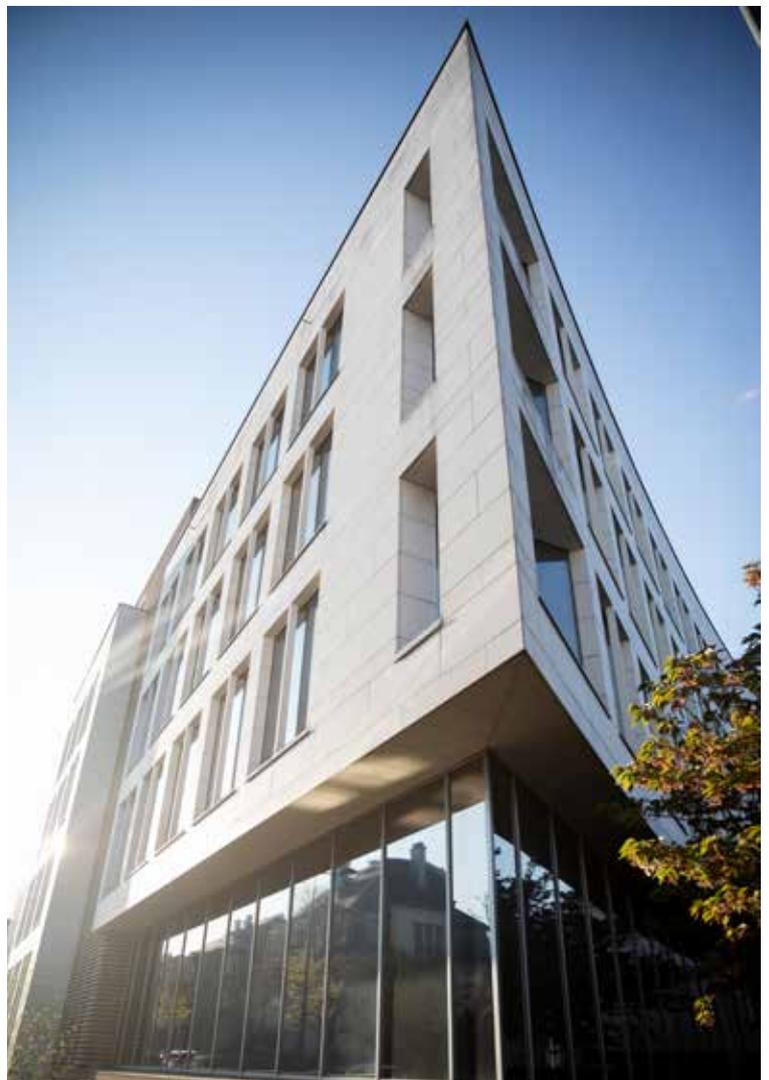


European Long-Term Investment Funds (ELTIFs) in a Nutshell

What you should know about ELTIF 2





European Long-Term Investment Funds (ELTIFs) in a Nutshell

1. ELTIF: DISTRIBUTING ALTERNATIVE STRATEGIES TO NON-PROFESSIONAL INVESTORS

Regulation (EU) 2015/760 on European long-term investment funds (ELTIF) will be amended by the revised ELTIF Regulation which shall apply from 10 January 2024.

The Luxembourg industry (and Elvinger Hoss Prussen in particular) have played an instrumental role historically in structuring investment products accessible to retail investors. More recently, we have been structuring investment funds, whether open-ended or closed-ended, that provide alternative strategies to non-professional investors.

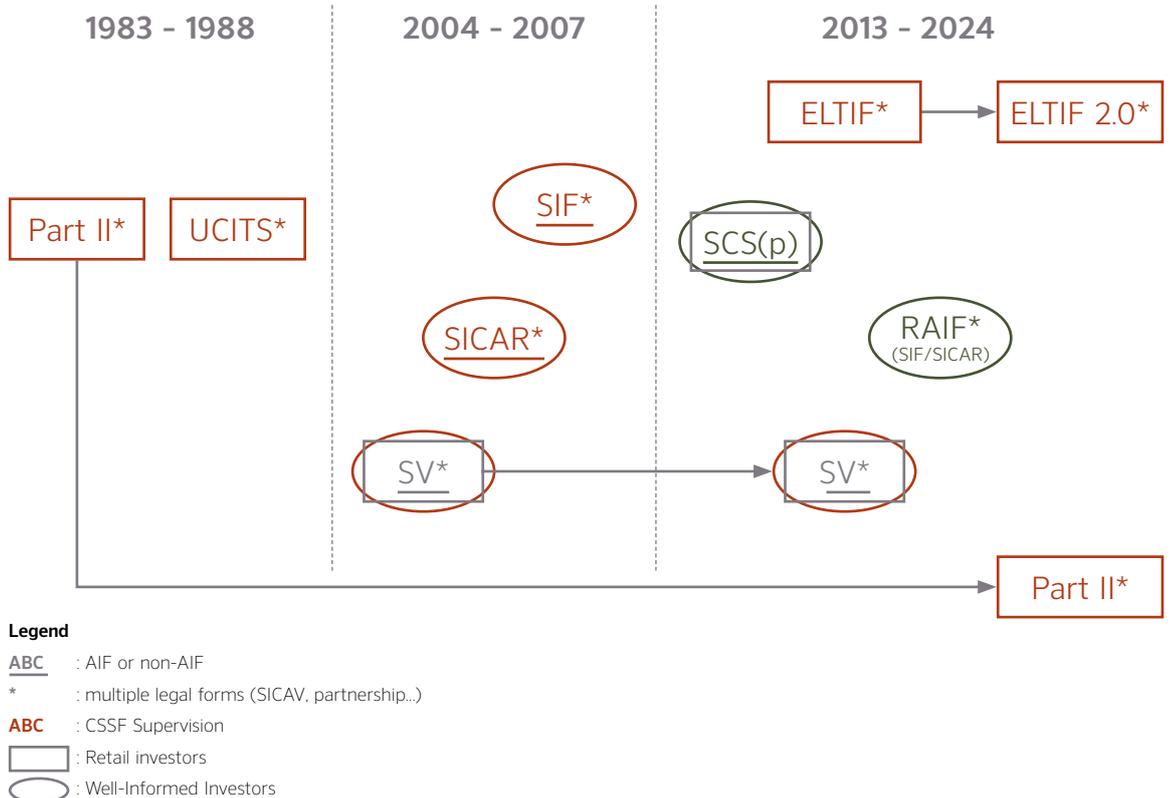
These 'democratized' vehicles have been structured mainly as ELTIFs or Luxembourg undertakings for

collective investment setup under part II of the Law of 2010 or the combination of ELTIFs and Part II structures. The Part II fund is a Luxembourg domestic AIF that may accept all types of investors, including retail.

The ELTIF regime enables alternative investment fund managers to market their AIFs in the EEA with a passport to retail investors. Part II funds have been well-known to investors beyond the EEA for several decades.

An ELTIF may be set-up as a Part II fund (or a compartment thereof) to release the full potential of its retail marketing passport.

2. OVERVIEW OF LUXEMBOURG INVESTMENT VEHICLES



3. ELTIF KEY FEATURES

- **Alternative investment fund (AIF)** – subject to AIFMD
- **Managed by an authorised AIFM** – no sub-threshold AIFM
- **Authorised and supervised by the financial regulator (CSSF)** – for compliance with ELTIF Regulation aspects
- **Authorisation at the level of the sub-fund** - possible to add ELTIF sub-funds to an existing structure
- **EU marketing passport for professional and retail investors** – unique advantage for AIFs
- **Objective to facilitate the raising and channeling of capital towards long-term investments in the real economy**

4. EU MARKETING PASSPORT

- The ELTIF Regulation is **directly applicable** in all EU countries.
- **Member states are not allowed to add requirements** in the field covered by the ELTIF Regulation (art. 1 paragraph 3)
- **Notification procedure as per AIFMD for both professional and retail investors**

5. ELIGIBLE INVESTORS

ELTIF	ELTIF - UCI Part II	ELTIF - RAIF, SIF or SICAR
<ul style="list-style-type: none"> • No restrictions <ul style="list-style-type: none"> • Professional investors • Retail investors 	<ul style="list-style-type: none"> • No restrictions 	<ul style="list-style-type: none"> • Only well-informed investors <ul style="list-style-type: none"> • Institutional investors • Professional investors • Any other investors who: <ul style="list-style-type: none"> • confirm in writing adhesion to the status of well-informed investor, AND • invests a minimum of EUR 100,000 (or has been the subject of an assessment by a credit institution, an investment firm, a management company or an authorised AIFM certifying his expertise, his experience and his knowledge in adequately appraising the contemplated investment)

6. DISTRIBUTION

ELTIF	ELTIF - UCI Part II	ELTIF - RAIF, SIF or SICAR
<ul style="list-style-type: none"> • EU marketing passport for professional and retail investors 	<ul style="list-style-type: none"> • EU marketing passport for professional and retail investors 	<ul style="list-style-type: none"> • EU marketing passport for professional and retail investors (but retail investors must qualify as well-informed investors)

Delegating to / appointing distributor(s) possible

7. MARKETING TO RETAIL INVESTORS – ADDITIONAL REQUIREMENTS

Suitability test

- **Obtaining information about retail investor (MIFID II):**
 - their knowledge and experience in the investment field
 - their financial situation
 - their investment objective
- **Providing statement** on suitability (MIFID II)
- **Express consent** of investor possible in case of negative statement
- **No MIFID II license required** for AIFM marketing directly

Depository – additional requirements (application of UCITS depository regime):

- Entity authorised to act as depository for UCITS (e.g. credit institution)
- No discharge of liability in the event of loss of financial instruments held by a 3rd party
- Liability of depository cannot be excluded or limited
- Assets cannot be reused by depository

PRIIPs Regulation

- PRIIPS KIDs

AIFMD

- Facilities: arrangement in host country(ies) to inform investors, handle orders, liaise with regulator... (no physical presence required)

8. ELTIF CONDITIONS FOR REDEMPTIONS UPON REQUEST

- **ELTIFs are by default closed-ended vehicles**
- **Redemptions are possible if provided for in ELTIF documentation**
- **Timeframe : Not during ramp-up OR not during minimum holding period***
 - except for feeder ELTIFs
- Liquidity management : Redemption policy containing procedures and conditions for redemptions*
- Max % of assets : Limited to portion of UCITS eligible assets*
- Redemptions on pro rata basis if requests exceed maximum % (possibility to foresee gating provisions)

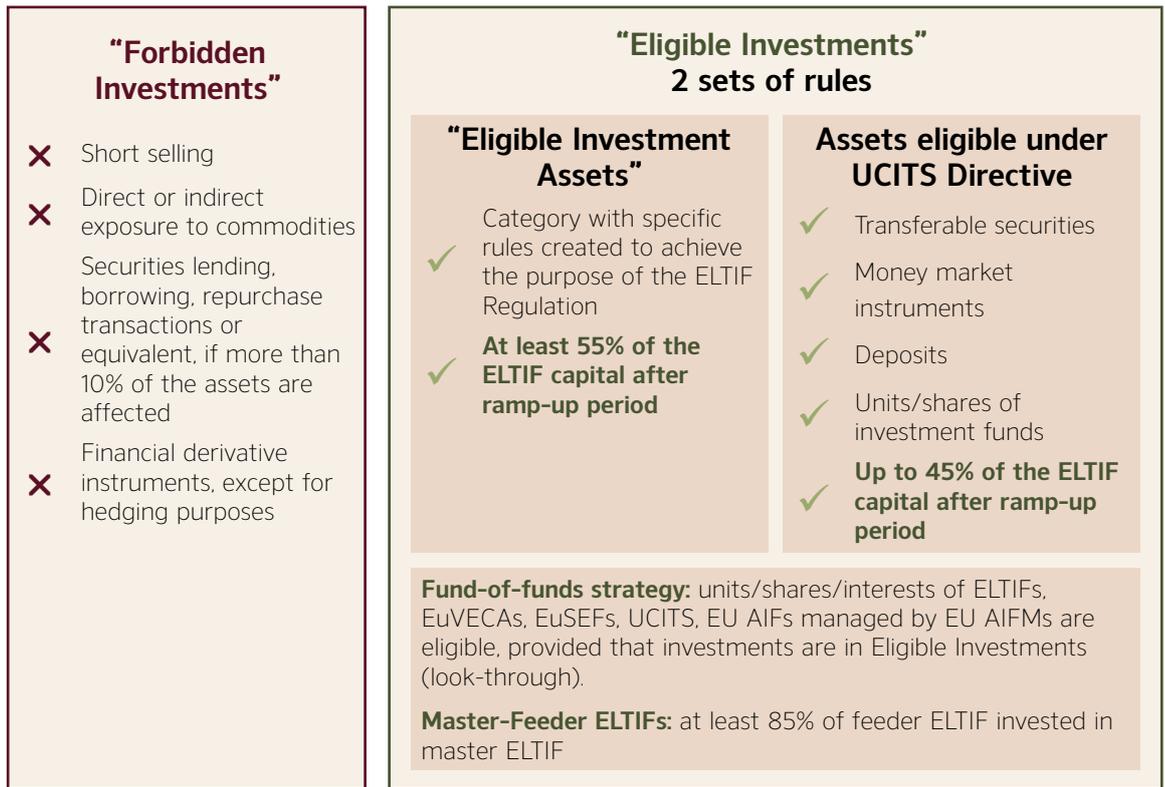
***To be specified in RTS**

9. ELTIF SECONDARY MARKET

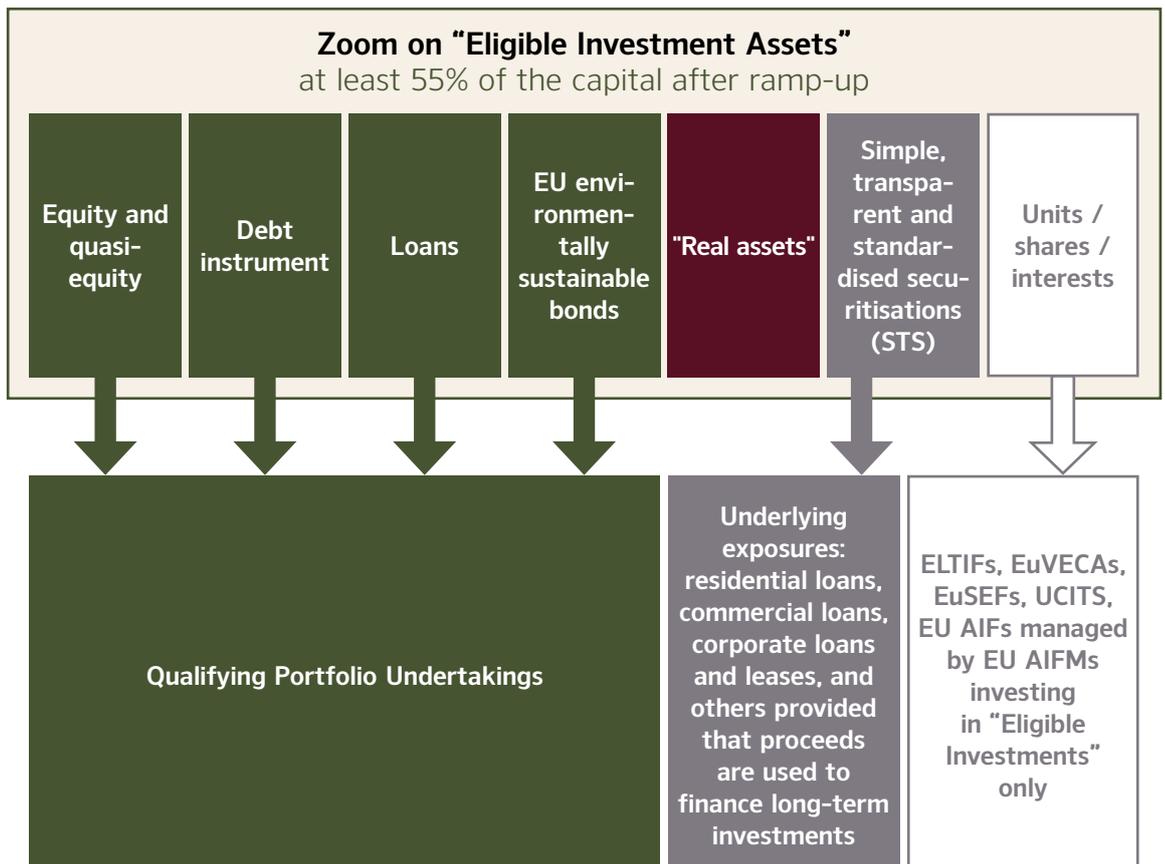
- **Listing of ELTIF possible**
- **Allowing free transfer of shares/units/interests is mandatory**
 - subject to complying with regulatory requirements and conditions set out in the prospectus
- **Possibility to provide for full or partial matching of transfer requests** between existing and potential investors*
 - subject to conditions set out in a detailed policy (role of AIFM, timing, price, ratio, costs and fees)

*** To be specified in RTS**

10.1. ELTIF ELIGIBLE ASSETS



10.2. ELIGIBLE INVESTMENT ASSETS



10.3. QUALIFYING PORTFOLIO UNDERTAKING

Zoom on Qualifying Portfolio Undertaking ("QPU")

Any undertaking that is, **at the time of the initial investment:**

- ✗ Not a financial holding company
- ✗ Not a mixed-activity holding company
- ✗ Not a financial undertaking unless authorised or registered more recently than 5 years before the date of investment
- ✗ Not listed with market capitalisation of more than EUR 1.5 B
- ✗ Not on EU list of high-risk third country with deficiencies in AML/CTF regimes
- ✗ Not on EU list of non-cooperative jurisdictions for tax purposes

Not applicable to a QPU financing QPU(s) or real asset(s)

10.4. REAL ASSETS

Zoom on "real assets"

"**real asset**" means an asset that has an intrinsic value due to its substance and properties.

EXAMPLES:

Comprises:

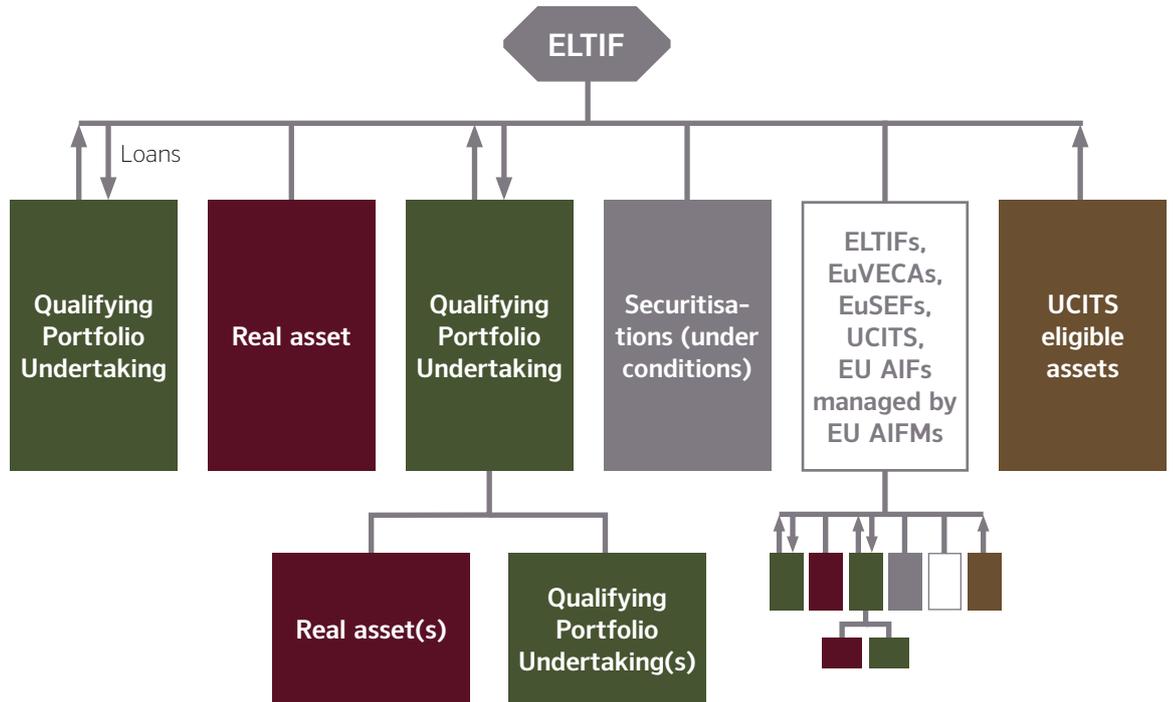
- ✓ immovable property, such as communication, environment, energy or transport infrastructure, social infrastructure, including retirement homes or hospitals, as well as infrastructure for education, health and welfare support or industrial facilities, installations, and other assets, including intellectual property, vessels, equipment, machinery, aircraft or rolling stock
- ✓ Investments in commercial property, in facilities or installations for education, counselling, research, development, including infrastructure and other assets that give rise to economic or social benefit, sports, or in housing, including in senior residents or social housing
- ✓ investments in water rights, forest rights, building rights and mineral rights

Does not comprise:

- ✗ works of art, manuscripts, wine stocks, jewellery or other assets, which do not in themselves represent long-term investments in the real economy

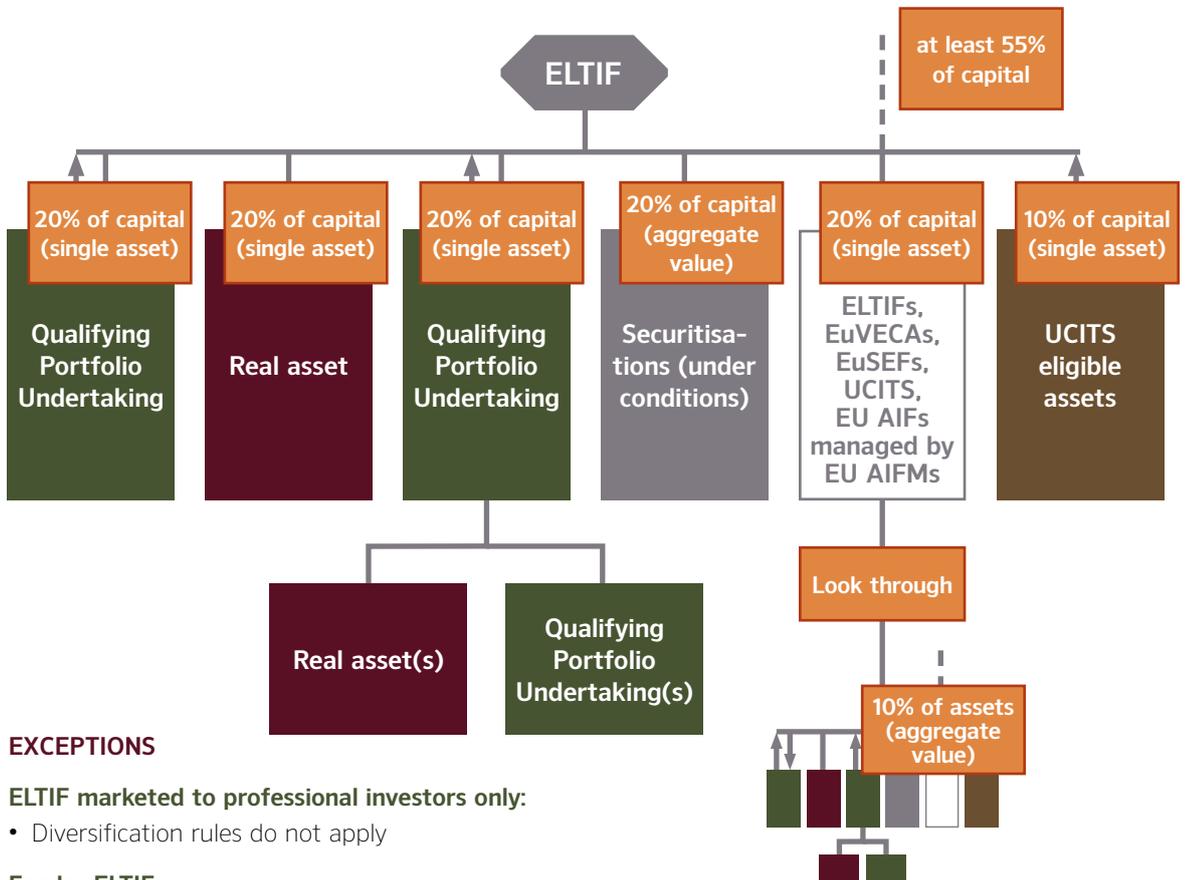
10.5. ELTIF ELIGIBLE ASSETS – SUMMARY

- Equity
- Quasi-equity
- Debt instruments
- EU environmentally sustainable bonds



11. ELTIF INVESTMENT RESTRICTIONS

- Equity
- Quasi-equity
- Debt instruments
- EU environmentally sustainable bonds



EXCEPTIONS

ELTIF marketed to professional investors only:

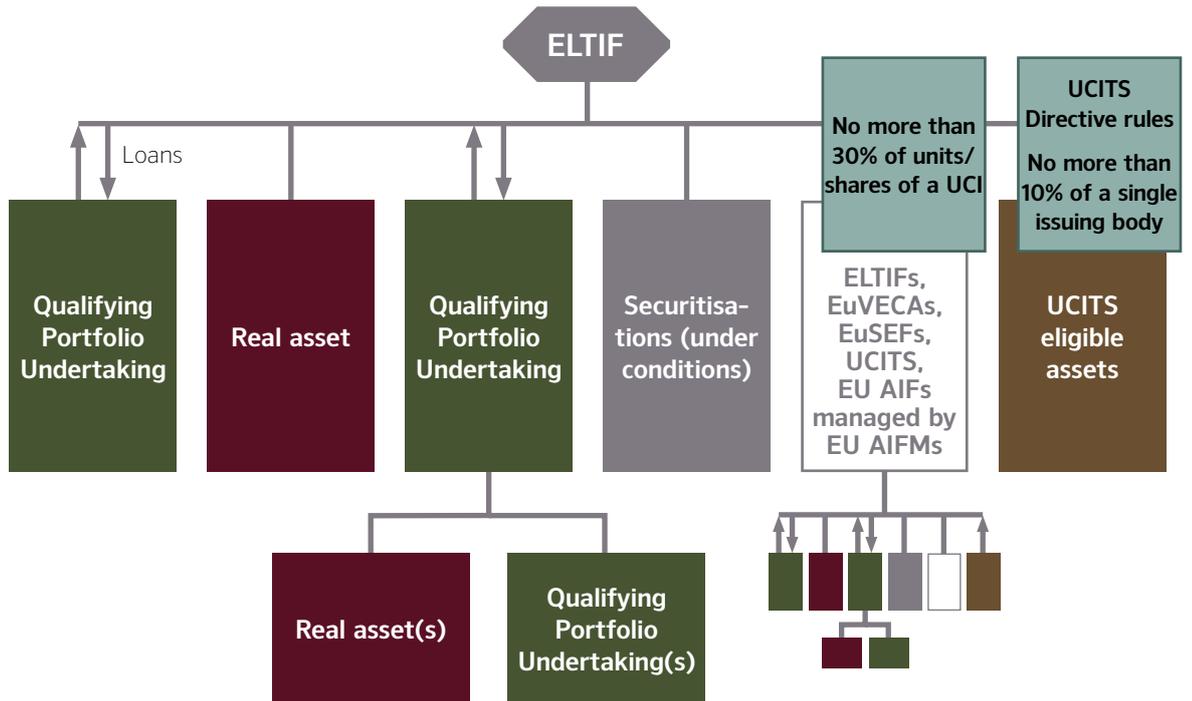
- Diversification rules do not apply

Feeder ELTIF:

- 85% of capital invested in master ELTIF

12. ELTIF CONCENTRATION LIMITS

- Equity
- Quasi-equity
- Debt instruments
- EU environmentally sustainable bonds



13. ELTIF BORROWING RESTRICTIONS

Conditions applicable to borrowing arrangements that are **not** covered by investors' capital commitments:

- ✓ Intention to borrow, borrowing limit and starting date (no later than 3 years after start of marketing) must be indicated in the prospectus
- ✓ No more than 50% of the NAV if ELTIF marketed to retail investors
- ✓ No more than 100% of the NAV if ELTIF marketed to professionals only
- ✓ Those limits of 50%/100% may be suspended for max. 12 months when ELTIF raises or reduces its capital
- ✓ If contracted in currency different than assets to be acquired, exposure must be appropriately hedged
- ✓ Maturity does not exceed the life of the ELTIF

14. TAXATION

- Taxation of an ELTIF depends on its legal form and applicable product law
- If Part II UCI, SIF or RAIF: exemption of annual subscription tax for ELTIFs

15. TYPICAL STRUCTURING OF LUXEMBOURG ELTIFS (IN A NUTSHELL)

	RAIF	SIF	UCI Part II	Partnership (not regulated or subject to product law)
Additional investor eligibility requirements	Yes, well-informed investors only	Yes, well-informed investors only	NO	NO
Contractual form possible (common fund)	YES	YES	YES	N/A, but partnership form is also very flexible
Umbrella possible (compartments)	YES	YES	YES	NO
Authorisation and supervision (on top of ELTIF process)	NO	YES	YES	NO

16. TIMELINE OF THE NEW ELTIF REGIME



- Released by ESMA on 23 May 2023
- Determining life of ELTIF
- Redemption policy
- Conditions for matching transfer requests



- ELTIF authorization under ELTIF 2
- ELTIF authorized before can choose to opt into the new regime by a notification to the CSSF
- ELTIF under old regime (raising additional capital) must comply with ELTIF 2 by 11 January 2029
- ELTIF under old regime that do not raise additional capital are deemed to comply with ELTIF 2



OUR TEAM

For further information, please liaise with any of the partners listed below:



JÉRÔME WIGNY
Partner
jeromewigny@elvingerhoss.lu
T. +352 446644-5233



OLIVIA MOESSNER
Partner
oliviamoessner@elvingerhoss.lu
T. +352 446644-5212



XAVIER LE SOURNE
Partner
xavierlesourne@elvingerhoss.lu
T. +352 446644-5270



YVES ELVINGER
Partner
yveselvinger@elvingerhoss.lu
T. +352 446644-5271



JOACHIM COUR
Partner
joachimcour@elvingerhoss.lu
T. +352 446644-5474



BENJAMIN ROSSIGNON
Partner
benjaminrossignon@elvingerhoss.lu
T. +352 446644-5231

Contact us to discuss how we can support your business with Luxembourg legal matters.

LUXEMBOURG | HONG KONG | PARIS

Elvinger Hoss Prussen
www.elvingerhoss.lu

NEW YORK

Elvinger SARL PLLC
www.elvinger.us

