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Additional Information

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

Topic
ELTIF

Subject Matter
Nationality-related eligibility restrictions on ELTIFs stemming from national law

Question
a) Shall Article 1(3) of the ELTIF Regulation be understood as not allowing a national law, regulation or administrative practice, either generally for all ELTIFs or specifically for some ELTIFs/specific situations, to require the master ELTIF to be established in the same Member State as the feeder ELTIF?

b) and c) May an ELTIF be required by national law, regulation or administrative practice to be authorised or established in a particular Member State when packaged in insurance products or embedded in pension/savings plans in order to be eligible as target investment? May any other provision or option provided for in the ELTIF Regulation be restricted by a national law, regulation or administrative practice for ELTIFs packaged in insurance products or embedded in pension/savings plans?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question a) Shall Article 1(3) of the ELTIF Regulation be understood as not allowing a national law, regulation or administrative practice, either generally for all ELTIFs or specifically for some ELTIFs/specific situations, to require the master ELTIF to be established in the same Member State as the feeder ELTIF?

Yes, Article 1(3) of the ELTIF Regulation, which sets out that Member States shall not add any further requirements in the field covered by the ELTIF Regulation, should be understood as prohibiting Member States to introduce or impose upon ELTIFs requirements, whether stemming from national law, regulations, guidance or administrative practices, pertaining to the domiciliation or the establishment of the master ELTIF or the feeder ELTIF. The ELTIF Regulation contains the definitions of “master ELTIFs” and “feeder ELTIFs”.
In addition, Article 5(1)(e)(iv) of the ELTIF Regulation, read in conjunction with Recital (25) of Regulation 2023/606, specifically recognises the possibility for feeder ELTIFs to be established in a Member State other than the home Member State of the master ELTIF. The ELTIF Regulation does not contain any requirements for the master ELTIF to be established in the same Member State as the feeder ELTIF.

Questions b) and c) May an ELTIF be required by national law, regulation or administrative practice to be authorised or established in a particular Member State when packaged in insurance products or embedded in pension/savings plans in order to be eligible as target investment? May any other provision or option provided for in the ELTIF Regulation be restricted by a national law, regulation or administrative practice for ELTIFs packaged in insurance products or embedded in pension/savings plans?

No, Article 1(3) of the ELTIF Regulation, which sets out that Member States shall not add any further requirements in the field covered by the ELTIF Regulation, should be understood as prohibiting Member States to introduce or impose upon ELTIFs requirements, whether stemming from national law, regulations, guidance or administrative practices, including those pertaining to the nationality, domiciliation or location of the ELTIF or its manager.

Article 3(1) of the ELTIF Regulation sets out that an authorisation as an ELTIF "shall be valid for all Member States". This means that once an ELTIF is authorised, it enjoys cross-border recognition across the entire EU. Furthermore, Article 5 of the ELTIF Regulation (Application for authorisation as an ELTIF), read in conjunction with Article 2 (12), does not set out any nationality, domiciliation or location requirements with respect to the AIFM seeking the authorisation of an ELTIF and particularly those that have the intent or the effect of hindering the free cross-border marketing of ELTIFs into such Member State or unduly favour ELTIFs in or from their Member State as opposed to ELTIFs passported from another Member State.

In this connection, Article 4(1) and Article 6(1) of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), as amended (OJ L 026 2.2.2016, p. 19) sets out that insurance, reinsurance and ancillary insurance intermediaries shall be allowed to pursue their activity under the freedom to provide services or the freedom or establishment, in accordance with the relevant provisions of the Treaty on the Functioning of the European Union, among others those that enshrine the EU principles of non-discrimination, market access and cross-border service provision.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they

introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.