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THE EUROPEAN UNION**

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**NOTE**

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From:	Presidency
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Long-term Investment Funds <i>- Presidency compromise text</i>

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Delegations will find attached a Presidency compromise proposal on the above Commission proposal, to be discussed at the meeting of 28 May.

Additions and changes to the previous compromise are denoted by bold underlining and deletions by strikethroughs.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on European Long-term Investment Funds**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Long-term finance is a crucial enabling tool for putting the European economy on a path of sustainable, smart and inclusive growth and for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance to various infrastructure projects or un-listed companies of lasting duration that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the Union economies.

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<sup>1</sup> OJ C , , p. .

- (2) On the demand side, ELTIFs can provide a steady income stream for pension administrators, insurance companies and other entities that face regular and recurrent liabilities. While providing less liquidity than investments in transferable securities, ELTIFs can provide a steady income stream for individual investors that rely on the regular cash flow that an ELTIF can produce. ELTIFs can also offer good opportunities for capital appreciation over time for those investors not receiving a steady income stream.
- (3) Financing for projects, regarding transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), roll-out of new technologies and systems that reduce use of resources and energy or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect.
- (4) While individual investors may be interested in investing in an ELTIF, the illiquid nature of most investments in long-term projects precludes an ELTIF from offering regular redemptions to its investors. The commitment of the individual investor to an investment in such assets is by its nature made to the full term of the investment. ELTIFs should, consequently, be structured so as not to offer regular redemptions before the end of life of the ELTIF. A report, ~~three~~**five** years after the adoption of this Regulation, shall investigate whether this rule will have achieved the expected results in terms of ELTIF distribution or whether the introduction, in a limited number of cases, of the possibility, for some individual retail investors, to redeem their units or shares before the end of the ELTIF, may contribute to increase the distribution of ELTIF among the individual retail investors.
- (5) Long-term asset classes within the meaning of this Regulation should comprise non-listed undertakings that issue equity or debt instruments for which there is no readily identifiable buyer. This Regulation should also cover real assets that require significant up-front capital expenditure **and SMEs admitted to trading on a regulated market or on a multilateral trading facility in accordance with point (13) of Article 4(1) of Directive 2014/\*\*/EU [MiFID II].**

- (6) In the absence of a Regulation setting out rules on ELTIFs, diverging measures might be adopted at national level, which are likely to cause distortions of competition resulting from differences in investment protection measures. Diverging requirements on portfolio composition, diversification and eligible assets, in particular the investment in commodities, create obstacles to the cross-border marketing of funds that focus on non-listed undertakings and real assets because investors cannot easily compare the different investment propositions offered to them. Divergent national requirements also lead to different levels of investor protection. Furthermore, different national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of derivative financial instruments, rules applicable to short selling or securities financing transactions lead to discrepancies in the level of investor protection. In addition, different requirements on redemption and/or holding periods impede the cross-border selling of funds investing in non-listed assets. By increasing legal uncertainty, those divergences can undermine the confidence of investors when considering investments in such funds, and reduce the scope for investors to choose effectively between various long-term investment opportunities. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty, as interpreted by consistent case law of the Court of Justice of the European Union.
- (7) Uniform rules across the Union are necessary to ensure that ELTIFs display a coherent product profile across the Union. In order to ensure the smooth functioning of the internal market and a high level of investor protection, it is necessary to establish uniform rules regarding the operation of ELTIFs, in particular on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use in order to gain exposure to non-listed undertakings and real assets. Uniform rules on the portfolio of an ELTIF are also required to ensure that ELTIFs that aim to generate regular income maintain a diversified portfolio of investment assets suitable to maintain the regular cash flow.

- (9) The new rules on ELTIFs are closely linked to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010<sup>2</sup> since that Directive forms the legal framework governing the management and marketing of alternative investment funds (AIFs) in the Union. By definition ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.
- (10) Whereas Directive 2011/61/EU also foresees a staged third country regime governing non-EU AIFMs and non-EU AIFs, the new rules on ELTIFs have a more limited scope emphasising the European dimension of the new long term investment product. Hence, only an EU AIF as defined in Directive 2011/61/EU is eligible to become an authorised ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU.
- (11) The new rules applicable to ELTIFs should build on the existing regulatory framework established through Directive 2011/61/EU and the acts adopted for its implementation. Therefore, the product rules concerning ELTIFs should apply in addition to the rules laid down in the existing Union legislation. Particularly, the management and marketing rules laid down in Directive 2011/61/EU should apply to ELTIFs. Equally, the rules on the cross-border provision of services and freedom of establishment laid down in Directive 2011/61/EU should apply accordingly to the cross-border activities of ELTIFs. These should be supplemented by the specific marketing rules designed for the cross-border marketing of ELTIFs to both retail and professional investors across the Union.
- (12) Uniform rules should apply to all those EU AIFs that wish to market themselves as ELTIFs. EU AIFs that do not wish to market themselves as ELTIFs should not be bound by these rules, thereby also consenting not to benefit from the advantages that ensue. On the other hand, Undertakings for collective investment in transferable securities (UCITS) and non-EU AIFs would not be eligible for marketing as ELTIFs.

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<sup>2</sup> *OJ L 174, 1.7.2011, p. 1.*

- (13) In order to ensure the compliance of ELTIFs with the harmonised rules governing the activity of these funds, it is necessary to require that competent authorities authorise ELTIFs. The harmonised authorisation and supervision procedures for AIFMs under Directive 2011/61/EU should therefore be supplemented with a special authorisation procedure for ELTIFs. Procedures should be established to ensure that only EU AIFMs authorised in accordance with Directive 2011/61/EU and capable of managing **AIFs that follow similar investment strategies to those of** an ELTIF may manage ELTIFs. **Where the ELTIF is internally managed and no external AIFM is appointed, the ELTIF should be authorised under this Regulation and as AIFM under Directive 2011/61/EU.** All appropriate steps are taken to ensure that the ELTIF shall be able to comply with the harmonised rules governing the activity of these funds.
- (14) Given that EU AIFs may take different legal forms that do not necessarily endow them with legal personality, the provisions requiring ELTIFs to take action should be understood to refer to the manager of the ELTIF in cases where the ELTIF is constituted as an EU AIF that is not in a position to act by itself because it has no legal personality of its own.
- (15) In order to ensure that ELTIFs target long-term investments, rules on the portfolio of ELTIFs should require a clear identification of the categories of assets that should be eligible for investment by ELTIFs and of the conditions under which they should be eligible. An ELTIF should invest at least 70% of its capital in eligible investment assets. To ensure the integrity of ELTIFs it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by raising additional risks different to those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging ~~the duration and currency risk of the other assets~~ **risks inherent to the ELTIF's investments**. - Given the liquid nature of commodities and financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded. This rationale does not apply to investments in infrastructure or companies related to commodities or whose performance is linked indirectly to the performance of commodities, such as farms in the case of agricultural commodities or power plants in the case of energy commodities.

- (16) The definition of what constitutes a long-term investment is broad. Without necessarily requiring long-term holding periods for the ELTIF manager, eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns. As a result such assets do not suit investments with redemption rights.
- (17) An ELTIF should be allowed to invest in assets other than eligible investment assets, as may be necessary to efficiently manage its cash flow, but only so long as this is consistent with the ELTIF's long term investment strategy.
- (18) Eligible investment assets must be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings and loans provided to them. They should also include participation in other funds that are focused on assets such as investments in non-listed undertakings that issue equity or debt instruments for which there is not always a readily identifiable buyer. Direct holdings of real assets, unless they are securitised, should also form a class of eligible assets. **Those assets could indicatively include social infrastructure that yields a predictable return, such as energy, transport and communication infrastructure, housing, and education, health, welfare support or industrial facilities.**
- (19) Quasi-equity instruments must be understood to comprise a type of financing instrument, which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking, and where the repayment of the instrument in the event of default is not fully secured. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants.

- (20) To reflect existing business practices, an ELTIF should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. Also, for the purposes of ensuring the widest possible opportunities for fundraising, investments into other ~~ELTIFs~~**AIFs** should be permitted, **provided that these AIFs have a depositary.** To prevent dilution of the investments into qualifying portfolio undertakings, ELTIFs should only be permitted to invest in other ~~ELTIFs~~**AIFs**, provided that those ~~ELTIFs~~**AIFs** have not themselves invested more than 10 % of their capital in other ~~ELTIFs~~**AIFs**.
- (21) The use of financial undertakings can be necessary in order to pool and organise the contributions of different investors, including investments of a public nature, into infrastructure projects. ELTIFs should therefore be permitted to invest in eligible investment assets by means of financial undertakings, so long as these undertakings are dedicated to financing long-term projects.
- (22) In order to provide investors with the assurance that ELTIFs contribute directly to the development of long-term investments, ELTIFs should be limited to investments in undertakings that have not been listed. Therefore qualifying portfolio undertakings should not be listed on regulated markets. **Nevertheless, in an attempt to promote financing of the real economy, SMEs, as defined in Directive 2014/\*\*/EU [MiFID II], listed on regulated markets or on multilateral trading facilities, should also constitute a qualifying portfolio undertaking.** Qualifying portfolio undertakings include infrastructure projects, investment in unlisted companies seeking growth and investments in real estate or other real assets that could be suitable for long term investment purposes.
- (23) Due to the scale of infrastructure projects, these require large amounts of capital that have to remain invested for long periods of time. Such infrastructure projects include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks and waste management infrastructure such as recycling or collection systems.



- (24) Unlisted undertakings can face difficulties accessing capital markets and financing further growth and expansion. Private financing through equity stakes or loans are typical ways of raising financing. Because such instruments are by their nature long-term investments they require patient capital that ELTIFs can provide.
- (25) Investments in real assets require patient capital due to the absence of liquid secondary markets. Investment funds represent an essential source of financing for assets that require large capital expenditure. For these assets, capital pooling is often necessary to achieve the desired level of funding. Such investments require long periods of time due to the generally long economic cycle attached to these assets. It generally takes several years to amortize the investment in large real assets. In order to facilitate the development of such large assets, ELTIFs should be able to invest directly in real assets with a value of more than €10 million . In practice this would include assets such as infrastructure, real estate, ~~ships~~vessels, equipment, machinery, aircraft or rolling stock. For these reasons it is necessary to treat direct holdings in real assets and investments in qualifying portfolio undertakings in like manner.
- (26) Where the manager holds a stake in a portfolio undertaking, there is a risk that the manager puts its interests ahead of the interests of investors in the fund. To avoid such conflict of interests, the ELTIF should only invest in assets that are unrelated to the manager.
- (27) In order to allow managers of ELTIFs a certain degree of flexibility in the investment of their funds, trading in assets other than long-term investments should be permitted up to a maximum threshold of 30 % of their capital.
- (28) In order to limit risk-taking by ELTIFs it is essential to reduce counterparty risk by subjecting the portfolio of ELTIFs to clear diversification requirements. All over-the counter (OTC) derivatives should be subject to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>3</sup>.

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<sup>3</sup> OJ L 201. 27.7.2012. p.1

- (29) In order to prevent the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body, it is necessary to avoid excessive concentration by an ELTIF in the same investment.
- (30) In order to allow ELTIF managers to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to 30% of the capital of the fund. This should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should only borrow in the currency the manager expects to acquire the asset in. **However, in order to prevent shadow banking activities, the cash borrowed from the ELTIF should not be used for granting loans to qualifying portfolio undertakings.**
- (31) Due to the long-term and illiquid nature of the investments of an ELTIF, the managers should have sufficient time to apply the investment limits. The time required to implement these limits should take account of the peculiarities and characteristics of the investments but should not exceed five years.
- (32) Notwithstanding the fact that ELTIFs do not offer redemption rights before the end of life of the ELTIF, nothing should prevent an ELTIF from seeking admission of these shares or units to a regulated market as defined in Article ~~4(14)~~**4(1)(21)** of Directive ~~2004/39/EC~~**2014/\*\*/EU** **[MiFID II]** of the European Parliament and of the Council of ~~24 April 2004~~ **\*\*\* 2014** on markets in financial instruments,<sup>4</sup> to a multilateral trading facility as defined in Article ~~4(15)~~**4(1)(22)** of Directive ~~2004/39/EC~~**2014/\*\*/EU**, or to an organised trading facility as defined in point (...) of Regulation (...), thus providing investors with an opportunity to sell their units or shares before the end of life of the ELTIF. The rules or instruments of incorporation of an ELTIF should therefore not prevent units or shares from being admitted to or from being dealt in regulated markets, nor should they prevent investors from freely transferring their shares or units to third parties who wish to purchase those shares or units.

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<sup>4</sup> OJ L 145, 30.4.2004, p.1.

- (33) In order for investors to effectively redeem their units or shares at the end of the fund's life, the manager should start to sell the portfolio of assets of the ELTIF in good time to ensure the value is properly realised. In determining an orderly disinvestment schedule, the ELTIF manager should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested. Due to the impracticality of maintaining the investment limits during this liquidation period, they should cease to apply when the liquidation period starts.
- (34) The assets in which an ELTIF is invested may obtain a listing on a regulated market during the life of the fund. Where this happens, the asset would no longer comply with the non-listing requirement of this Regulation. In order to allow managers to disinvest from such an asset in an orderly manner, this asset could continue to count towards the 70% limit of eligible investment assets for up to three years.
- (35) Given the specific characteristics of ELTIFs, as well as the targeted retail and professional investors it is important that solid transparency requirements be put in place that are capable of allowing prospective investors to make an informed judgement and be fully aware of the risks implied. In addition to the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should necessarily include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council<sup>5</sup> and Commission Regulation (EC) No 809/2004.<sup>6</sup> For the marketing of an ELTIF to retail investors it should be mandatory to publish a key information document (KID) in accordance with Regulation No [...] of [...] of the European Parliament and the Council. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF.

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<sup>5</sup> OJ L 345, 31.12.2003, p.64.

<sup>6</sup> OJ L 149, 30.4.2004, p.1.

(36) As ELTIFs target both professional and retail investors across the Union, it is necessary that certain requirements be added to the marketing requirements laid down in Directive 2011/61/EU in order to ensure an appropriate degree of investor protection. Thus, facilities should be made available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide. Moreover, in order to ensure that retail investors are not disadvantaged with respect to experienced professional investors certain safeguards have to be put in place when ELTIFs are marketed to retail investors.

**(36a) The manager of the ELTIF should obtain all necessary information regarding the retail investor's knowledge and experience, financial situation, risk appetite, investment objectives and time horizon in order to assess whether the ELTIF is suitable for marketing to retail investors, taking into account, inter alia, the lifecycle and the intended investment strategy of the ELTIF.**

**(36b) When marketed to retail investors, the depositary of the ELTIF should comply with the provisions of Directive 2014/\*\*/EU [UCITS V], as regards the eligible entities that are permitted to act as depositaries, the no discharge of liability rule and the reuse of assets.**

**(36c) In the attempt to strengthen protection of retail investors, the Regulation provides additionally for a minimum investment threshold, as well as for the investors' declaration of risk awareness.**

(37) The competent authority of the ELTIF should verify whether an ELTIF is able to comply with this Regulation on an on-going basis. As the competent authorities are already provided with extensive powers under Directive 2011/61/EU, it is necessary that such powers be extended in order to be exercised by reference to the new common rules on ELTIFs.

- (38) ESMA should be able to exercise all the powers conferred under Directive 2011/61/EU with respect to this Regulation.
- (39) The European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (ESMA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC,<sup>7</sup> should play a central role in the application of the rules concerning ELTIFs by ensuring consistent application of Union rules by national competent authorities. As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission, in respect of the circumstances in which the life of an ELTIF will be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, the features of the schedule for the orderly disposal of ELTIF assets, the definitions, calculation methodologies and presentation of cost disclosures, and the characteristics of the facilities to be set up by ELTIFs in each Member State where they intend to market units or shares.

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<sup>7</sup> OJ L 331, 15.12.2010, p.84.

- (40) The new uniform rules on ELTIFs should comply with the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>8</sup> and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data<sup>9</sup>.
- (41) Since the objectives of this Regulation, namely to ensure uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, while taking full account of the need to balance safety and reliability of ELTIFs with the efficient operation of the market for long-term financing and the cost for its various stakeholders, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (42) The new uniform rules on ELTIFs respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data. The new uniform rules on ELTIFs should be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

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<sup>8</sup> OJ L 281, 23.11.1995, p. 31–50

<sup>9</sup> OJ L 8, 12.1.2001, p. 1–22

# Chapter I

## General provisions

### *Article 1*

#### *Subject matter*

1. This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (AIFs) or compartments of **EU** AIFs that are marketed in the Union as European long-term investment funds (ELTIFs).
2. Member States shall not add any additional requirements in the field covered by this Regulation.

### *Article 2*

#### *Definitions*

For the purposes of this Regulation the following definitions apply:

- (1) 'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses which are directly or indirectly borne by investors;
- (1a) (...)
- (1b) 'professional investor' means an investor who is a professional client, in accordance with Section I of Annex II to Directive .../.../EU [new MiFID], or who may, on request, be treated as a professional client in accordance with Section II of Annex II of such Directive;

- (2) 'equity' means ownership interest in an undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;
- (3) 'quasi-equity' means any type of financing instrument where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;
- (3a) "Real asset" means a physical or tangible assets that ~~have~~has value, due to theirits substance and properties, and provides ~~predictable~~ returns. **Such real assets could indicatively include social infrastucture and/or other assets that provide social benefit, such as education, counselling, research and development.**
- (4) 'financial undertaking' means any of the following:
- (a) a credit institution as defined in point (1) of Article 4 (1) of Regulation EU No 575/2013 of the European Parliament and of the Council<sup>10</sup>;
  - (b) an investment firm as defined in Article 4 (1) (1) of Directive EC ..... [new MiFID];
  - (c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council<sup>11</sup>;
  - (d) a financial holding company as defined in point (20) of Article 4 of of Regulation EU No 575/2013;
  - (e) a mixed-activity holding company as defined in point (22) of Article 4 of Directive 2006/48/EC;
  - (f) a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC;
  - (g) an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU.

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<sup>10</sup> OJ L 177, 30.6.2006, p.1.

<sup>11</sup> OJ L 335, 17.12.2009, p.1.



(4a) (...)

(4aa) 'EU AIF' means EU AIF as defined in Article 4(1)(k) of Directive 2011/61/EU;

(4b) 'EU AIFM' means EU AIFM as defined in Article 4(1)(l) of Directive 2011/61/EU;

(5) 'competent authority of the ELTIF' means the competent authority of the home Member State of the EU AIF as defined in Article 4(1)(p) of Directive 2011/61/EU;

(6) 'ELTIF home Member State' means the Member State where the ELTIF is authorised.

(6a) 'competent authorities of the ELTIF manager' means the competent authority of the home Member State of the EU AIFM as defined in Article 4(1)(q) of Directive 2011/61/EU

(6b) 'securities lending' and 'securities borrowing' mean any transaction in which a counterparty transfers securities subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, that transaction being considered as securities lending for the counterparty transferring the securities and being considered as securities borrowing for the counterparty to which they are transferred;

(6c) 'repurchase transaction' means a transaction as defined in point (83) of Article 4 of Regulation (EU) No 575/2013;

(6d) 'ELTIF manager' means the authorised EU AIFM approved to manage an ELTIF or the internally managed ELTIF where the legal form of the ELTIF permits an internal management and where no external AIFM has been appointed.

### *Article 3*

#### *Authorisation and use of designation*

1. Only EU AIFs shall be eligible for authorisation as an ELTIF.
2. An ELTIF may be marketed in the Union only if it has been authorised in accordance with this Regulation and the relevant AIF is consequently treated as an ELTIF.

The authorisation as an ELTIF shall be valid for all Member States.

3. A collective investment undertaking shall only use the designation 'ELTIF' or 'European long-term investment fund' in relation to itself or the units or shares it issues where it has been authorised in accordance with this Regulation.

4. The competent authorities of the ELTIF shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn pursuant to this Regulation.

ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation, its manager and the competent authority of the ELTIF. The register shall be made available in electronic format.

#### *Article 4*

##### *Application for authorisation as ELTIF*

1. An EU AIF shall apply for authorisation as ELTIF to its competent authority.

The application for authorisation as an ELTIF shall include the following:

- (a) the fund rules or instruments of incorporation;
- (b) information on the identity of the manager;
- (c) information on the identity of the depositary;
- (d) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;
- (e) (...)

**The competent authority may request clarification and information as regards the aforementioned documentation and information provided.**

2. An EU alternative investment fund manager (AIFM) authorised under Directive 2011/61/EU shall apply to the competent authority of the ELTIF for approval to manage an ELTIF that has submitted an application for authorisation in accordance with paragraph 1.

The application for managing the ELTIF shall include the following:

- (a) the written agreement with the depositary;
- (b) information on delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF;
- (c) information about the investment strategies, the risk profile and other characteristics of AIFs that the AIFM is authorised to manage.

The competent authority of the ELTIF may ask the competent authority of the EU AIFM for clarification and information as regards the documentation referred to in the second subparagraph or an attestation as to whether ELTIFs fall within the scope of the EU AIFM's authorisation to manage AIFs. The competent authority of the EU AIFM shall provide an answer within 10 working days from the date it received the request submitted by the competent authority of the ELTIF.

3. The ELTIF and the EU AIFM shall be informed within two months from the date of submission of a complete application whether authorisation of the ELTIF has been granted.
4. Any subsequent modifications of the documentation referred to in paragraphs 1 and 2 shall be immediately notified to the competent authority of the ELTIF.

5. By way of derogation from paragraphs 1 and 2, an EU AIF whose legal form permits an internal management and where the AIF's governing body chooses not to appoint an external AIFM, shall simultaneously apply for authorisation as ELTIF under this Regulation and as AIFM under Directive 2011/61/EU.

Without prejudice to Article 7 of Directive 2011/61/EU, the application for authorisation as an internally managed ELTIF shall include the following:

- (a) the fund rules or instruments of incorporation;
- (b) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;

By way of derogation from paragraph 3, the internally managed ELTIF shall be informed within three months from the date of submission of a complete application whether authorisation of the ELTIF has been granted.

*Article 5*  
*Conditions for granting the authorisation*

1. An applicant ELTIF shall be authorised only where its competent authority:
  - (a) is satisfied that the applicant ELTIF is able to meet all the requirements of this Regulation;
  - (b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules and the choice of the depositary.
- 1a. Where the legal form of the applicant ELTIF permits internal management and no external AIFM is appointed, the competent authority shall authorise the applicant ELTIF only where it is satisfied that the applicant ELTIF complies with both the requirements of this Regulation and of the Directive 2011/61/EU regarding the authorisation of an EU AIFM.
2. The competent authority of the ELTIF may refuse to approve the application of the EU AIFM to manage the ELTIF only where:
  - (a) the EU AIFM does not comply with this Regulation;
  - (b) the EU AIFM does not comply with Directive 2011/61/EU;
  - (c) the EU AIFM is not authorised by its competent authority to manage AIFs that follow similar investment strategies of the type covered in this Regulation;
  - (d) the EU AIFM has not provided the documentation referred to in Article 4(2).

Before such refusal, the competent authority of the ELTIF shall consult the competent authority of the EU AIFM.

3. The competent authority shall not grant authorisation as an ELTIF if the applicant ELTIF is legally prevented from marketing its units or shares in its home Member State. The competent authority shall communicate to the applicant ELTIF the reason for its refusal to grant authorisation.
4. Authorisation as an ELTIF shall not be subject to a requirement that the ELTIF be managed by an EU AIFM authorised in the ELTIF home Member State or that the EU AIFM pursue or delegate any activities in the ELTIF home Member State.

### *Article 6*

#### *Applicable rules and liability – Administrative penalties*

1. An ELTIF shall comply at all times with the provisions of this Regulation.
2. An ELTIF and its manager shall comply at all times with the requirements of Directive 2011/61/EU **and its implementing measures**.
3. The manager of the ELTIF shall be responsible for ensuring compliance with this Regulation and shall also be liable in accordance with the Directive 2011/61/EU for breaches of this Regulation. The manager shall be also liable for any loss or damage resulting from non-compliance with this Regulation
4. Member States shall lay down the rules on ~~administrative~~ penalties and other measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The ~~administrative~~ penalties and other measures provided for shall be effective, proportionate and dissuasive.
5. By \*\* 2016 the Member States shall notify the Commission and ESMA of the rules referred to in paragraph 4. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

## **Chapter II**

### **Obligations concerning the investment policies of ELTIFs**

#### **SECTION 1**

#### **GENERAL RULES AND ELIGIBLE ASSETS**

##### *Article 7*

##### *Investment compartments*

Where an ELTIF comprises more than one investment compartment, each compartment shall be regarded as a separate ELTIF for the purposes of this Chapter.

##### *Article 8*

##### *Eligible investments*

1. An ELTIF shall only invest in the following categories of assets and only under the conditions specified in this Regulation:
  - (a) eligible investment assets;
  - (b) assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council.<sup>12</sup>
2. An ELTIF shall not undertake any of the following activities:
  - (a) short-selling of assets;
  - (b) taking direct or indirect exposure to commodities, including via derivatives, certificates representing them, indices based on them or any other means or instrument that would give an exposure to them;

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<sup>12</sup> OJ L 302, 17.11.2009, p. 32.

- (c) entering into securities lending, securities borrowing, and repurchase transactions or any other agreement which has an equivalent economic effect and poses similar risks, if thereby more than 10% of the assets of the ELTIF are affected;
- (d) using financial derivative instruments, except where it solely serves the purpose of hedging risks inherent to other investments of the ELTIF.

2a. ESMA shall develop draft regulatory technical standards specifying the criteria for establishing when derivative contracts are solely serving the purpose of hedging the risks inherent to the investments referred to in paragraph 2 point d;

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards to the Commission by 3 months after entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

### *Article 9*

#### *Eligible investment assets*

An asset referred to in Article 8(1)(a) shall be eligible for investment by an ELTIF only where it falls into one of the following categories:

- (a) equity or quasi-equity instruments which have been:
  - (i) issued by a qualifying portfolio undertaking and acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;



- (ii) issued by a qualifying portfolio undertaking in exchange for an equity instrument previously acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
  - (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary, in exchange for an equity instrument acquired in accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
- (b) debt instruments issued by a qualifying portfolio undertaking with a maturity that does not exceed the life of the ELTIF;
- (c) loans granted to a qualifying portfolio undertaking, with a maturity that does not exceed the life of the ELTIF;
- (d) units or shares of one or several AIFs provided that, according to the fund rules or instruments of incorporation:
  - (i) each AIF is not allowed to invest in aggregate more than 10% of its capital in units or shares of other collective investment undertakings;
  - (ii) the investment strategy of each AIF requires that at least 70% of the AIF's capital is invested in the categories of assets specified in article 8(1)(a) and does not permit the activities specified in article 8(2); and
  - (iii) each AIF has a depositary;
- (e) direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets that require up-front capital expenditure of at least EUR 10 million or its equivalent in the currency, and at the time, in which the expenditure is incurred.

*Article 10*

*Qualifying portfolio undertaking*

1. A qualifying portfolio undertaking referred to in Article 9(4) shall be a portfolio undertaking other than a collective investment undertaking, that fulfils all of the following requirements:

(a) it is not a financial undertaking;

**(aa) it is an undertaking that develops or maintains, or that supports the development or maintenance of, real assets as defined in Article 2(3a).**

(b) it is not admitted to trading:

(i) on a regulated market as defined in Article (....) of Directive / /EC {MiFID II};

(ii) on a multilateral trading facility as defined in Article-(....) of Directive / /EC { MiFID II};

(iii) on organised trading facilities as defined in point [...]of Directive / /EC { MiFID II};

(c) it shall be established in a Member State, or in a third country provided that the third country:

(i) is not a high-risk and non-cooperative jurisdictions identified by the Financial Action Task Force (FATF);

(ii) has signed an agreement with the home Member State of the manager of the ELTIF and with every other Member State in which the units or shares of the ELTIF are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

2. By way of derogation from paragraph 1(a) of this Article, a qualifying portfolio undertaking may be a financial undertaking that, exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in Article 9.
3. By way of derogation from paragraph 1 **(aa) and** (b) of this Article, a qualifying portfolio undertaking may be a SME admitted to trading on a regulated market or on a multilateral trading facility in accordance with point (13) of Article 4(1) of the new MiFID.

### *Article 11*

#### *Conflict of interest*

An ELTIF shall not invest in an eligible investment asset in which the manager has or takes a direct or indirect interest, other than by investing units or shares of the AIFs it manages.

## SECTION 2

### PROVISIONS ON INVESTMENT POLICIES

#### *Article 12*

#### *Portfolio composition and diversification*

1. An ELTIF shall invest at least 70% of its capital in eligible investment assets.
2. An ELTIF shall invest no more than:
  - (a) 10% of its capital in instruments issued by or loans granted to any single qualifying portfolio undertaking;
  - (b) 10% of its capital directly or indirectly in a single real asset;
  - (c) 10% of its capital in units or shares of any single AIF;
  - (d) 10 % of its capital in assets referred to in Article 8(1)(b) where those assets have been issued by any single body.
3. The aggregate value of units or shares of AIFs in an ELTIF portfolio shall not exceed 20% of the value of its capital.
4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over the counter (OTC) derivative transactions or reverse repurchase agreements shall not exceed 5% of its capital.
5. By way of derogation from paragraph 2(a) and 2(b), the ELTIF may raise the 10% limit referred to therein to 20%, provided that the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets in which it invests more than 10% of its capital does not exceed 40% of the value of its capital.

- 5a. By way of derogation from paragraph 2(d), the ELTIF may raise the 10% limit referred to therein to 25% where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.
6. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Seventh Council Directive 83/349/EEC<sup>13</sup> or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 5.

#### *Article 12a*

##### *Rectification of investment positions*

In circumstance where the ELTIF breaches the diversification requirements as stipulated in Article 12 and the contravention is beyond the control of the ELTIF manager, competent authorities shall provide an appropriate period for the manager to take such measures as are necessary to rectify the position.

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<sup>13</sup> OJ L 193, 18.7.1983, p. 1.

*Article 13*  
*Concentration*

1. An ELTIF may acquire no more than 25% of the units or shares of a single AIF.
2. The concentration limits laid down in Article 56(2) of Directive 2009/65/EC shall apply to investments in the assets referred to in Article 8(1)(b) of this Regulation.

*Article 14*  
*Borrowing of cash*

An ELTIF may borrow cash provided that such borrowing fulfils all of the following conditions:

- (a) it represents no more than 30% of the capital of the ELTIF;
- (b) it serves the purpose of acquiring a participation in eligible investment assets, **provided that the paid up capital of the ELTIF is not sufficient to acquire the participation in eligible investment assets;**
- (ba) it is not used for granting loans referred to in Article 9(c);**
- (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash;
- (d) (...)
- (e) it encumbers solely the new assets acquired via the relevant borrowing.
- (ea) it has a maturity that does not exceed the life of the ELTIF;

## *Article 15*

### *Application of portfolio composition and diversification rules*

1. The investment limits laid down in Article 12(1) shall:
  - (a) apply by the date specified in the ELTIF rules or instruments of incorporation, where this date shall take account of the peculiarities and characteristics of the assets to be invested by the ELTIF and shall not be later than five years after the authorisation of the ELTIF. In exceptional circumstances, the competent authority of the ELTIF, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year;
  - (b) be suspended once the ELTIF starts to sell assets in order to redeem investors after the end of life of the ELTIF;
  - (c) be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months;
  - (d) (...)
2. Where a long-term asset in which the ELTIF has invested is issued by a qualifying portfolio undertaking that no longer complies with Article 10(1)(b), the long-term asset may continue to be counted for the purpose of calculating the 70% referred to in Article 12(1) for a maximum of three years as of the date when the portfolio undertaking no longer fulfils the requirements in Article 10.

## **Chapter III**

### **Redemption, trading and issue of ELTIF shares or units and distributions of income**

#### *Article 16*

#### *Redemption policy*

1. Investors of the ELTIF shall not be able to ask for redemption of their units or shares before the end of life of the ELTIF. Redemption to investors shall be possible as of the day following the date defining the end of life of the ELTIF.

The end of life of the ELTIF shall be clearly indicated as a specific date in the ELTIF rules or instruments of incorporation and disclosed to investors.

The ELTIF rules or instruments of incorporation and disclosures to investors shall lay down the procedures for redemption and disposal of assets and state clearly that redemption to investors shall commence on the day following the date defining the end of life of the ELTIF.

- 1a. (...)



- 1b. The ELTIF rules or instruments of incorporation shall clearly indicate a specific date as the end of life of the ELTIF and may also indicate the right to temporarily extend the life of the ELTIF and the conditions to exercise such right. ~~In case the decision to extend the life of the ELTIF is not unanimous the minority may return its units or shares to the ELTIF.~~
2. The life of the ELTIF shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset, and the stated investment objective of the ELTIF.
3. Investors may request the winding down of the ELTIF if their redemption requests have not been satisfied within one year after the end of life of the ELTIF.
4. Investors shall always have the option to be repaid in cash.
5. Repayment in kind out of the ELTIF's assets shall be possible only where all of the following conditions are met:
  - (a) the ELTIF rules or instrument of incorporation foresees this possibility, under the condition that all investors receive fair treatment;
  - (b) the investor asks in writing to be repaid through a share of the assets of the fund;
  - (c) no specific rules restrict the transfer of those assets.
6. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

*Article 17*  
*Secondary market*

1. The ELTIF rules or instrument of incorporation shall not prevent units or shares of an ELTIF from being admitted to trading on a regulated market as defined in Article 4(14) of Directive 2004/39/EC or on a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC or on an organised trading facility as defined in point (...) of Regulation (...).
2. The ELTIF rules or instrument of incorporation shall not prevent investors from freely transferring their shares or units to third parties other than the manager of the ELTIF.
3. The ELTIF shall publish in its periodical reports the market value of its listed shares or units along with the net asset value per share or unit and provide an explanation of any significant difference between the two in that report. In case there is a material change in the value of an asset, the manager shall disclose this to investors.

4. **ESMA shall develop draft regulatory technical standards specifying the circumstances in which it is considered that there exists a significant difference between the market value and the net asset value of the shares or units of the ELTIF, as well as the circumstances in which it is considered that a material change in the value of an asset has taken place.**

**ESMA shall submit those draft regulatory technical standards to the Commission by [...].**

**Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**

*Article 18*  
*Issuance of new shares or units*

1. An ELTIF may offer new issues of shares or units in accordance with its fund rules or instruments of incorporation.
2. An ELTIF shall not issue new shares or units at a price below its net asset value without a prior offering of those shares or units at that price to existing investors.

*Article 19*  
*Disposal of ELTIF assets*

1. Each ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors after the end of life of the ELTIF and shall disclose this to the competent authority of the ELTIF one year before that date.
2. The schedule referred to in paragraph 1 shall include:
  - (a) an assessment of the market for potential buyers;
  - (b) an assessment and comparison of potential sales prices;
  - (c) a valuation for the assets to be divested;
  - (d) an indicative timeframe for the disposal schedule.
- 2a. By way of derogation from paragraph 1, an ELTIF may reduce its capital on a pro rata basis in case of a disposal of an asset, provided that such an option has been disclosed in the prospectus and that the early disposal is duly considered as being in the investors' interest by the ELTIF manager, such decision shall be reasonably justified.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and valuation in point (c) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

*Article 20*

*Distribution of income*

1. An ELTIF may distribute to investors the income generated by the assets contained in the portfolio. This income shall be composed of:
  - (a) any income that the assets are regularly producing;
  - (b) the capital appreciation realized after the disposal of an asset, but excluding the original capital commitments made.
2. The income shall not be distributed to the extent that it is required for future commitments of the ELTIF.
3. The ELTIF shall state in its fund rules or instruments of incorporation the distribution policy that it will adopt during the life of the fund.

## Chapter IV

### Transparency requirements

#### *Article 21*

#### *Transparency*

1. The units or shares of an authorised ELTIF shall not be marketed in the Union without prior publication of a prospectus.

The units or shares of an authorised ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document (KID) in accordance with PRIIPS Regulation No[...] of [...] of the European Parliament and the Council.<sup>14</sup>

2. The prospectus shall include the information necessary for investors to be able to make an informed judgement regarding the investment proposed to them, and, in particular, the risks attached thereto.
3. The prospectus shall contain at least the following:
  - (a) a statement setting out how the ELTIF's investment objectives and strategy for achieving these objectives qualify the fund as long term in nature;
  - (b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council<sup>15</sup> and Commission Regulation (EC) No 809/2004<sup>16</sup>;
  - (c) information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU, if it is not already covered under point(b) of this paragraph;

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<sup>14</sup> OJ Reference.

<sup>15</sup> OJ L 345, 31.12.2003, p.64.

<sup>16</sup> OJ L 149, 30.4.2004, p. 1.

- (d) the categories of assets the ELTIF is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised, in which case it shall include a prominent statement indicating how those operations may be carried out only for the purpose of hedging risks inherent to other investments of the ELTIF, and the possible outcome of the use of financial derivative instruments on the risk profile;
- (e) any other information considered by the competent authorities to be relevant for the purpose of paragraph 2.

Upon request of a retail investor, the ELTIF manager shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the ELTIF, to the methods chosen to this end and to the recent evolution of the main risks and yields of the instrument categories.

4. The prospectus, ~~the KID~~ and any other marketing documents shall prominently notify investors about the illiquid nature of the fund.

In particular, the prospectus, ~~the KID~~, and any other marketing documents shall clearly:

- (a) inform investors about the long-term nature of the ELTIF's investments;
- (b) inform investors about the end of life of the ELTIF as well as the option to extend the life of the ELTIF, if this is provided, and the conditions thereof. ;
- (c) state whether the ELTIF is intended to be marketed to retail investors;
- (d) state that investors shall have no right to redeem their investment until the end of life of the ELTIF;

- (e) state the frequency and the timing of any income payments, if any, to the investors during the life of the fund;
- (f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF;
- (fa) inform investors about the hedging policy of the ELTIF;

**(fb) inform investors about the risks related to investing in real assets.**

5. The fund rules or instruments of incorporation of an internally managed ELTIF shall form an integral part of the prospectus and shall be annexed thereto.

The documents referred to in the first subparagraph are not, however, required to be annexed to the prospectus provided that the investor is informed that, on request, he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are marketed, he or she may consult them.

6. The essential elements of the prospectus shall be kept up to date.
7. An ELTIF shall send its prospectus and any amendments thereto, as well as its annual report, to the competent authorities of the ELTIF. An ELTIF shall provide that documentation to the competent authorities of the ELTIF manager on request.
8. The prospectus and the latest published annual report shall be provided to investors on request and free of charge.

The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to retail investors on request and free of charge.

9. The annual report shall be available to investors in the manner specified in the prospectus and in the KID. A paper copy of the annual report shall be delivered to retail investors on request and free of charge.

*Article 22*  
*Cost disclosure*

1. The prospectus shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investor. The different costs shall be grouped according to the following headings:
  - (a) costs of setting-up the ELTIF;
  - (b) the costs related to the acquisition of assets;
  - (c) management and performance related fees;
  - (d) distribution costs;
  - (e) other costs, including administrative, regulatory, depositary, professional service and audit costs.
2. The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF.
3. ~~The key information document shall reflect all of the costs outlined in the prospectus within its expression of total costs in monetary and percentage terms.~~



4. ESMA shall develop draft regulatory technical standards to specify:
- (a) the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2;
  - (b) ~~the common definition, calculation methodology and presentation format of the expression of total costs in paragraph 3.~~

When developing these draft regulatory technical standards, ESMA shall take into account the draft regulatory standards referred to in point (...) of Regulation (...) [PRIPS].

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## **Chapter V**

### **Marketing of units or shares of ELTIFs**

#### *Article 23*

##### *Facilities available to investors*

1. The manager of an ELTIF shall, in each Member State where it intends to market units or shares of that ELTIF, put in place facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide.
  - 1a. The above is not applicable in case managers market such products only to professional investors.
2. ESMA shall develop draft regulatory technical standards to specify the types and characteristics of the facilities, their technical infrastructure and of the content of their tasks in respect of ELTIF investors referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### *Article 23a*

##### *Internal assessment process for ELTIFs marketed to retail investors*

1. The manager of an ELTIF whose units or shares are intended to be marketed to retail investors shall establish and apply a specific internal process for the assessment of that ELTIF before it is marketed or distributed to retail investors.

2. As part of the internal process referred to in paragraph 1, the ELTIF manager shall assess whether the ELTIF is suitable for marketing to retail investors, taking into account at least
  - (a) the lifecycle of the ELTIF; and
  - (b) the intended investment strategy of the ELTIF.
3. The ELTIF manager shall make available to any distributor all appropriate information on the ELTIF that is marketed to retail investors, including all information as regards the lifecycle and the investment strategy, as well as on the internal assessment process.

#### *Article 23b*

##### *Specific requirements concerning the distribution of ELTIFs to retail investors*

When directly offering or placing an ELTIF to retail investors the ELTIF manager shall obtain the necessary information regarding the retail investor's knowledge and experience in the investment field relevant to the ELTIF, that person's financial situation including his ability to bear losses, and his investment objectives including his time horizon so as to enable the ELTIF manager to recommend the ELTIF only if it is suitable for the retail investor.

**-1. By way of derogation from Article 21(3) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall be an entity as referred to in Article 23(2) of Directive 2014/\*\*/EU [UCITS V].**

1. By way of derogation from Article 21 paragraph 13 second sub-paragraph and paragraph 14 of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall not be able to discharge itself of liability in case of a loss of financial instruments held in custody by a third party.
2. The liability of the depositary referred to in Article 21 paragraph 12 of Directive 2011/61/EU shall not be excluded or limited by agreement where the ELTIF is marketed to retail investors.
3. Any agreement that contravenes the provision of paragraph 2 shall be void.
- 4. The assets held in custody by the depositary of an ELTIF shall not be reused by the depositary or by any third party to whom the custody function has been delegated for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.**

**The assets held in custody by the depositary of an ELTIF are only allowed to be reused provided that the reuse of the assets is executed for the account of the ELTIF, the depositary is carrying out the instructions of the manager of the ELTIF on behalf of the ELTIF, the reuse is for the benefit of the ELTIF and the interest of the shareholders or unit-holders and the transaction is covered by high quality and liquid collateral received by the ELTIF under a title transfer arrangement. The market value of the collateral at all times has to amount to at least the market value of the reused assets plus a premium.**

## Article 24

### *Additional requirements for marketing to retail investors*

1. (...)

1a. The manager of an ELTIF shall be able to market the units or shares of that ELTIF to retail investors provided that all of the following additional requirements are fulfilled:

**(-a) retail investors commit to invest a minimum of €20,000 and state in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment;**

- (a) the ELTIF's rules or instruments of incorporation provide that all investors benefit from equal treatment and no preferential treatment or specific economic benefits are granted to individual investors or groups of investors;
- (b) the ELTIF may have any legal form as long as it does not lead to any further liability for the investor or require any additional commitments on behalf of such investor apart from the original capital commitment;
- (c) retail investors may, during the subscription period and at least two weeks after subscription of units or shares of the ELTIF, cancel their subscription and have the money returned without penalty.
- (ca) the manager of the ELTIF shall establish appropriate procedures and arrangements to deal with retail investors' complaints. Those measures shall allow retail investors to file complaints in the official language or one of the official languages of their Member State;

*Article 25*  
*Marketing of units or shares of ELTIFs*

1. The manager of an ELTIF shall be able to market the units or shares of that authorised ELTIF to professional and retail investors in its home Member State upon notification in accordance with Article 31 of Directive 2011/61/EU.
2. The manager of an ELTIF shall be able to market the units or shares of that authorised ELTIF to professional and retail investors in Member States other than in the home Member State of the ELTIF manager upon notification in accordance with Article 32 of Directive 2011/61/EU.
3. The manager of the ELTIF shall in respect of each ELTIF specify to its competent authority whether or not it intends to market it to retail investors.
4. In addition to the documentation and information required pursuant to Articles 31 and 32 of Directive 2011/61/EU the manager of the ELTIF shall provide to its competent authority all of the following:
  - (a) the prospectus of the ELTIF;
  - (b) the key information document of the ELTIF in case of marketing to retail investors;
  - (c) information on the facilities referred to in Article 23.
5. The competences and powers of the the competent authorities pursuant to Articles 31 and 32 of Directive 2011/61/EU shall be understood to also refer to the marketing of ELTIFs to retail investors and to cover the additional requirements laid down in this Regulation.

6. In addition to its powers in accordance with Article 31(3) first paragraph of Directive 2011/61/EU, the competent authority of the home Member State of the ELTIF manager shall also prevent the marketing of an authorised ELTIF if the ELTIF manager does not or will not comply with this Regulation.
7. In addition to its powers in accordance with Article 32(3) first paragraph of Directive 2011/61/EU, the competent authority of the home Member State of the ELTIF manager shall also refuse the transmission of a complete notification file to the competent authorities of the Member State where the ELTIF is intended to be marketed, if the ELTIF manager does not or will not comply with this Regulation.

# Chapter VI

## Supervision

### *Article 26*

#### *Supervision by the competent authorities*

1. The competent authorities shall supervise compliance with this Regulation on an on-going basis.
2. The competent authority of the ELTIF shall be responsible for supervising compliance with the rules laid down in Chapters II, III and IV.
3. The competent authority of the ELTIF shall be responsible for supervising compliance with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with this Regulation.
4. The competent authority of the manager of the ELTIF shall be responsible for supervising the adequacy of the arrangements and organisation of the manager so that the manager of the ELTIF is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the ELTIFs it manages.

The competent authority of the manager shall be responsible for supervising compliance of the ELTIFs manager with this Regulation.

5. Competent authorities shall monitor collective investment undertakings established or marketed in their territories to verify that they do not use the ELTIF designation or suggest that they are an ELTIF unless they are authorised and comply with this Regulation.



## *Article 27*

### *Powers of competent authorities*

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.
2. The powers conferred on competent authorities in accordance with Directive 2011/61/EU shall be exercised also with respect to this Regulation.

## *Article 28*

### *Powers and competences of ESMA*

1. ESMA shall have the powers necessary to carry out the tasks attributed to it by this Regulation.
2. ESMA's powers in accordance with Directive 2011/61/EU shall be exercised also with respect to this Regulation and in compliance with Regulation (EC) No 45/2001.
3. For the purposes of Regulation (EU) No 1095/2010, this Regulation shall be included under any further legally binding Union act which confers tasks on the Authority as referred to in Article 1(2) of Regulation (EU) 1095/2010.

## *Article 29*

### *Cooperation between authorities*

1. The competent authority of the ELTIF and the competent authority of the manager, if different, shall cooperate with each other and exchange information for the purpose of carrying out their duties under this Regulation. Competent authorities shall cooperate with each other in accordance with Directive 2011/61/EU.
2. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010.
3. Competent authorities and ESMA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to identify and remedy breaches of this Regulation.

## **Chapter VII**

### **Final provisions**

#### *Article 30*

##### *Review*

No later than five years after the entry into force of this Regulation, the Commission shall start a review of the application of this Regulation. The review shall analyse in particular:

- (a) the impact of the provision in Article 16(1) that excludes investors from redeeming their units or shares before the end of life of the ELTIF. The review, taking into account ELTIF's distribution to different investor categories, shall also assess whether exempting a limited number of individual retail investors from such a rule would have the effect of increasing demand for ELTIF amongst retail investors;
- (b) the impact on asset diversification of the application of the minimum threshold of 70% of eligible investment assets laid down in Article 12(1);
- (c) the extent to which ELTIFs are marketed in the Union, including whether AIFMs falling under Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs.

The results of this review shall be communicated to the European Parliament and the Council accompanied, where necessary, by appropriate proposals for amendments.

*Article 31*

*Entry into force*

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Member States shall apply this Regulation from ... 6 months after entry into force [*OP please introduce exact date, 6 months after entry into force of this Regulation*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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