIF 2.0. You should in any case consider the CSSF's ELTIF questionnaire[2] and ensure that all elements covered therein are properly addressed.

Additionally, you will have to include a risk warning in the ELTIF's offering document to highlight that the final RTS are not yet available and that the ELTIF's documentation may have to be amended once those final RTS are published.

Ireland

The Central Bank of Ireland (the "CBI") has been processing authorisation applications for Irish-domiciled ELTIFs since 11 March 2024.

The CBI is considering applications for semi-liquid ELTIFs on a case-by-case basis, with a particular focus on understanding the ELTIF's redemption policy and liquidity management tools, in line with Article 18(2)(b) of ELTIF 2.0. Another area of CBI focus has been how the ELTIF plans to align with the final RTS once

[2] Request for a European Long-Term Investment Fund (ELTIF) – CSSF

effective and how this could impact investors where the liquidity terms are less favourable.

Further Information

If you would like to: (i) receive more information on the recent developments in relation to ELTIF 2.0 and the RTS; (ii) discuss any legal, practical and / or operational challenges with the RTS; or (iii) obtain guidance on how to best prepare your ELTIF documentation in light of the current status quo, please reach out to your usual Maples Group contact or any of the contacts below.

Ireland

Adam Donoghue
+353 1 619 2041
adam.donoghue@maples.com

Eimear O'Dwyer
+353 1 619 2065
eimear.o'dwyer@maples.com

Aaron Mulcahy
+353 1 619 2104
aaron.mulcahy@maples.com

John Gallagher
+353 1 619 2073
john.gallagher@maples.com

Aoife McDonagh
+353 1 619 2772
aoife.mcdonagh@maples.com

Kieran Fox
+353 1 512 3178
kieran.fox@maples.com

Christina McCarthy
+353 1 697 3224
christina.mccarthy@maples.com

Declan McHugh
+353 1 697 3215
declan.mchugh@maples.com

Luxembourg

Johan Terblanche
+352 28 55 12 44
johan.terblanche@maples.com

Michelle Barry
+352 28 55 12 47
michelle.barry@maples.com

Manfred Dietrich
+352 28 55 12 10
manfred.dietrich@maples.com

Jennifer Burr
+352 28 55 12 68
jennifer.burr@maples.com

Donnchadh McCarthy
+352 28 55 12 22
donnchadh.mccarthy@maples.com

Appendix

Annex I

Determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 as a function of the redemption frequency and the notice period of the ELTIF, including the extension of the notice period, if any ("Notice Period")

Option 1 – Baseline option

Notice Period / Redemption frequency	No Notice Period	2 weeks Notice Period	1 month Notice Period	3 months Notice Period	6 months Notice Period	9 months Notice Period	12 months Notice Period
12 months	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%
6 months	50,0%	52,2%	54,5%	66,7%	100,0%	100,0%	100,0%
3 months	25,0%	26,1%	27,3%	33,3%	50,0%	100,0%	100,0%
2 months	16,7%	17,4%	18,2%	22,2%	33,3%	66,7%	100,0%
1 month	8,3%	8,7%	9,1%	11,1%	16,7%	33,3%	100,0%
Bi-weekly	4,2%	4,3%	4,5%	5,6%	8,3%	16,7%	100,0%
Weekly	1,9%	2,0%	2,1%	2,6%	3,8%	7,7%	100,0%

Annex II

Determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 as a function of the redemption frequency and the minimum percentage of assets referred to in Article 9(1), point (b) of that Regulation

Redemption frequency	**Minimum percentage of assets referred to in Article 9(1), point (b)**	**Maximum percentage referred to in Article 18(2), first sub-paragraph, point (d)**
12 months, and less frequent	10%	100%
6 months	15%	67%
3 months	20%	50%
1 month or more frequent	25%	20%, applied on a monthly aggregate basis