ELTIFS, 18 MONTHS ON

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IN JUNE 2013, the European Commission published a proposal for the creation of a new type of regulated EU fund product – the EU Long-Term Investment Fund (Eltif) – that will enable investors to invest in companies and projects that need long-term capital financing of tangible assets, such as energy, transport, industrial and climate change technologies, and intangible assets such as research and development.

Eltifs will provide a financing route alternative to raising money on the stock market or bank lending. They will be subject to uniform rules on authorisation, investment policies and operating conditions – and Eltif managers will have a marketing passport allowing them to sell Eltifs freely throughout the EU.

In November 2014, the European Parliament announced that it had reached a political agreement on the Eltif regulation with the European Council. On December 8, the council published the final text, which was formally approved by its permanent representatives committee two days later, paving the way for it to be adopted by the parliament in early 2015.

During the political process, there was some disagreement about the proposed minimum investment of €10,000 for retail investors. The UK and Estonia argued that a minimum subscription is a poor method of determining the appropriateness of a product for an investor and favoured an advised sales process.

In contrast, Austria, Belgium, Portugal and France announced that the proposal did not provide adequately safe rules for retail distribution and that their preference was for a minimum investment of €100,000 for retail investors.

The final text of the Eltif regulation differs materially from the original version. For example, the original prohibition on investing in listed undertakings has been discarded to promote financing of the real economy. Accordingly, shares issued by small and medium-sized enterprises and listed on regulated markets will qualify as eligible.

Also, an Eltif may invest in other Eltifs provided those funds have not themselves invested more than 10% of their capital in Eltifs, it does not invest more than 10% of its capital in any single Eltif and the aggregate value of other Eltifs in its portfolio does not exceed 20% of its capital. In short, an Eltif fund of funds is not envisaged.

Another example is that the potential for an Eltif to invest long-term in third-country opportunities is made explicit.

There are a number of requirements on the retail front, too. For instance:

• The manager or distributor should make a suitability determination in respect of each prospective retail investor and provide “appropriate investment advice”;
• Where the lifecycle of an Eltif exceeds 10 years, the manager or distributor must give a written warning;
• The depositary of the Eltif must comply with the Ucits V provisions on eligible depositaries, the no discharge of liability rule and the reuse of assets;
• For retail investors with a portfolio of €500,000 or less, the manager or distributor – having performed a suitability test and given “appropriate advice” – should ensure that the investor does not invest more than 10%. of their portfolio in Eltifs, with a minimum investment in Eltifs set at €10,000;
• On request from a retail investor, the manager must provide information regarding the quantitative limits that apply in the risk management of the Eltif; and
• Complaints procedures must be established.

The broader amendments also extend to outlawing shadow banking activity by prohibiting Eltif managers from using the cash they can borrow to raise further capital for the Eltif for granting loans to any qualifying portfolio undertakings in which that Eltif is invested.

Moreover, Eltifs marketed to professional investors only will not be required to appoint a facilities agent in each member state where they are marketed. fe