

# Opinion

On ELTIF regulatory technical standards under the revised ELTIF Regulation



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# 1 Executive Summary

## Reasons for publication

The revised ELTIF Regulation<sup>1</sup> provides that ESMA shall develop draft regulatory technical standards (RTS) to determine in particular the following:

- the circumstances in which the life of a European long-term investment fund (“ELTIF”) is considered compatible with the life-cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- the costs disclosure.

On 19 December 2023, ESMA published its final report on the draft RTS under the revised ELTIF Regulation<sup>2</sup> and submitted it to the European Commission (the EC) for adoption<sup>3</sup>.

On 8 March 2024, ESMA received a letter from the EC<sup>4</sup> explaining that the EC’s analysis of the draft RTS is that “*ESMA’s draft RTS do not sufficiently cater for the individual characteristics of different ELTIFs*” and that “... *it is necessary to take a more proportionate approach to the drafting of the RTS, in particular with regard to the calibration of the requirements relating to redemptions and liquidity management tools*”. The EC informed ESMA that it intends to adopt the proposed RTS with amendments, which were submitted to ESMA as an Annex to the letter, and invited ESMA to submit new draft RTS to the EC reflecting the amendments provided in the Annex.

Pursuant to the ESMA Regulation, within a period of six weeks from the receipt of the letter, ESMA may amend its draft RTS and resubmit them to the EC in the form of a formal opinion.

In this opinion, ESMA suggests only a limited number of changes to the amendments proposed by the EC, as explained further below and set out in the Appendix. ESMA acknowledges that an appropriate balance should be found between, on the one hand, the protection of retail investors and financial stability related objectives, and on the other hand, the fact that ELTIFs should make an important contribution to the capital market union objectives. However, in view of the Commission’s comments, ESMA proposes striking that balance slightly differently from the EC.

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Section 2 describes the legal basis, Section 3 sets out the background, as well as the policy objectives, while the suggested amended draft RTS are included in the Appendix.

## Next Steps

In response to the letter received on 8 March 2024, ESMA has adopted this opinion, which is being communicated to the EC, with copies to the European Parliament and the Council. The EC may adopt the RTS with the amendments it considers relevant or reject it. The European Parliament and the Council may object to an RTS adopted by the EC within a period of three months.

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<sup>1</sup> [Regulation \(EU\) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.](#)

<sup>2</sup> [https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1300023242-159\\_Final\\_report\\_ELTIF\\_RTS.pdf](https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1300023242-159_Final_report_ELTIF_RTS.pdf).

<sup>3</sup> Pursuant to Article 10(1) of Regulation (EU) No 1095/2010 (the 'ESMA Regulation').

<sup>4</sup> [https://finance.ec.europa.eu/document/download/6d479235-3dc3-47da-844b-69bcaa2a0913\\_en?filename=240306-communication-eltif-rtf-annex\\_en.pdf](https://finance.ec.europa.eu/document/download/6d479235-3dc3-47da-844b-69bcaa2a0913_en?filename=240306-communication-eltif-rtf-annex_en.pdf) and [https://finance.ec.europa.eu/system/files/2024-03/240306-communication-eltif-rtf\\_en.pdf](https://finance.ec.europa.eu/system/files/2024-03/240306-communication-eltif-rtf_en.pdf).

## 2 Legal basis

1. The revised ELTIF Regulation provides that ESMA shall develop draft regulatory technical standards (RTS) to determine the following:
  - criteria for establishing the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to other investments of the ELTIF;
  - the circumstances in which the life of a European long-term investment fund (“ELTIF”) is considered compatible with the life-cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
  - the circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors;
  - the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets; and
  - the costs disclosure.
2. On 19 December 2023, ESMA published its final report on these draft RTS under the revised ELTIF Regulation and submitted it to the EC for adoption of the draft RTS pursuant to Article 10(1) of Regulation (EU) No 1095/2010 (the ‘ESMA Regulation’).
3. On 8 March 2024, ESMA received a letter from the EC<sup>5</sup> explaining that its analysis of the draft RTS indicated that “*ESMA’s draft RTS do not sufficiently cater for the individual characteristics of different ELTIFs*” and that “*... it is necessary to take a more proportionate approach to the drafting of the RTS, in particular with regard to the calibration of the requirements relating to redemptions and liquidity management tools*”. The EC therefore informed ESMA that it intends to adopt the proposed RTS with amendments, which were submitted to ESMA as an Annex to the letter, and invited ESMA to submit a new draft RTS to the EC reflecting the amendments set out in the Annex to the letter.

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<sup>5</sup> [https://finance.ec.europa.eu/document/download/6d479235-3dc3-47da-844b-69bcaa2a0913\\_en?filename=240306-communication-eltif-rtis-annex\\_en.pdf](https://finance.ec.europa.eu/document/download/6d479235-3dc3-47da-844b-69bcaa2a0913_en?filename=240306-communication-eltif-rtis-annex_en.pdf) and [https://finance.ec.europa.eu/system/files/2024-03/240306-communication-eltif-rtis\\_en.pdf](https://finance.ec.europa.eu/system/files/2024-03/240306-communication-eltif-rtis_en.pdf).

4. Pursuant to Article 10(1) of the ESMA Regulation, within a period of six weeks from the receipt of the EC's letter ESMA may amend its draft RTS and resubmit them to the EC in the form of a formal opinion.
5. ESMA's competence to deliver an opinion is based on Article 10(1) of the ESMA Regulation. In accordance with Article 44(1) of the ESMA Regulation the Board of Supervisors has adopted this opinion.
6. This opinion sets out ESMA's view on how ESMA considers the draft ELTIF RTS should be amended in light of the alternative approach set out by the Commission in its letter to ESMA. ESMA's amendments are presented in the following section 3 ('Background'). The Appendix of this opinion includes the proposed amendments in tracked changes from the draft RTS submitted by ESMA in December 2023. The proposed changes by ESMA are shown in tracked-changes highlighted in yellow, while all the other tracked-changes are the changes proposed by the EC to ESMA in the EC's letter of 8 March.
7. Overall, ESMA suggests only a limited number of changes to the amendments proposed by the EC. ESMA acknowledges that an appropriate balance should be found between, on the one hand, the protection of retail investors and financial stability related objectives, and on the other hand, the fact that ELTIFs should make an important contribution to the capital market union objectives. However, in view of the Commission's comments, ESMA proposes striking that balance slightly differently from the EC. While the full text of the proposed revised draft RTS is set out in the Appendix, the most important of ESMA's proposed amendments are detailed in the following section, and relate in particular to i) the notice period and the maximum amount that can be redeemed (section 3.1, from paragraph 13) and ii) the liquidity management tools (section 3.1, from paragraph 30).

## 3 Background

### 3.1 Redemption policy (RTS under Article 18(2) of the ELTIF Regulation)

8. In relation to the redemption policy of the ELTIF (RTS under Article 18(2) of the ELTIF Regulation), the draft RTS suggested by the EC depart from the draft RTS submitted by ESMA in December 2023 on several aspects.

*Material changes (Article 4(2) of the draft RTS submitted by ESMA, related to the minimum information to be provided by the manager of an ELTIF to the competent authority of the ELTIF)*

9. In relation to material changes, the EC suggests to delete Article 4(2) of the draft RTS, which indicates that the manager of the ELTIF shall inform the competent authority of the ELTIF, as soon as practically possible and not later than within 3 business days from the date the material change to the information<sup>6</sup> became known or should have become known to the manager of the ELTIF, whenever there is a material change to that information.
10. The EC is of the view that this requirement can be construed as limiting the ability of national competent authorities to get the updated information before the ELTIF implement changes, including significant changes. To avoid such a result, in the view of the EC, material changes should be notified to the national competent authorities before they occur, unless such material changes are beyond the control of the manager of the ELTIF.
11. In order to address the abovementioned issues, instead of deleting Article 4(2), ESMA suggest to replace the formulation included in the draft RTS submitted to the EC in December 2023 with the following one:

“Where there is a material change to the information referred to in paragraph 1, the manager of the ELTIF shall give written notice thereof to the competent authority of the ELTIF as soon as possible and at least one month before implementing the change. If the material change to the information referred to in paragraph 1 is not planned by the ELTIF manager and goes beyond its control, the ELTIF manager shall inform the competent authority of the ELTIF, as soon as the change becomes known to the manager of the ELTIF.”

12. In the view of ESMA, such a formulation would address the concern expressed by the EC in its Letter, while retaining the key supervisory requirement that material changes should be notified to competent authorities by ELTIF managers.

*Minimum notice period for redemptions (Article 5(5) and (6) of the draft RTS submitted by ESMA) and liquidity requirements related to standardised notice periods requirements (Article 5(6), first sub-paragraph, of the draft RTS submitted by ESMA)*

13. In relation to the minimum notice period for redemptions, the EC considers that linking the length of the notice periods with fixed percentages of minimum liquid assets and

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<sup>6</sup> Minimum information related to the redemption policy to be provided by the manager of an ELTIF to the competent authority of the ELTIF under Article 18(2), at the time of authorisation, specified in Article 4(1) of the draft RTS.



maximum percentages that can be redeemed<sup>7</sup>, as included in the draft RTS submitted by ESMA, fails to sufficiently take into account the specific situation of ELTIFs. In the view of the EC, the imposition of the minimum notice period for redemptions also raises questions as to their compatibility with the empowerments laid down in the ELTIF Regulation. Accordingly, the EC indicates that the draft RTS should be amended to remove the requirement of a minimum 12-month notice period.

14. In relation to the liquidity requirements related to standardised notice periods, the EC also considers that requiring the simultaneous application of these requirements<sup>8</sup> fails to sufficiently take into account the individual situation of each ELTIF.
15. The EC therefore “considers that the proposed requirements should be more proportionate in relation to the obligation ‘that the ELTIF has in place an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF’ provided for in Article 18(2)(b) of the ELTIF Regulation.”
16. Accordingly, the EC is of the view that the liquidity related requirements linked to notice periods requirements set out in the draft RTS should be amended and should specifically take into account the principle of proportionality, the existing market practices for retail long-term funds and the individual situation of ELTIFs.
17. In order to address these issues, the EC suggests to “calibrate the liquidity profile of the ELTIF through the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of the ELTIF Regulation, as well as the redemption frequency (since the liquid assets are mobilised each time there is a redemption) and the notice period of the ELTIF”. These proposals are included in Article 5(6) and Annex I and II of the proposed draft RTS by the EC (included in the Appendix of the present Opinion).
18. Under the ELTIF Regulation (Article 18(6)), ESMA has been empowered to draft RTS specifying -among others- the following: ‘(c) the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in paragraph 2, first subparagraph, points (b) and (c); and (d) the criteria to assess the percentage referred to in paragraph 18(2), first subparagraph, point (d) [ELTIF Regulation] [...]’.
19. Hence, ESMA is mandated to specify requirements for ELTIF redemption policies and liquidity management tools as well as the criteria to assess the percentage in paragraph

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<sup>7</sup> referred to in Article 18(2) first subparagraph, point (d) of the ELTIF Regulation.

<sup>8</sup> Under the requirements of the draft RTS submitted by ESMA, the notice period shall be calibrated based on the minimum liquid assets, which are deemed to be a liquid basket of the ELTIF, and taking into account the maximum percentage of the redeemable assets referred to in Article 18(2), first subparagraph, point (d), in accordance with the table put forward by the draft RTS.

18(2)(d) ELTIF Regulation. The criteria to assess the percentage have been set in Article 6 of the draft RTS submitted by ESMA to the EC in December 2023. The requirements for ELTIF redemption policies are specified in Article 5 of the draft RTS. To fulfil its mandate, ESMA specified among other redemption policy requirements, requirements for redemption notice periods as ESMA considered this is a key element of the redemption policy.

20. While the draft RTS submitted by ESMA to the EC in December 2023 contains a baseline redemption policy requirement prescribing a fixed notice period of 12 months (Article 5(5a)), it also permits derogations from this requirement (Article 5(6)). In particular, the derogation allows redemption notice periods of less than 12 months. It is even possible to set a redemption notice period of less than a month, as indicated in Article 5(6) of the draft RTS.
21. ESMA decided to include this wide range of potential notice periods in the draft RTS after taking due account of stakeholder feedback which was summarised on pages 22 to 24 of ESMA's Final report<sup>9</sup>. The draft RTS indeed allow for a notice period of less than 12 months, provided certain requirements on the holding of liquid assets are met. The rationale behind this choice is as follows.
22. ESMA took note that the majority of respondents to the ESMA consultation were not in favour of an approach under which a mandatory notice period would be set for all ELTIFs, given in particular the variety of ELTIF strategies and assets in which an ELTIF may invest.
23. However, given the illiquid nature of certain assets in which an ELTIF may invest, the fact that ELTIFs could be marketed to retail investors, and in line with the international work on liquidity management conducted in particular at the FSB and IOSCO and ongoing considerations in the EU on specific vulnerabilities of NBFIs such as structural liquidity mismatches<sup>10</sup>, ESMA was of the view that a certain level of prescriptiveness was needed in relation to the requirements on the notice period of an ELTIF. This would also ensure that the ELTIF brand is not put in danger by a liquidity strain such as the one that affected certain types of real estate vehicles in some Member States in 2023.

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<sup>9</sup> [https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1300023242-159\\_Final\\_report\\_ELTIF\\_RTS.pdf](https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1300023242-159_Final_report_ELTIF_RTS.pdf).

<sup>10</sup> See section 2 (The macroprudential framework for NBFIs) of the [Report from the Commission to the European Parliament and the Council on the macroprudential review for credit institutions, the systemic risks relating to NonBank Financial Intermediaries \(NBFIs\) and their interconnectedness with credit institutions, under Article 513 of Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation \(EU\) No 648/2012](#).

24. ESMA therefore put forward an option under which, depending on the length of the notice period, ELTIF managers shall hold a minimum percentage of liquid assets, and, at the same time, different percentages of maximum amount of liquid assets that can be redeemed are also applied to them. In the view of ESMA, this would still allow to take into account the specificities of different types of ELTIFs while, at the same time, ensuring that investors, including remaining investors of ELTIFs, are adequately protected. These more rigorous liquidity requirements are proposed whenever ELTIFs offer redemption opportunities that become closer to those of ‘cash or cash-like funds’ (i.e. below 12 months), notwithstanding their long-terms investments, i.e. need to address liquidity mismatches.
25. For the detailed reasons indicated above, ESMA considers that the solution proposed by the EC might not be the only way of interpreting the ELTIF provisions. However, in order to ensure a timely implementation of the ELTIF requirements and move the process forward with the EC, ESMA decided to submit an amended version of the draft RTS for the EC’s consideration which takes into account the proposals made by the EC.
26. ESMA is therefore suggesting an amended version of the proposal from the EC on Article 5(6) which would at the same time, retain the key investor protection related aspects of the abovementioned proposed requirements included in Article 5(6) of the RTS submitted by ESMA to the EC in December 2023, and take into account the abovementioned arguments made by the EC and in particular the need to take into account the variety of ELTIFs.
27. This amended proposal would read as follows:
- a. it would retain the second option<sup>11</sup> put forward by the EC, as included in the Appendix of this opinion, but delete the first option<sup>12</sup>, given that option does not make it mandatory for the ELTIF manager to hold minimum percentages of liquid assets, and given that option also implies that in certain circumstances (e.g. no notice period and weekly redemption frequency) the maximum amount that can be redeemed is less than 2%, which does not seem compatible with the fact that retail investors may invest in ELTIF given they may not be aware nor understand that redemptions could be limited to that extent;
  - b. with respect to the abovementioned second option, in the table included in the corresponding Annex II of the RTS, “redemption frequency” would be replaced with “notice period”, because if the reference to redemption frequency was to

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<sup>11</sup> option b) as referred to in the Article 5(6) included in the draft RTS submitted by the Commission.

<sup>12</sup> option a) as referred to in the Article 5(6) included in the draft RTS submitted by the Commission.

be kept, ELTIF managers would not have time to stagger the sales of assets, if all redemption requests were formulated one day before the redemption day. ESMA is of the view that it is more appropriate to make the link between notice periods and the minimum percentage of liquid assets;

- c. in the case of a notice period of 12 months (first line of the table), the maximum that can be redeemed should be 90%, instead of 100%.

28. The proposed amended table included in Annex II of the draft RTS sent by the EC (and in the draft RTS included in the Appendix of this opinion) would read as follows:

Notice period	<u>Minimum percentage of liquid assets referred to in Article 9(1), point (b)</u>	<u>Maximum percentage referred to in Article 18(2), first subparagraph, point (d)</u>
<u>Less than 12 months to 6 months (included)</u>	<u>10%</u>	<u>90%</u>
<u>Less than 6 months to 3 months (included)</u>	<u>15%</u>	<u>67%</u>
<u>Less than 3 months to 1 month (included)</u>	<u>20%</u>	<u>50%</u>
<u>Less than 1 month</u>	<u>25%</u>	<u>20%</u>

29. Finally, in line with further feedback received from stakeholders, and in light of the revised requirements suggested above, ESMA is of the view that the need to justify the appropriateness of the notice period to the competent authority should be triggered if the notice period is less than six months, instead of three months, as suggested in Article 5(6):

“Where the notice period is less than **6** months, the manager of the ELTIF shall provide the competent authority of the ELTIF with a justification how that notice period is consistent with the individual features of the ELTIF and the interest of investors of the ELTIF”.

*Liquidity management tools (Article 5(7) of the draft RTS submitted by ESMA)*

30. In relation to liquidity management tools, the EC considers that the draft RTS could be construed as disincentivising or limiting the possibility for ELTIF managers to

implement different liquidity management tools, other than anti-dilution liquidity management tools, that could be equally or even more compatible with the long-term investment strategy of the ELTIF.

31. The EC therefore suggests to delete the obligatory requirement for the manager of an ELTIF to select and implement at least one anti-dilution liquidity management tool, among anti-dilution levies, swing pricing and redemption fees.
32. The EC also suggests referring to the “extension of notice period”, as referred to in the Annex V<sup>13</sup> of the revised AIFMD, in addition to the notice period of the ELTIF.
33. The draft RTS submitted by ESMA to the EC included several requirements related to liquidity management tools. These requirements allow for the use of another type of LMT than anti-dilution tools, provided justifications are given by the manager of the ELTIF.
34. ESMA took note that the majority of respondents to the ESMA consultation were not in favour of the proposed approach in the ESMA Consultation paper<sup>14</sup> in relation to the setting of liquidity management tools, and in particular the proposal to mandate the implementation of at least one anti-dilution tool (among anti-dilution levies, swing pricing and redemption fees), as well as gates, in exceptional circumstances only.
35. ESMA also took note that the variety of assets in which an ELTIF may invest, as well as the variety of ELTIF strategies, which may also be linked to different types of investor bases, may trigger the need, in some cases, for other sets of liquidity management tools. As a consequence, ESMA included a derogation allowing the ELTIF manager to deviate from the requirement to implement at least one anti-dilution tool, provided adequate justifications are provided to the competent authority of the ELTIF. This requirement is in line with the international work on liquidity management conducted in particular at the FSB and IOSCO level.
36. As compared to an AIF<sup>15</sup>, an ELTIF is a more specific type of investment fund, which may invest in illiquid assets, while being marketed to the retail investors and benefit

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<sup>13</sup> Annex V: “Liquidity management tools available to AIFMs managing open-ended AIFs” [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202400927](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202400927).

<sup>14</sup> [https://www.esma.europa.eu/sites/default/files/2023-05/Consultation\\_Paper\\_on\\_RTS\\_under\\_the\\_revised\\_ELTIIF\\_Regulation.pdf](https://www.esma.europa.eu/sites/default/files/2023-05/Consultation_Paper_on_RTS_under_the_revised_ELTIIF_Regulation.pdf).

<sup>15</sup> Broadly defined in Article 4(1) of the AIFMD as “collective investment undertakings, including investment compartments thereof, which: (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;”.

from a passport, which is why the requirements on LMTs for ELTIFs may not be exactly the same as the general requirements applicable to all AIFs.

37. For the detailed reasons indicated above, ESMA considers that the solution proposed by the EC might not be the only way of interpreting the ELTIF provisions. However, in order to ensure a timely implementation of the ELTIF provisions and move the process forward with the EC, ESMA decided to submit an amended version of the draft RTS for the EC's consideration which takes into account the proposals made by the EC on LMTs.
38. However, ESMA suggests deleting the additional wording included by the EC on the "extension of notice period", which would risk confusing between, on the one hand, the minimum notice period of the fund which is one of its key features (as set out in the table above), and on the other hand, the extension of such notice period, which is a liquidity management tool. It should be left to the choice of the ELTIF manager to select and implement such a tool, in line with the general requirements on liquidity management tools included in the revised AIFMD<sup>16</sup>.

*Redemption gates (Article 5(8) of the draft RTS submitted by ESMA)*

39. In relation to gates, the EC considers that "the draft RTS should be amended to ensure that the implementation and activation of redemption gates is not limited to "exceptional" circumstances or exclusively contingent on the notice period set out in the calibration table proposed by the draft RTS".
40. The draft RTS that ESMA submitted to the EC indeed allow for the use of gates, but in situations which are not only exceptional ones.
41. ESMA took note that the majority of respondents to the ESMA consultation paper on the ELTIF RTS were not in favour of the proposed approach in the CP in relation to the setting of liquidity management tools, and in particular the proposal to mandate the implementation of gates, in exceptional circumstances only.
42. ESMA therefore included a requirement under which gates may be used by managers in various 'specific' situations, including, but not limited to the context of the table included in Article 5(6) of the draft RTS submitted by ESMA to the EC (this table included requirements to hold, depending on the size of the notice period, a certain amount of liquid assets, and, at the same time, different percentages of maximum

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<sup>16</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202400927](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202400927).

amount of liquid assets that can be redeemed are also applied to managers - therefore referring to the use of gates).

43. The abovementioned term 'specific', which is different from the term 'exceptional'<sup>17</sup>, was used to indicate that, however, the use of gates should not be seen as the systematic and most normal way to address liquidity issues of the ELTIF, given in particular minimum amounts of liquid assets are to be held by the ELTIF. This requirement is in line with the international work on liquidity management conducted in particular at the FSB and IOSCO level.
44. For the detailed reasons indicated above, ESMA considers that the solution proposed by the EC might not be the only way of interpreting the ELTIF provisions. However, in order to ensure a timely implementation of the ELTIF provisions and move the process forward with the EC, ESMA decided to submit an amended version of the draft RTS for the EC's consideration which takes into account the proposals made by the EC.
45. However, for the sake of clarity, instead of deleting all references to gates in the draft RTS, as suggested by the EC in the revised RTS submitted to ESMA, ESMA suggests referring explicitly to gates in the draft Article 5(9) of the RTS, indicating that ELTIF managers, and while this is not an obligation for them, may use gates:

“The manager of the ELTIF may also implement redemption gates, in particular if the amount of liquid assets is not sufficient to cover a reasonable expected redemption at the redemption dates.”

*Other issues related to the redemption policy of the ELTIF: Valuation, disclosure of the redemption policy*

46. In addition to the abovementioned issues related to the redemption policy of the ELTIF referred to in the Letter sent by the EC, ESMA would like to highlight other proposed amendments by the EC, on which ESMA would suggest alternative drafting proposals.
47. In relation to the minimum holding period referred to in Article 18(2)(a) of the revised ELTIF Regulation, the EC suggests, in Article 3(1), to replace the first sentence included in the RTS sent by ESMA (“A manager of an ELTIF shall, when determining the minimum holding period referred to in Article 18(2), first subparagraph, point (a), of Regulation (EU) 2015/760 consider at least all of the following”) with the following one:

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<sup>17</sup> 'as well as in certain specific circumstances", as referred to in Article 5(8) of the draft RTS submitted by ESMA to the Commission.

*“Where the manager of an ELTIF chooses to establish a minimum holding period, that manager shall, when determining the minimum holding period referred to in Article 18(2), first subparagraph, point (a), of Regulation (EU) 2015/760 consider at least all of the following”.* With this proposed change by the EC, the determination of a minimum holding period becomes optional for the manager of the ELTIF. ESMA is however still of the view that the setting of a minimum holding period is one of the key aspects of the redemption policy of the ELTIF and would therefore suggest to retain the formulation included in the draft RTS sent by ESMA.

48. In relation to valuation, which is another key area of the redemption policy of the ELTIF, ESMA suggest strengthening some of the requirements amended by the EC in order to ensure clarity as regards the information on asset valuation to be submitted to the competent authority of the ELTIF at the time of the authorisation of the ELTIF.
49. Specifically, in Article 4(1)(f), that starts with “a description of the valuation procedures of the ELTIF demonstrating” the EC has deleted the second part of the sentence “that at each valuation date the ELTIF has substantial, reliable, sound and up-to-date data on each of its assets”. Instead of deleting this part of the sentence, ESMA suggests to replace it with “that such valuations of assets and calculations are carried out at a frequency which is both appropriate to the assets held by the ELTIF, and consistent with its issuance and redemption frequency as referred to in Article 19(3) of the Directive 2011/61/EU”.
50. In relation to the disclosure of redemption policy (Article 5(1) of the draft RTS), while ESMA does not object that details of an ELTIF’s redemption policy should be set out in its prospectus, ESMA is of the view that it would not seem appropriate to provide for flexibility for the policy to be set out in the AIFM’s website as an alternative approach. ESMA therefore suggests to delete the following language “...or on the website of the manager...” or to replace it with “... and on the website of the manager”.

### **3.2 Cost disclosure (RTS under Article 25 of the ELTIF Regulation)**

51. In relation to the cost disclosure requirements (Common definitions, calculation methodologies and presentation formats of costs - Article 12 of the draft RTS) the EC is of the view that *“the draft RTS seem to introduce a cost disclosure methodology, which is different from that set out in Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail, as amended ( 6 ) (hereinafter: the PRIIPs Regulation), that of the Directive on Markets in Financial Instruments (“MiFID II”) ( 7 ) and, where applicable, that of the Directive for Alternative Investment Fund Managers (“AIFMD)”*. The EC is of the view that cost disclosures (both the methodology and the presentation) under



the revised ELTIF Regulation should not give rise to sector-specific requirements unless duly justified by the characteristics of the ELTIFs.

52. In order to address the abovementioned issues, instead of calculating the overall cost indicator as a “percentage of the capital of the ELTIF”, the EC suggests calculating it as a percentage of the “net asset value of the ELTIF per annum” (Article 12(8) of the draft RTS submitted by the EC, as presented in Appendix of this opinion).
53. With respect to the RTS under Article 25(3) of the ELTIF Regulation, the ELTIF Regulation specifies that “When developing these draft regulatory technical standards, ESMA shall take into account the regulatory technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014”. In 2016, and then in 2019, ESMA therefore considered necessary to wait for the finalisation of the PRIIPs RTS before the work to develop the RTS under Article 25(3) of the ELTIF Regulation could continue.
54. The corresponding PRIIPs Delegated Regulation<sup>18</sup> was published in the Official Journal of the EU dated 12 April 2017, but it was then further amended, so that the updated version of the PRIIPs Delegated Regulation (2021/2268)<sup>19</sup> was finally published in the Official Journal of the EU dated 20 December 2021 and entered into application on 1 January 2023.
55. Taking into account the latest regulatory framework put in place in the context of the PRIIPs Regulation, as well as the amended version of the Article 25 included in the revised version of the ELTIF Regulation, ESMA noted that that the summary cost indicators defined in the PRIIPs Delegated Regulation 2021/2268 (in points 61 to 89 of the Annex VI, and in Annex VII of this Delegated Regulation) are, on the one hand, reduction in yield indicator (as for the cost indicator “Annual cost impact” disclosed in the table 1 “Costs over time” of the Annex VII<sup>20</sup>), and on the other hand, cost ratios defined in different possible ways, depending on the nature of the cost, e.g. cost / “investment<sup>21</sup>” (as for the cost indicators disclosed in the table 2 “Composition of costs” of the Annex VII of the aforementioned Delegated Regulation). ESMA therefore considered that both references (reduction in yield and cost ratio) are relevant with respect to the overall cost ratio referred to in Article 25(2) of the ELTIF Regulation, all the more so as the main change between the requirements included in the PRIIPs

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<sup>18</sup> Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

<sup>19</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0653&from=EN>  
Publications Office (europa.eu).

<sup>20</sup> with a grow assumption equal to 0.

<sup>21</sup> as per the term used in table 2 of the Annex VII of the PRIIPs Delegated Regulation 2021/2268.

Delegated Regulation 2021/2268, and the previous version of Delegated Regulation (2017/653), in relation to cost disclosure, is that for PRIIPs (i.e. PRIIPs which are in the scope of MiFID), the reduction in yield indicators which were previously included in the abovementioned table 2 “Composition of costs” of the cost section of the KID were replaced with cost ratios, such as “cost / investment”, and absolute amounts of costs in EUR. In particular this was because it was considered easier to understand for retail investors, and more appropriate for PRIIPs, given reduction in yield indicators are mostly familiar to investors of insurance-based investment products.

56. ESMA was of the view that the overall cost ratio under the ELTIF Regulation should be calculated as a ratio of the costs to the capital of the ELTIF, so that in particular the different cost components listed in Article 25(1) of the ELTIF Regulation, also expressed as ratios of the capital of the ELTIF, can at the same time be easily understood by investors, and easily aggregated to obtain the overall cost indicator.
57. For the detailed reasons indicated above, ESMA considers that the solution proposed by the EC might not be the only way of interpreting the ELTIF provisions. However, in order to ensure a timely implementation of the ELTIF provisions and move the process forward with the EC, ESMA decided to submit an amended version of the draft RTS for the EC’s consideration which takes into account the proposals made by the EC.
58. ESMA is indeed of the view that the proposal made by the EC in the draft RTS sent to ESMA (included in the Appendix of this opinion), which is that instead of calculating the overall cost indicator as a “percentage of the capital of the ELTIF”, it should be calculated as a percentage of the “net asset value of the ELTIF per annum”, is acceptable.
59. It is to be noted however that if the EC would seek a complete alignment between the overall cost indicator under the Article 25 of the ELTIF Regulation and the “annual cost impact” included in table 1 of the cost section of the PRIIPs KID, the EC could also consider to make reference to the reduction in yield indicator referred to in point 62 of Annex VI of the PRIIPs Delegated Regulation, but linked to the costs listed in Article 25 of the ELTIF Regulation. Alternatively, the EC could make reference to the “summary indicator”, as referred to in Article 8(3)(f) of the PRIIPs Regulation (1286/2014), but linked to the costs referred to in Article 25 of the ELTIF Regulation. Given the PRIIPs Delegated Regulation, and in particular its Annex VI, might further change in the future, a reference to the summary cost indicator included in the level 1 PRIIPs Regulation might indeed be more appropriate, in order to avoid inconsistencies between these different regulatory frameworks.

### **3.3 Other RTS (matching mechanism under Article 19(2a) of the ELTIF Regulation)**

60. While the other amendments suggested by the EC on the other regulatory technical standards (in particular on the matching mechanism under Article 19(2a) of the ELTIF Regulation) are acceptable to ESMA, ESMA would like to highlight one specific issue on the disclosure of the rules of the matching mechanism on which further drafting proposals are suggested.

#### *Disclosure of the rules of the matching mechanism*

61. In Article 7, 8(1),(3) and 8(4) of the draft RTS sent by the EC, ESMA suggest that flexibility for the rules and procedures for the full or partial matching of transfer requests and rules related to the execution price and pro-ratio conditions related to the matching mechanism under Article 19(2a) to be contained only within the prospectus are removed.

62. ESMA is of the view that these provisions should be included in the rules or instruments of incorporation, as initially suggested by ESMA, as they relate to the operations of the ELTIF.

63. Alternatively, such provisions could be amended to read: "...the rules or instruments of incorporation and the prospectus...".

## 4 Appendix

### Draft regulatory technical standard proposed by ESMA

(tracked-changes are the proposed amendments by the EC to the draft RTS submitted by ESMA in December 2023 while tracked-changes highlighted in **yellow** are the proposed changes by ESMA to the suggested modifications by the EC)



Brussels, **XXX**  
[...](2024) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation (EU) 2018/480

(Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of ~~an ELTIF,~~ a European long-term investment fund (ELTIF), and transparency requirements and repealing Delegated Regulation (EU) 2018/480

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, and in particular Article 9(3), third paragraph, Article 18(6), fourth subparagraph, Article 19(5), third subparagraph, Article 21(3), third subparagraph and Article 25(3), fourth subparagraph thereof, Whereas:

- (1) With respect to the specification of the criteria for establishing the circumstances in which the use of financial derivative instruments can be considered to solely serve the purpose of hedging the risks inherent to the investments of ~~an ELTIF,~~ a European longterm investment funds (ELTIF), as referred to in Article 9(2), point (d), of Regulation 2015/760, the financial derivative instruments that should be considered are those the underlying of which corresponds to the assets to which an ELTIF has or would have exposures and, where the exposure to such an asset is not available, the underlying of which corresponds to the asset class to which an ELTIF has or would have exposure. That is in particular because in certain cases a financial derivative instrument to hedge an exposure to a specific item is not available, but rather as an item among others included in an index which is the underlying of a financial derivative instrument. In addition, the use of financial derivative instruments might in some cases serve the purpose of hedging the risks inherent to the investments of an ELTIF only where such strategy is combined with trades in certain assets. ~~In order to~~To ensure that the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments of an ELTIF, the financial derivative instruments should reduce effectively the relevant risk. The reduction of risk should be verifiable through systems identifying the risks intended to be mitigated and the way in which the derivative would mitigate such risk. Since ELTIFs should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the risks inherent to their own

investments, the use of the financial derivative instruments primarily aimed to provide a return for the ELTIF should not be deemed to serve the purpose of hedging the risks.

(2) The results, assumptions and inputs used for liquidity stress tests, where such liquidity stress tests are carried out in accordance with Article 15(3), point (b) or Article 16(1) of Directive 2011/61/EU of the European Parliament and of the Council<sup>22</sup>, which should be among the minimum information to be provided by the manager of an ELTIF to the competent authority of the ELTIF under Article 18(2), first subparagraph, point (b), of Regulation (EU) 2015/760, could allow the managers of ELTIFs to demonstrate whether and how, in severe but plausible scenarios, the ELTIF is able to deal with redemption requests. The results, assumptions and inputs used for carrying out such liquidity stress tests in accordance with Article 15(3), point (b) or Article 16(1) of Directive 2011/61/EU should enable the assessment by the ELTIF manager of the stress scenarios for the assets and liabilities, including redemption and collateral shocks, and the decrease in the value of the assets. Managers of ELTIFs carrying out liquidity stress tests in accordance with Article 15(3), point (b) or Article 16(1) of Directive 2011/61/EU should employ appropriate liquidity management systems and adopt procedures which enable them to monitor the liquidity risk of the ELTIF and ensure that the liquidity profile of the investments of the ELTIF is compatible with the long-term investment strategy of the ELTIF. Managers of ELTIFs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of ELTIFs including resilience to redemptions and collateral shocks, and fluctuations in the value of the assets. The results, assumptions and inputs used for carrying out such liquidity stress tests should be among the minimum information to be provided by the manager of the ELTIF to the competent authority of the ELTIF under Article 18(2), first subparagraph, point (b), of Regulation (EU) 2015/760.

~~(2)~~(3) When assessing whether the life of an ELTIF is compatible with the life cycles of each of the individual assets of the ELTIF, as referred to in Article 18(3) of Regulation (EU) 2015/760, the manager of an ELTIF should consider, given the long-term nature of the ELTIF, the liquidity profile of each of the ELTIF's individual assets, the liquidity profile of the ELTIF's portfolio on a weighted basis, the criteria on the timing of acquisition of those assets, and their valuation. During that assessment, given its interaction with the liquidity of the ELTIF, the manager of an ELTIF should also consider, where the ELTIF provides for the possibility of redemptions during the life of the ELTIF, the redemption policy of the ELTIF.

~~(3)~~(4) The criteria to determine the minimum holding period referred to in Article 18(2), first subparagraph, point (a), of Regulation (EU) 2015/760 should ensure that the length of such minimum holding period is consistent with the time necessary to complete the

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<sup>22</sup> 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 (OJ L 174, 1.7.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/61/oj>).

investment of the ELTIF's capital contributions. It follows that the longer that time, the longer the minimum holding period should generally be. That minimum holding period is a period that locks the capital at investor level and which the ELTIF applies at the beginning of its life. However, to ensure fair treatment of investors and financial stability, ELTIF managers should be able to implement lock-up periods for subsequent investors and apply the same abovementioned criteria.

~~(4)~~(5) The criteria to determine the minimum holding period should also take into account whether the ELTIF concerned allows for redemptions throughout the life-cycles of the assets, the life of the ELTIF, the redemption policy, the valuation procedure and other circumstances and conditions under which the ELTIF may allow redemptions, including the investor base of the ELTIF.

~~(5)~~(6) To ensure investor protection and financial stability, the information referred to in Article 18(2), first subparagraph, point (b), of Regulation (EU) 2015/760 should relate in particular to the valuation procedures of the ELTIF, the liquidity stress tests conducted by the manager of the ELTIF including the methodology and parameters used in that stress test, the procedures detailing which liquidity management tools are available, and the calibration and activation of those liquidity management tools. To facilitate and improve the supervision of ELTIFs, the competent authority of the home

Member State of the manager of the ELTIF, where different from the competent

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authority of the ELTIF, should supplement and integrate the set of information provided by the manager of the ELTIF when so requested by the competent authority of the home Member State of the ELTIF.

~~(7)~~ In line with Directive (EU) 2011/61, The manager of an ELTIF should implement, in accordance with Directive 2011/61/EU, detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of any selected liquidity management tool. The liquidity management tools that the manager of an ELTIF puts in place, their calibration, and the conditions under which the manager of the ELTIF would activate those tools should be clearly described in the rules or instruments of incorporation or in the prospectus of the ELTIF.

~~(6)~~(8) The redemption policy of the ELTIF and the use of liquidity management tools imply, given an ELTIF is an AIF Alternative Investment Fund (AIF) according to the requirements of Directive 2011/61/EU, the availability of the valuation procedures for the redemptions and subscriptions in line with the requirements set out in that Directive. The manager of the ELTIF should be able to perform a reliable, sound and updated valuation of the assets of the ELTIF. The redemption policy and the valuation procedures of an ELTIF should also ensure a level of liquidity of the ELTIF's underlying

assets that is appropriate to avoid liquidity mismatches. The ~~manager redemption policy of an~~ ELTIF should put in place a shall contain the length of the minimum notice period for allowing redemptions of the that that unitholders or shareholders must give to fund managers when redeeming their units or shares. of the ELTIF.

~~(7)~~(9) To ensure a fair treatment of remaining and redeeming investors, the valuation should ensure that the redemption prices reflect the fair value of underlying assets at all times. The manager of an ELTIF should also ensure consistency between the frequency of calculation of the net asset value of the ELTIF, the availability of a reliable, sound, and updated valuation of ELTIF's assets, and the frequency of redemptions during the life of the ELTIF.

~~(8)~~ To avoid dilution of remaining investors in the ELTIF, and mitigate any potential risk to financial stability, that may be driven by first mover advantage related issues, the manager of an ELTIF should select and implement at least one anti-dilution liquidity management tool, which could be anti-dilution levies, swing pricing or redemption fees.

~~(9)~~(10) ~~To~~To reduce the probability of suspension of an ELTIF, the manager of an ELTIF should be able to implement redemption gates. The use of gates should relate to different types of situations, including to stressed market situations. Such stressed market situations may comprise situations where there are numerous or voluminous redemption requests at the same redemption point and the sale of assets to meet the requests is either impossible or implies a sale at a highly discounted price.

~~(10)~~(11) The criteria to assess the redemption percentage referred to in Article 18(2), point (d), of Regulation (EU) 2015/760 should ensure that that percentage takes into account the variety of ELTIFs, their liquidity profile, the notice period, the planned and expected frequency of redemptions of the ELTIF, and the financial performance of the ELTIF.

~~(12)~~ For the purposes of assessing the redemption percentage referred to in Article 18(2), point (d) of Regulation (EU) 2015/760, ELTIFs should manage liquid assets in conservative manner and consider future cash flows.

~~(13)~~ The maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 should be an integral part of the redemption policy of the ELTIF and should be determined by the manager of the ELTIF on the basis of the notice period and the minimum percentage of liquid assets. Where the the notice period do not correspond to the parameters set out in the calibration table provided to the ELTIF manager, the linear approximation should be used to determine the maximum percentage of assets referred to Article 18(2), first sub-paragraph, point (d).

~~(11)~~(14) Providing for the possibility of using the matching mechanism under Article 19(2a) of Regulation (EU) 2015/760, during the life of the ELTIF, should not be deemed to prohibit other forms of secondary transfers if this is explicitly agreed between the



transferring investors and the rules or instruments of incorporation of the ELTIF do not prohibit such transfers.

~~(12)~~(15) In relation to the matching mechanism referred to in Article 19(2a) of Regulation (EU) 2015/760, that for the purpose of this Regulation should not be considered a multilateral system, and the possibility of redemptions during the life of the ELTIF referred to in Article 18(2) of ~~that same~~ Regulation (EU) 2015/760, it is ~~important~~necessary to specify certain requirements to clarify the functioning of this newly established mechanism. The circumstances for the use of matching requirements should relate to the transfer process for both exiting and potential investors, the role of the manager of the ELTIF in conducting transfers, the matching of respective requests, the requirements on the determination of the execution price and the proration conditions, the level of the fees, costs and charges related to the transfer process, and the timing and the nature of the disclosure of information to investors, ~~which should be published on the website of the manager of the ELTIF~~, with respect to the transfer conditions. ~~In order to~~To avoid any arbitrage, where the execution price is not based on the net asset value of the ELTIF, the execution price should be implemented outside the valuation dates of the ELTIF. In relation to the rules on proration conditions, where unexecuted requests are not automatically carried over to the next exit date, investors should be offered an opportunity to take any of the following actions: restate their orders; leave their residual matching requests in place in anticipation of future matching; or withdraw their residual/outstanding matching interest.

~~(13)~~(16) The assessment of the market for potential buyers to be included in the schedule for the orderly disposal of the assets of the ELTIF, as referred to in Article 31(2), point (a), of Regulation (EU) 2015/760, should take into account market risks, and thus assess, inter alia, whether potential buyers are dependent on obtaining loans from third parties, whether there is a risk of illiquidity of the assets before sale, whether there are risks associated with political changes or legislative changes, including fiscal reforms, and whether there is a risk of deterioration of the economic situation in the market which is relevant to the ELTIF assets.

~~(14)~~(17) The valuation of the assets to be included in the schedule for the orderly disposal of the assets of the ELTIF should be carried out at a moment in time that is sufficiently close to the beginning of the disposal of the assets. An ELTIF that has

already valued those assets in accordance with Directive 2011/61/~~EU of the European Parliament and of the Council~~<sup>23</sup> ~~at EUat~~ a moment in time that is sufficiently close to the

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<sup>23</sup> ~~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 (OJ L 174, 1.7.2011, p. 1).~~

beginning of the disposal of those assets should not be required to revalue those assets.

~~(15)~~(18) Article 21(1) of Regulation (EU) 2015/760 was amended by Regulation (EU) 2023/606 of the European Parliament and the Council<sup>24</sup> to replace the obligation for an ELTIF to submit to its competent authority an itemised schedule for the orderly disposal of its assets at the latest one year before the end of the life of the ELTIF, with an obligation to submit such schedule when requested to do so. It follows that there should no longer be any references to the mandatory disclosure of the itemised schedule for the orderly disposal of the assets of the ELTIF.

~~(16)~~(19) To ensure a common approach to the application of Regulation (EU) 2015/760 in relation to costs disclosure, it is necessary to lay down that such disclosure of costs encompasses all costs borne directly or indirectly by investors.

~~(17)~~(20) Pursuant to Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council<sup>25</sup>, units or shares in a retail ELTIF qualify as packaged retail investment product. It follows that, pursuant to Article 5(1) of that Regulation, the manager of an ELTIF has to draw up a key information document disclosing the costs related to such ELTIFs, and provide prospective retail investors with that document, in addition to the prospectus.

~~(18)~~(21) In the interest of clarity, coherence and legal certainty, it is appropriate to repeal Delegated Regulation (EU) 2018/480, and integrate those provisions of Delegated Regulation (EU) 2018/480 that do not need to be amended or deleted in light of Regulation (EU) 2023/606.

~~(19)~~(22) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority ~~(ESMA)~~.

~~(20)~~(23) ~~ESMA~~The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of

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<sup>24</sup> Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules (OJ L 80, 20.3.2023, p. 1, ELI: <http://data.europa.eu/eli/reg/2023/606/oj>).

<sup>25</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p.1, ELI: <http://data.europa.eu/eli/reg/2014/1286/oj>).

the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>26</sup>.

~~(21)~~(24) Given that Regulation (EU) 2023/606 has already entered into force on 9 April 2023 and applies as of 10 January 2024, to provide legal certainty pertaining to

the authorisation, operational conditions and marketing of ELTIFs it is necessary that this Regulation enters into force on the day following that of its publication, ~~given it is important that that enters into force as soon as possible after the date when Regulation (EU) 2023/606 enters into force,~~

HAS ADOPTED THIS REGULATION:

#### Article 1

##### The use of financial derivative instruments for hedging purposes

The use of financial derivative instruments shall be considered as solely serving the purpose of hedging the risks inherent to other investments of the European long-term investment fund (ELTIF) as referred to in Article 9(2), point (d), of Regulation (EU) 2015/760, where all of the following conditions are fulfilled:

- (a) the use of the financial derivative instruments is economically appropriate for the ELTIF at the ELTIF level and is ~~both cost-effective and~~ consistent with the risk profile of the ELTIF;
- (b) the use of the financial derivative instruments aims at a verifiable ~~and objectively measurable~~ reduction of the risks at the ELTIF level, ~~including in stressed market conditions~~;
- (c) the underlying of the financial derivative instrument is an asset to which an ELTIF has or would have exposures, and where the exposure to such an asset is not available the underlying of the financial derivative instruments the same or economically similar asset class to which an ELTIF has or would have exposures.

For the purposes of point (b), the manager of the ELTIF shall take all reasonable steps to ensure that the financial derivative instruments used to hedge the risks inherent to other

<sup>26</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. ~~84~~–84, ELI: <http://data.europa.eu/eli/reg/2010/1095/oj>).

investments of the ELTIF reduce the risks at the ELTIF level, including in stressed market conditions.

## Article 2

Circumstances in which the life of an ELTIF is to be considered compatible with the lifecycles of each of its individual assets

When assessing whether the life of an ELTIF is compatible with the life cycles of each of the individual assets of the ELTIF, as referred to in Article 18(3) of Regulation (EU) 2015/760, the manager of an ELTIF shall consider at least all of the following:

- (a) the liquidity profile of each of the individual assets of the ELTIF and the liquidity profile of the ELTIF's portfolio on a weighted basis;
- (b) the timing of the acquisition and the disposal of each of the individual assets of the ELTIF, assessed against the background of the economic life cycle of the assets, and the life of the ELTIF;
- (c) the stated investment objective of the ELTIF;
- (d) where the rules or instruments of incorporation of an ELTIF stipulate that redemptions are possible during the life of the ELTIF, the redemption policy of the ELTIF;
- (e) the cash management needs and expected cash-flow and liabilities of the ELTIF;
- (f) the possibility to roll over or terminate the exposure of the ELTIF to the individual assets of the ELTIF;
- (g) the availability of a reliable, sound and up-to-date valuation of the assets in the ELTIF's portfolio;
- (h) the portfolio composition and the life-cycle management of the ELTIF's assets throughout the life of the ELTIF.

## Article 3

Criteria to determine the minimum holding period referred to in Article 18(2), first subparagraph, point (a), of Regulation (EU) 2015/760

1. A manager of an ELTIF shall, ~~when~~ determining the minimum holding period referred to in Article 18(2), first subparagraph, point (a), of Regulation (EU) 2015/760 consider at least all of the following:
  - (a) the long-term nature and investment strategy of the ELTIF;
  - (b) the underlying asset classes of the ELTIF, their liquidity profile and their position in their life cycle;

- (c) the ELTIF's investment policy and the extent to which the ELTIF takes part in the investment policy and governance of the underlying assets in which the ELTIF invests;
  - (d) the investor base of the ELTIF and, where the ELTIF can be marketed to retail investors, the expected aggregate concentration of retail investors and, where the ELTIF can solely be marketed to professional investors, information on the degree of concentration of the ownership of the professional investors in the ELTIF;
  - (e) the liquidity profile of the ELTIF;
  - (f) the procedures for the valuation of the ELTIF's assets and the time ~~needed~~required to produce a reliable, sound and up-to-date (based on the most recent data) valuation ~~of the investments~~;
  - (g) the extent to which the ELTIF lends or borrows cash, grants loans, or enters into securities lending, securities borrowing, repurchase transactions or any other agreement which has an equivalent economic effect and poses similar risks;
  - (h) the portfolio composition and diversification of the ELTIF;
  - (i) the average and mean length of life of the assets of the portfolio of the ELTIF;
  - (j) the duration and the characteristics of the life-cycle of the ELTIF and the ELTIF's redemption policy;
  - (k) the timeframe for the investment phase of the strategy of the ELTIF;
  - (l) whether the minimum holding period is consistent and commensurate with the time necessary to complete the investment of the ELTIF's capital contributions, in particular, whether that minimum holding period covers at least the initial investment phase of the ELTIF and, unless duly justified by the manager of the ELTIF, whether the minimum holding period lasts at least until the ELTIF's aggregate capital contributions have been invested.
2. The manager of the ELTIF shall be able to ~~demonstrate~~justify to the competent authority of the ELTIF, upon request by the latter, on the basis of the criteria set out in paragraph 1, the appropriateness of the duration of the minimum holding period of the ELTIF and its compatibility with the valuation procedures and the redemption policy of the ELTIF.

#### Article 4

Minimum information to be provided by the manager of an ELTIF to the competent authority of the ELTIF under Article 18(2), first subparagraph, point (b), of Regulation (EU) 2015/760

1. Where the rules or instruments of incorporation of an ELTIF provide for the possibility of redemptions during the life of the ELTIF, the manager of an ELTIF shall provide

the competent authority of the ELTIF, at the time of authorisation of the ELTIF, with all of the following information:

- ~~(a)~~ the redemption policy of the ELTIF;
- (a) , which shall include and clearly indicate information on the periodicity and the duration of the redemptions;
- (b) the conditions and procedures for requesting redemptions and for processing the redemption requests received;
- (c) ~~the persons or~~ entities responsible for managing the redemption process and the systems used to document the redemptions;
- (d) a description of how the assets and liabilities of the ELTIF are adequately managed in case of redemptions;
- (e) a description of the procedures to prevent redemptions causing dilution effects for investors;
- (f) a description of the valuation procedures of the ELTIF demonstrating that ~~that at each valuation date the ELTIF has substantial, reliable, sound and up-to-date data on each of its assets such~~ valuations of assets and calculations are carried out at a frequency which is both appropriate to the assets held by the ELTIF, and consistent with its issuance and redemption frequency as referred to in Article 19(3) of Directive 2011/61/EU;
- (g) the results, assumptions and inputs used for liquidity stress tests, where such liquidity stress tests ought to be carried out in accordance with ~~Articles~~Article 15(3)~~(b)~~, point (b) or Article 16(1) of Directive 2011/61/EU; demonstrating whether and how, in severe but plausible scenarios, the ELTIF is able to deal with redemption requests;
- (h) the liquidity offered to investors of the ELTIF and the liquidity profiles of the assets of the ELTIF under normal and stressed conditions;
- (i) a description of the available liquidity management tools, the procedures for implementing and calibrating them, and the conditions for their activation;
- (j) any other information that the competent authority of the ELTIF considers ~~necessary~~relevant to assess whether the redemption policy of the ELTIF and the liquidity management tools meet the requirements set out in Regulation (EU) 2015/760.

~~For the purpose of point (h), the results, assumptions and inputs used for carrying out liquidity stress tests shall include the stress scenarios for the assets and liabilities, including redemption and collateral shocks, and the decrease in the value of the assets.~~

2. Where there is a material change to the information referred to in paragraph 1, the manager of the ELTIF shall give written notice thereof to the competent authority of the ELTIF as soon as possible and at least one month before implementing the change. If the material change to the information referred to in paragraph 1 is not

~~planned by the ELTIF manager and goes beyond its control, the ELTIF manager shall inform the competent authority of the ELTIF, in a timely manner, as soon as the change becomes known to the manager of the ELTIF. The manager of the ELTIF shall inform the competent authority of the ELTIF, as soon as practically possible and not later than within 3 business days from the date the material change to the information provided in paragraph 1 became known or should have become known to the manager of the ELTIF, whenever there is a material change to that information, or whenever there are material changes to any other elements that may affect the redemption policy, including:~~

- ~~(a) the results of liquidity stress tests conducted after the authorisation of the ELTIF;~~
- ~~(a) the implementation of the liquidity management tools after the authorisation of the ELTIF;~~
- ~~(b) the implementation of the derogation referred to in Article 18(2) of Regulation (EU) 2015/760.~~

~~In such a case, the manager of the ELTIF shall provide to the competent authority of the ELTIF an updated version of the information set out in paragraph 1 within 20 business days.~~

3. Throughout the life of the ELTIF, the manager of an ELTIF shall also provide all of the following information, upon request from the competent authority of the ELTIF:

- ~~(c) updated information on the valuation of assets and on whether and how that valuation is sufficiently substantive, reliable, and in line with the redemption policy of the ELTIF to prevent any possible dilution effects for remaining investors in the ELTIF;~~
- (a) updated and detailed information on whether the liquidity management tools of the ELTIF have been activated and used to manage redemption requests, and if so, in which circumstances and how;
- (b) the updated results of the liquidity stress tests, as well as and the updated assumptions and inputs used for carrying out the liquidity stress tests performed, under ~~normal and~~ exceptional and stressed market conditions.

#### Article 5

Requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, as referred to in Article 18(2), first subparagraph, points (b) and (c), of Regulation (EU) 2015/760

1. An ELTIF shall make the redemption policy referred to in Article 18(2), first subparagraph, points (b) and (c), of Regulation (EU) 2015/760 available to its investors at all times in

the prospectus and on the website of the manager of the ELTIF. The redemption policy of the ELTIF shall contain all of the following elements:

- (a) the conditions under which and the time window within which redemptions can be granted during the life of the ELTIF;
- (b) the frequency or periodicity at which redemptions can be granted;
- (c) the procedures that need to be followed, the requirements that need to be fulfilled and timing limitations, if any, applicable to the redemptions, including:

(i) the procedures, minimum notice period ;  
~~(i)(ii)~~ the conditions and procedures for redemptions requests;

~~(ii)(iii)~~ the role and responsibilities of the entities and persons involved in the procedures and the requirements for the granting of redemptions;

- (d) ~~a description of the method and internal processes for the valuation of the assets of the ELTIF throughout the life of the ELTIF;~~

~~(e)(d)~~ whether the requests for redemptions that have not been fully satisfied, due to the application of pro-rata, will automatically be cancelled or whether they will be still valid, for the remaining part, and count for future redemptions;

~~(f)(e)~~ a description of how and within which time investors will be repaid;

~~(g)(f) wherewhether~~ the ELTIF rules or instruments of incorporation provide for the possibility of repayments in kind out of ELTIF's assets, as referred to in Article 18(5)~~;~~ of Regulation (EU) 2015/760, ~~the most recently available valuation of those assets at the moment of their delivery to investors as repayments;~~

~~(h)(g)~~ whether the ELTIF includes a the minimum holding period established by the ELTIF manager in accordance with Article 3, and the duration and conditions for the minimum holding period;

(h) a description of the available liquidity management tools and of the conditions for their activation. ~~Where;~~

(i) the percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760.

For the purposes of point (h), where ELTIF are marketed to retail investors, the description of the liquidity management tools shall be explained in non-technical terms in an effort to maximise retail investors' understanding of the tools~~;~~



~~(i) the percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760.~~

2. When adopting the redemption policy of an ELTIF, the manager of the ELTIF shall take into account all of the following features of the ELTIF, ~~which shall also constitute information to be provided to the competent authority of the ELTIF, as referred to in Article 4(1),~~ to assess the liquidity profile of the ELTIF:

- (a) the composition of the portfolio of the ELTIF, including the assets referred to in Article 9(1), point (b) of Regulation (EU) 2015/76;
- (b) the life of the ELTIF;
- (c) the liquidity profile of the ELTIF and methods and the documented process for the valuation of the assets of the ELTIF;
- (d) the market conditions and material events that may affect the possibility of the manager of the ELTIF to implement the redemption policy;
- (e) the minimum holding period established by the ELTIF manager pursuant to Article 3 and the criteria used by the manager of the ELTIF to determine that minimum holding ~~period~~period;
- (f) the available liquidity management tools, of their calibration and of the conditions for their activation;
- (g) the percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760, together with the criteria used by the manager of the ELTIF to determine that percentage;
- (h) if and how redemptions occur on a pro rata basis;
- (i) the liquidity stress tests, where such liquidity stress tests ought to be carried out in accordance with ~~Articles~~Article 15(3)~~(f)~~, point (b) and Article 16(1) of Directive 2011/61/EU, and their results, and of how the interests of investors will be protected.

The features referred to in the first subparagraph shall also constitute information to be provided to the competent authority of the ELTIF in accordance with Article 4(1).

3. Throughout the life of the ELTIF, the redemption policy shall be sound, well documented and consistent with the ELTIF's investment strategy and the liquidity profile of the ELTIF. The different features of the redemption policy, including the redemption frequency, the minimum holding period, the ~~period~~date referred to in Article 17(1), point (a)~~),~~ of Regulation (EU) 2015/760, ~~and~~ the minimum notice period ~~referred to in paragraph~~ shall be consistent with the nature and the level of liquidity of the ELTIF's underlying assets.

~~The information that a manager of an ELTIF shall provide throughout the life of the ELTIF shall also include the information referred to in paragraph 2 of this Article, which~~ The manager of an ELTIF shall take into account the results of the back-testing performed

and the new information acquired by the manager of the ELTIF throughout the life of the ELTIF.

~~4a. 4. In accordance with Article 19 of Directive 2011/61/EU Where redemptions take place more frequently than on a quarterly basis, the manager of the ELTIF shall be able to perform a reliable, sound and updated valuation of the assets of the ELTIF at each redemption point of the units or shares of the ELTIF. To that end, the manager of the ELTIF shall ensure that:~~

- ~~(a) the frequency of redemptions is consistent with the actual possibility to have a valuation of assets that is reliable, sound and up-to-date;~~
- ~~(a) when valuating the assets in which the ELTIF invests, all reasonably available data are used including the financial information of the qualifying portfolio undertakings, where available;~~
- ~~(b) the costs of the asset valuation and the impact of the disposal of assets on the ELTIF are taken into account~~

~~4a. The frequency of redemptions shall be, as a maximum, quarterly, except where the manager of the ELTIF can justify to the competent authority of the ELTIF a higher frequency, on the basis of the appropriateness of the redemption frequency and its compatibility with the individual features of the ELTIF referred to in paragraph 2 of this Article and the actual possibility to have a reliable, sound and updated valuation of the assets of the ELTIF.~~

1. Redemptions shall only be possible after a notice period is given by each investor. The manager of the ELTIF shall determine the length of that notice period based on the liquidity profile of the underlying assets of the ELTIF, and the time it takes to sell those assets under normal and stressed market conditions.

~~2. Redemptions shall only be possible after a notice period is given by each investor. The manager of the ELTIF shall determine the length of that notice period based on the liquidity profile of the underlying assets of the ELTIF, and the time it takes to sell those assets under normal and stressed market conditions.~~

~~5a. The notice period shall be a minimum of 12 months.~~

3. Notwithstanding paragraph 5a of this Article, The maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 shall be an ELTIF may allow investors to redeem their shares with a notice period of less than 12 months. In such case, the notice period integral part of the redemption policy of the ELTIF and shall be calibrated at the discretion of the manager of the ELTIF based upon:

the notice period and the minimum percentage of liquid assets as referred to in Article 9(1), point (b) of Regulation (EU) 2015/760, and taking into account the as set out in Annex II.

The maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760, in accordance with the table below, of the ELTIF set out in Annex II to this Regulation, as the case can be, is to be assessed on a forecasted basis for a period of 12 months.

Redemption Notice period	Minimum percentage of liquid assets	Maximum percentage referred in Article 18(2)(d)
Less than 1 year to 9 months (included)	13%	50%
Less than 9 months to 6 months (included)	27%	45%
Less than 6 months to 3 months (included)	40%	40%
Less than 3 months to 1 month (included)	40%	35%
Less than 1 month	40%	20%

~~Where the amount of liquid assets of the ELTIF breaches the requirements set out in the first subparagraph, the ELTIF manager shall, within an appropriate period of time, take such measures as are necessary to reconstitute the minimum percentage of the liquid assets, taking due account of the interests of the investors in the ELTIF.~~

Where the amount of liquid assets of the ELTIF breaches the requirements set out in Annex II, the ELTIF manager shall, within an appropriate period of time, take such measures as are necessary to reconstitute the minimum percentage of the liquid assets, taking due account of the interests of the investors in the ELTIF.

Where the notice period is less than **6** months, the manager of the ELTIF shall provide the competent authority of the ELTIF with a justification ~~why the notice period is less than 3 months and~~ how that notice period is consistent with the ~~requirements laid down in~~

~~the first subparagraph~~ individual features of ~~this paragraph~~ the ELTIF and the interest of investors of the ELTIF.

4. The manager of the ELTIF ~~shall~~ may select and implement at least one anti-dilution liquidity management tool, among anti-dilution levies, swing pricing and redemption fees. ~~In addition to that or those anti-dilution tool(s), the manager of the ELTIF may also select and implement other liquidity management tools.~~

~~By way of derogation~~ In addition to anti-dilution tools referred to in the first subparagraph, ~~in specific circumstances,~~ the manager of the ELTIF may also select and implement other liquidity management tools ~~than those referred to in the first subparagraph, in which.~~ In such a case, the manager of the ELTIF shall provide the competent authority of the ELTIF ~~the competent authority of the ELTIF~~ with information to justify why, on the basis of the individual features of the ELTIF set out in paragraph 2, the liquidity management tools referred to in the first subparagraph are not adequate for ~~this~~ that specific ELTIF and why another set of liquidity management tools would be more appropriate, and taken due account of the interests of investors.

5. The manager of an ELTIF may also implement redemption gates in particular if the amount of liquid assets is not sufficient to cover a reasonable expected redemption at the redemption dates.
6. ~~The manager of an ELTIF shall also implement redemption gates in accordance with the table set in paragraph 6, first subparagraph, as well as in certain specific circumstances, including situations where redemptions gates are needed to mitigate any potential risk to financial stability and, in stressed market conditions, where numerous or voluminous redemption requests could be received by the manager of the ELTIF at the same redemption point and where the sale of assets to meet those requests is either impossible or implies a sale at a highly discounted price.~~
7. ~~The manager of an ELTIF shall implement detailed policies and procedures for the activation and deactivation of any selected liquidity management tool and the operational and administrative arrangements for the use of any selected liquidity management tool. The liquidity management tools that the manager of an ELTIF puts in place as well as their calibration and the conditions under which the manager of the ELTIF would activate those tools shall be clearly described in the rules of the ELTIF or in its instruments of incorporation and in the prospectus of the ELTIF.~~
8. ELTIFs that can solely be marketed to professional investors may ask the competent authority of the ELTIF to be exempted from providing the competent authority with the information referred to in paragraph 6, third subparagraph, and 7, second subparagraph.

## Article 6

Criteria to determine the percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760

1. ~~4.~~ When determining the percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760, the manager of an ELTIF shall take into account all of the following elements:
  - a. the liquidity profile of the ELTIF, the assets and liabilities of the ELTIF, the risk of liquidity mismatches and the expected inflows and outflows of the ELTIF;
  - b. the life cycle of the assets of the ELTIF, the life of the ELTIF, the overall stability of the investment strategy of the ELTIF throughout its life and the potential market events that may affect the ELTIF;
  - c. the planned and expected frequency of redemptions of the ELTIF and the risks of dilution effects of such redemptions for investors;
  - d. the availability and nature of existing liquidity management tools;
  - e. the financial performance of the ELTIF, including the free cash flows and the balance sheet of the ELTIF;
  - f. potential market circumstances and conditions that would affect the ELTIF when the percentage is set or the extent to which the units or shares of the ELTIF can be redeemed;
  - g. the availability of reliable information on the valuation of the assets of the ELTIF;
  - h. the stability and the investment strategy of the ELTIF and its portfolio composition following the potential redemptions throughout the life cycle of the ELTIF to ensure that the interests of the remaining investors are protected;
  - i. any other information necessary to determine that percentage in stressed market conditions and normal market conditions.
2. The percentage of allowed redemptions referred to in Article 18(2), point (d), of Regulation (EU) 2015/760 may vary depending on the lifecycle of the assets of the ELTIF and the life of the ELTIF and shall be determined in accordance with the redemption policy, the valuation procedures of the ELTIF and ~~the limits set out in the table in Article 5(6), first subparagraph,~~ of this Regulation.

## Article 7

Matching of transfer requests as referred to in Article 19(2a) of Regulation (EU) 2015/760

1. ~~4.~~ The rules and the procedures for the full or partial matching of transfer requests as referred to in Article 19(2a) of Regulation (EU) 2015/760 shall be set out in the

rules or instruments of incorporation **and** in the prospectus of the ELTIF. Those rules and procedures shall contain all of the following:

- (a) the format, process and the timing of the matching;
- (b) the frequency or periodicity of the matching window and the duration of that window;
- (c) the dealing dates;
- (d) the requirements for the submission of purchase and for the exit requests deadlines;
- (e) the deadlines for the submission of purchase and exit requests;
- (f) the settlement and pay-out periods;
- (g) the safeguards to avoid any potential arbitrage against investors' interest due to the asymmetry of information inherent to the matching of transfer requests
- (h) where the ELTIF manager imposes a notice period for receiving purchase and exit requests, the details regarding such a notice period.

Where the rules or instruments of incorporation of an ELTIF also provide for the possibility of redemptions during the life of the ELTIF as referred to in Article 18(2) of Regulation (EU) 2015/760, the rules or instruments of incorporation **and the prospectus** of the ELTIF shall clearly set out the differences between such redemptions and the matching referred to in Article 19(2a) of that Regulation, in particular as regards the frequency, periods, execution price, and notice period for such matching, and shall contain the specific criteria for the determination of the execution price in case of matching.

2. The rules and procedures for matching requests shall be sound, appropriate for the ELTIF, and calibrated and shall aim at preventing, managing and monitoring conflicts of interest.

#### Article 8

The determination of the execution price and the pro-ratio conditions where transfers are matched as referred to in Article 19(2a) of Regulation (EU) 2015/760, and the level of the fees, costs and charges, if any, related to the transfer

1. ~~4.~~ The rules or instruments of incorporation **and the prospectus** of an ELTIF shall set out the rules to determine the execution price related to the matching of transfer requests as referred to in Article 19(2a) of Regulation (EU) 2015/760. ~~Where the net asset value is not reliable or appropriate for the ELTIF,~~ the manager of the ELTIF may determine the execution price using other tools than the net asset value, provided that the fair treatment of all investors, including exiting and remaining

investors of the ELTIF, is ensured, in particular where the ELTIF allows for redemptions as referred to in Article 18(2) of Regulation (EU) 2015/760.

~~For the purpose of the first subparagraph, the rules or instruments of incorporation of an ELTIF shall set out the rules to determine the execution price related to the matching of transfer requests as referred to in Article 19(2a) of Regulation (EU) 2015/760.~~

2. Where the execution price related to the matching of transfer requests as referred to in Article 19(2a) of Regulation (EU) 2015/760 is based on the net asset value, such matching shall be aligned with the valuation dates of the ELTIF. Where such execution price is not based on the net asset value, such matching shall be implemented outside the valuation dates of the ELTIF.
3. The rules or instruments of incorporation **and the prospectus** of an ELTIF shall set out the rules determining any exit or purchase fee related to the matching of transfer requests.
4. With respect to pro rata conditions, the rules or instruments of incorporation **and the prospectus** of the ELTIF shall contain clear rules on how the manager of the ELTIF will deal with any transfer requests to ensure the fair treatment of investors. To that end, those rules or instruments shall establish all of the following:
  - (a) where there are purchasing orders but no sale orders, or vice versa, whether the requests are cancelled or carried over;
  - (b) where exit orders are lower than purchasing orders, that exit orders are carried out and that purchasing orders that are to be satisfied are selected on the basis of the criterion established by the manager of the ELTIF and whether the excess purchasing orders are carried over;
  - (c) where exit orders are higher than purchasing orders, that the manager of the ELTIF executes the exit orders on the basis of the criterion established by the manager of the ELTIF and whether the excess exit orders are carried over and, if so, for how long.

Except if duly justified by the manager of the ELTIF taking into account the specificities of the ELTIF, the rules determining the pro rata conditions shall be based on the size of each exit order and take into account the available assets of the ELTIF ~~at the time of the proposed transfer.~~

#### Article 9

Information that ELTIFs need to disclose to investors when transfers are matched as referred to in Article 19(2a) of Regulation (EU) 2015/760 and the timing of such disclosure

1. When matching transfers as referred to in Article 19(2a) of Regulation (EU) 2015/760, the manager of the ELTIF shall provide to investors all of the following

information, as applicable, depending on whether the execution price is based on net asset value or not:

- (a) predefined dealing dates and settlement/pay-out periods;
- (b) deadlines for the submission of purchase or exit forms;
- (c) the frequency at which the matching is available;
- (d) where the execution price is calculated by using methods or tools that are different, and may deviate, from the net asset value and, if so, the specific criteria on the basis of which the execution price is determined and the manner in which investors will be clearly informed thereof;
- (e) any exit or subscription fees and charges or costs borne by existing or potential investors related to the matching of transfer requests;
- (f) any notice period for receiving purchase and exit orders;
- (g) by when, whom and how the new investors will be informed of the fact that they have acquired the units or shares of the ELTIF and when and how the exiting investors will receive the corresponding amount for their units or shares of the ELTIF;
- (h) the rules on the pro rata conditions;

Where the rules or instruments of incorporation of an ELTIF also provide for the possibility of redemptions during the life of the ELTIF, as referred to in Article 18(2) of Regulation (EU) 2015/760, the ELTIF manager shall provide investors with clear information about the differences between such redemptions and the matching referred to in Article 19(2a) of that Regulation, and in particular, as regards the frequency, periods, execution price and notice period for such mechanism.

2. Where the information referred to in paragraph 1 is not in the prospectus of the ELTIF, the prospectus of the ELTIF shall contain a direct link to a webpage, or another place, where that information can be found. ~~The key information document of the ELTIF shall also contain a direct link to the webpage where that information can be found.~~

3. The manager of the ELTIF shall keep the information referred to in paragraph 1 upto-date.

## Article 10

### Criteria for the assessment of the market for potential buyers

For the purposes of Article 21(2), point(a), of Regulation (EU) 2015/760, the manager of an ELTIF shall assess all of the following elements in relation to each asset in which the ELTIF invests:



- (a) whether one or more potential buyers are present in the market;
- (b) whether the manager of the ELTIF, based on an assessment conducted with due skill, care and diligence at the time of the completion of the itemised schedule referred to in Article 21(1) of Regulation (EU) 2015/760, expects potential buyers to be dependent on external financing for buying the asset concerned;
- (c) where there are no potential buyers for an asset, the length of time likely to be necessary to find one or more buyers for that asset;
- (d) the specific maturity profile of the asset;
- (e) whether the manager of the ELTIF, based on an assessment conducted with due skill, care and diligence at the time of the completion of the itemised schedule referred to in Article 21(1) of Regulation (EU) 2015/760, expects the following risks to materialise:
  - (i) a risk associated with legislative changes that could affect the market for potential buyers;
  - (ii) a political risk that could affect the market for potential buyers;
- (f) whether the elements ~~listed under~~referred to in points (a) and (b) may be impacted adversely during the disposal period by overall economic conditions in the market or markets relevant to the asset.

#### Article 11

##### Criteria for the valuation of the assets to be divested

1. For the purposes of Article 21(2), point (c), of Regulation (EU) 2015/760, an ELTIF shall start the valuation of the assets to be divested ~~well in advance of~~before the deadline referred to in Article 21(1) of Regulation (EU) 2015/760 and shall ~~be finalised~~finalise that valuation within no more than 6 months of that deadline.
2. An ELTIF may take into account valuations made in accordance with Article 19 of Directive 2011/61/EU where such valuation has been finalised no more than 6 months before the deadline referred to in paragraph 1 of this Article.

#### Article 12

##### Common definitions, calculation methodologies and presentation formats of costs

1. The costs of setting up the ELTIF as referred to in Article 25(1), point (a), of Regulation (EU) 2015/760 shall comprise all administrative, regulatory, depositary, custodial, professional service and audit costs related to the setting up of the ELTIF irrespective of whether they are paid to the manager of the ELTIF or to a third party.
2. The costs related to the acquisition of assets as referred to in Article 25(1), point (b), of Regulation (EU) 2015/760 shall comprise all administrative, regulatory, depositary, custodial, professional service and audit costs related to the acquisition of the assets of the ELTIF, irrespective of whether those costs are paid to the manager of the ELTIF

or to a third party. Those costs shall be calculated in accordance with the methodology set out in points 19(b) and 20 of Annex VI to Commission Delegated Regulation (EU) 2017/653<sup>27</sup>.

3. ~~The costs laid down in paragraphs 1 and 2 shall be expressed as a percentage of the capital of the ELTIF.~~
4. ~~The~~ management and performance related fees referred to in Article 25(1), point (c))), of Regulation (EU) 2015/760 shall comprise all payments to the manager of the ELTIF, including payments to any person to whom the corresponding function has been delegated, except any fees that are related to the acquisition of the assets referred to in paragraph 2- of this Article. Those costs shall also include carried interest, as referred to in point 25 of Annex VI to Delegated Regulation 2017/653.
5. ~~The management fees shall be expressed as a percentage of the capital of the ELTIF over a one-year period.~~
- ~~6~~4. The performance related fees and carried interest shall be calculated in accordance with points 24 and 25 of Annex VI to Delegated Regulation (EU) 2017/653 and expressed as a percentage of the capital of the ELTIF over a one-year period.

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~~7~~5. The distribution costs referred to in Article 25(1), point (d), of Regulation (EU) 2015/760 shall comprise all administrative, regulatory, professional service and audit costs related to distribution.

~~8. The distribution costs referred to in paragraph 7 shall be expressed as a percentage of the capital of the ELTIF.~~

~~9~~6. Other costs, as referred to in Article 25(1), point (e))), of Regulation (EU) 2015/760, shall comprise all of the following items:

- (a) payments to the following persons or entities, including any person to whom those persons or entities have delegated any function;
  - (i) the depositary;
  - (ii) the custodian(s);
  - (iii) any investment adviser;

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<sup>27</sup> Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1, ELI: [http://data.europa.eu/eli/reg\\_del/2017/653/oj](http://data.europa.eu/eli/reg_del/2017/653/oj)).

- (iv) providers of valuation, fund accounting services and fund administration;
  - (v) providers of property management and similar services;
  - (vi) other providers that trigger transaction costs; (vii) prime-brokerage service providers;
  - (viii) providers of collateral management services;
  - (ix) securities lending agents;
  - (x) provisioned fees for specific treatment of gains and losses;
  - (xi) operating costs under a fee-sharing arrangement with a third party;
- (b) all payments to legal and professional advisers; (c) audit, registration and regulatory fees.

The costs referred to in the first subparagraph shall not include the costs related to the setting up of the ELTIF, the up-front part of the costs related to the acquisition of assets referred to in paragraph 2, the up-front part of the distribution costs referred to in paragraph 75 and the management and performance related fees.

~~407.~~ The costs referred to in paragraph 96 shall be expressed as a percentage of the capital/net asset value of the ELTIF over a one-year period.

~~448.~~ The overall cost ratio of the ELTIF as referred to in Article 25(2) of Regulation (EU) 2015/760 shall be the ratio of the total costs to the capital/net asset value per annum of the ELTIF and shall be calculated as follows:

- (a) the overall cost ratio of the ELTIF shall be expressed as a percentage to two decimal places;
- (b) ~~the overall cost ratio of the ELTIF shall be calculated at least once a year;~~
- (c) ~~the overall cost ratio of the ELTIF shall equal the sum of the management and performance related fees as referred to in paragraph 4 and the other costs as referred to in paragraph 9, plus the sum of the costs of setting up the ELTIF as referred to in paragraph 1, the costs related to the acquisition of assets as referred to in paragraph 2 and the distribution costs as referred to in paragraph 7, divided by the recommended holding period of the ELTIF, as referred to in Article 8(3), point (g)(ii), of Regulation (EU) 1286/2014;~~
- (d) ~~where one type of cost is covered by two or more types of costs as referred to in paragraphs 1 to 9 of this Article, that type of cost shall only be accounted for once in the calculation of the overall cost ratio of the ELTIF;~~
- (e) ~~the capital of the ELTIF shall relate to the same period as the costs;~~

(f) ~~until the capital of the ELTIF has been determined, the capital shall be the minimum target capital below which the ELTIF may not start operations;~~

~~(g)~~(b) the overall cost ratio of the ELTIF shall be based on the most recent cost calculations by the manager of the ELTIF and they shall be calculated and updated on an annual basis;

~~(h)~~(c) the costs shall be assessed on an 'all taxes included' basis.

~~12. The costs section of the prospectus of the ELTIF shall contain a presentation of costs in the form laid down in the Annex.~~

~~13. In the case of ELTIFs subject to the requirements of Regulation (EU) No 1286/2014, the prospectus of the ELTIF shall contain narratives presenting both the PRIIPs overall reduction in yield figure and the ELTIF's overall cost ratio and explanations of any potential differences between those figures.~~

#### Article 13

#### Repeal

Delegated Regulation (EU) 2018/480 is repealed ~~with effect from ...~~.

References to Delegated Regulation (EU) 2018/480 shall be construed as references to this Regulation.

#### Article 14

#### Entry into force and application

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

It shall apply from ~~...~~the date following the date of the entry of this Regulation into force.

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

Done at Brussels,

For the Commission  
The President  
[...]

One-off costs	Expressed as	Nature of the cost
The costs of setting up the ELTIF (in %)	% (of capital)	Accompanying explanation detailing the content of the costs
<del>The costs related to the acquisition of assets (in %)</del>	% (of capital)	Accompanying explanation detailing the content of the costs
Distribution costs (in %)	% (of capital)	Accompanying explanation detailing the content of the costs

Ongoing costs	Expressed as	Nature of the cost
Management fees (in %)	yearly % (of capital, over a one-year period)	Accompanying explanation detailing the content of the costs
Other costs (in %)	yearly % (of capital, over a one-year period)	Accompanying explanation detailing the content of the costs

Incidental costs	Expressed as	Nature of the cost
Performance fees (and carried interest) (in %)	yearly % (of capital, over a one-year period)	Accompanying explanation detailing the content of the costs, including the potential application of high watermark

Aggregated costs (one-off costs, ongoing costs, and incidental costs)	Expressed as
Overall cost ratio (in %)	yearly % (of capital, over a one-year period)

### ANNEX I

### Format for the Presentation of Costs

**Determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 as function of the redemption frequency and the extended notice period of the ELTIF**

<b>One-off costs</b>	<b>Expressed as</b>	<b>Nature of the cost</b>
<b>The costs of setting up the ELTIF (in %)</b>	<b>% (of capital)</b>	<b>Accompanying explanation detailing the content of the costs</b>
<b>The costs related to the acquisition of assets (in %)</b>	<b>% (of capital)</b>	<b>Accompanying explanation detailing the content of the costs</b>
<b>Distribution costs (in %)</b>	<b>% (of capital)</b>	<b>Accompanying explanation detailing the content of the costs</b>

<b>Ongoing costs</b>	<b>Expressed as</b>	<b>Nature of the cost</b>
<b>Management fees (in %)</b>	<b>yearly % (of capital, over a one-year period)</b>	<b>Accompanying explanation detailing the content of the costs</b>
<b>Other costs (in %)</b>	<b>yearly % (of capital, over a one-year period)</b>	<b>Accompanying explanation detailing the content of the costs</b>

<b>Incidental costs</b>	<b>Expressed as</b>	<b>Nature of the cost</b>
<b>Performance fees (and carried interest) (in %)</b>	<b>yearly % (of capital, over a one-year period)</b>	<b>Accompanying explanation detailing the content of the costs, including the potential application of high watermark</b>

<b>Aggregated costs (one-off costs, ongoing costs, and incidental costs)</b>	<b>Expressed as</b>
<b>Overall cost ratio (in %)</b>	<b>yearly % (of capital, over a one-year period)</b>

**Option 1 — Baseline option**

Notice period / Redemption frequency	No notice period	2 weeks notice period	1 month notice period	3 months notice period	6 months notice period	9 months notice period	12 months notice period
12 months	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%
6 months	50,0%	52,2%	54,5%	66,7%	100,0%	100,0%	100,0%
3 months	25,0%	26,1%	27,3%	33,3%	50,0%	100,0%	100,0%
2 months	16,7%	17,4%	18,2%	22,2%	33,3%	66,7%	100,0%
1 month	8,3%	8,7%	9,1%	11,1%	16,7%	33,3%	100,0%
Bi-weekly	4,2%	4,3%	4,5%	5,6%	8,3%	16,7%	100,0%
Weekly	1,9%	2,0%	2,1%	2,6%	3,8%	7,7%	100,0%

**Option 2 — Aggregation on a one-month basis**

Notice period / Redemption frequency	No notice period	2 weeks notice period	1 month notice period	3 months notice period	6 months notice period	9 months notice period	12 months notice period
12 months	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%
6 months	50,0%	52,2%	54,5%	66,7%	100,0%	100,0%	100,0%
3 months	25,0%	26,1%	27,3%	33,3%	50,0%	100,0%	100,0%
2 months	16,7%	17,4%	18,2%	22,2%	33,3%	66,7%	100,0%
1 month or more frequent than 1 month	On an aggregate basis, ever one month: 8,3%	On an aggregate basis, ever one month: 8,7%	On an aggregate basis, ever one month: 9,1%	On an aggregate basis, ever one month: 11,1%	On an aggregate basis, ever one month: 16,7%	On an aggregate basis, ever one month: 33,3%	On an aggregate basis, ever one month: 100%

**Option 3 — Aggregation on a two-months basis**

Notice period / Redemption frequency	No notice period	2-weeks notice period	1-month notice period	3-months notice period	6-months notice period	9-months notice period	12-months notice period
12 months	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%
6 months	50,0%	52,2%	54,5%	66,7%	100,0%	100,0%	100,0%
3 months	25,0%	26,1%	27,3%	33,3%	50,0%	100,0%	100,0%
2 months or more frequent than 2 months	On an aggregate basis, over 2 months: 16,7%	On an aggregate basis, over 2 months: 17,4%	On an aggregate basis, over 2 months: 18,2%	On an aggregate basis, over 2 months: 22,2%	On an aggregate basis, over 2 months: 33,3%	On an aggregate basis, over 2 months: 66,7%	On an aggregate basis, over 2 months: 100%

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### ANNEX I

Determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 as function of the notice period and the minimum percentage of liquid assets referred to in Article 9(1), point (b)

<u>Notice period</u>	<u>Minimum percentage of liquid assets referred to in Article 9(1), point (b)</u>	<u>Maximum percentage referred to in Article 18(2), first sub-paragraph, point (d)</u>
<u>Less than 12 months to 6 months (included)</u>	<u>10%</u>	<u>90%</u>
<u>Less than 6 months to 3 months (included)</u>	<u>15%</u>	<u>67%</u>
<u>Less than 3 months to 1 month (included)</u>	<u>20%</u>	<u>50%</u>
<u>Less than 1 month</u>	<u>25%</u>	<u>20%</u>