ESMA_QA_2468

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Indirect investment

Question
a) Does Recital (12) of Regulation (EU) 2023/606, which refers to the investments made “through the participation of intermediary entities” correspond to Article 10(1)(a)(iii) of the ELTIF Regulation pertaining to the eligible investment categories of equity or quasi-equity instruments that are issued by an undertaking in which a qualifying portfolio undertaking holds a capital participation?

b) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, how should ELTIF composition and risk-spreading requirements apply?

c) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, where an ELTIF uses intermediary entities in executing its investment strategy, do such entities automatically qualify as AIFs?

d) Are intermediary entities, as referred to in Recital (12) of the ELTIF Regulation, required to meet the conditions laid down in Article 11 (Qualifying portfolio undertaking - “QPU”) of the ELTIF Regulation to qualify as “qualifying portfolio undertakings”?

e) Can an eligible asset qualify as both an eligible investment asset within the meaning of Article 9(1)(a) and as an asset referred to in Article 50(1) of Directive 2009/65/EC within the meaning of Article 9(1)(b) of the ELTIF Regulation?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question (a) Does Recital (12) of Regulation (EU) 2023/606, which refers to the investments made “through the participation of intermediary entities” correspond to Article 3 10(1)(a)(iii) of the ELTIF Regulation pertaining to the eligible investment categories of equity or quasi-equity instruments that are issued by an undertaking in which a qualifying portfolio undertaking holds a capital participation?

No, Recital (12) does not correspond to Article 10(1)(a)(iii). Notably, Article 10(1)(a)(iii) of the ELTIF Regulation refers to undertakings in which a qualifying portfolio undertaking holds a capital participation (i.e. an ELTIF eligible target investment), as opposed to Recital (12), which refers to intermediary undertakings (i.e. pass-through vehicles) that hold on behalf of

the ELTIF a capital participation in a qualifying portfolio undertaking.

Question (b) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, how should ELTIF composition and risk-spreading requirements apply?

Investment decisions by ELTIF managers may be executed through intermediary entities, such as SPVs, securitisation or aggregator vehicles, or holding companies, as acknowledged in Recital (12) of Regulation (EU) 2023/606 and portfolio composition and diversification shall be assessed by looking through such intermediary vehicles.
Intermediary vehicles are not themselves investments. These are vehicles used to hold, facilitate or channel the ELTIF's actual investments into ELTIF eligible investment assets. As a result, ELTIF asset composition and risk-spreading requirements should not, as such, be applied or imposed upon such intermediary vehicles.

Question (c) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, where an ELTIF uses intermediary entities in executing its investment strategy, do such entities automatically qualify as AIFs?

No, as per answers to Questions 1(a) and 1(b) above, intermediary vehicles (Recital 12) and target AIFs (Article 10(1)d)) are two different concepts. The qualification of an entity as an ELTIF-eligible alternative investment fund (AIF) as per Article 10(1)(d) is made on a case-by-case basis by assessing whether the criteria laid down in Article 4(1)(a) of Directive 2011/61/EU (AIFMD), as further clarified by ESMA Guidelines on key concepts of the AIFMD (ESMA/2013/611), are cumulatively met. Therefore, intermediary entities should not automatically be considered as AIFs and AIFs should not automatically be considered as aggregators.

Question (d). Are intermediary entities, as referred to in Recital (12) of the ELTIF Regulation, required to meet the conditions laid down in Article 11 (Qualifying portfolio undertaking - "QPU") of the ELTIF Regulation to qualify as "qualifying portfolio undertakings"?

No, as explained in answers to Questions (a) and (b), intermediary entities can be used, as recognised by Recital (12), for instance, for the purposes of structuring, optimisation, cost-effectiveness and other legitimate operational purposes. As such, intermediary entities are not themselves the target investment and shall not be confounded with QPUs. Conversely,

as set out in Article 11 of the ELTIF Regulation, the notion of QPU determines the parameters of the target or end-investment in an undertaking through a combination of cumulative conditions pertaining to, among others, the nature, size, location (establishment) and other conditions that determine the eligibility of the target allocation by an ELTIF.

Question (e) Can an eligible asset qualify as both an eligible investment asset within the meaning of Article 9(1)(a) and as an asset referred to in Article 50(1) of Directive 2009/65/EC within the meaning of Article 9(1)(b) of the ELTIF Regulation?

Yes, where an asset qualifies as both an eligible investment asset within the meaning of Article 9(1)(a) and Article 9(1)(b), such an asset could indeed be deemed as an eligible investment asset within the meaning of Article 9(1)(a) and, on an equal basis, as an eligible investment asset within the meaning of Article 9(1)(b). The ELTIF Regulation does not set out an obligation for an ELTIF or its manager to categorise an asset as either an Article 9(1)(a) or Article 9(1)(b) asset. Furthermore, when an asset qualifies as both an eligible investment asset within the meaning of Article 9(1)(a) and Article 9(1)(b), such an asset can be considered when determining the compliance with the ELTIF Regulation, e.g. with Article 13(1) and (2) and with Article 18(2)(d).

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