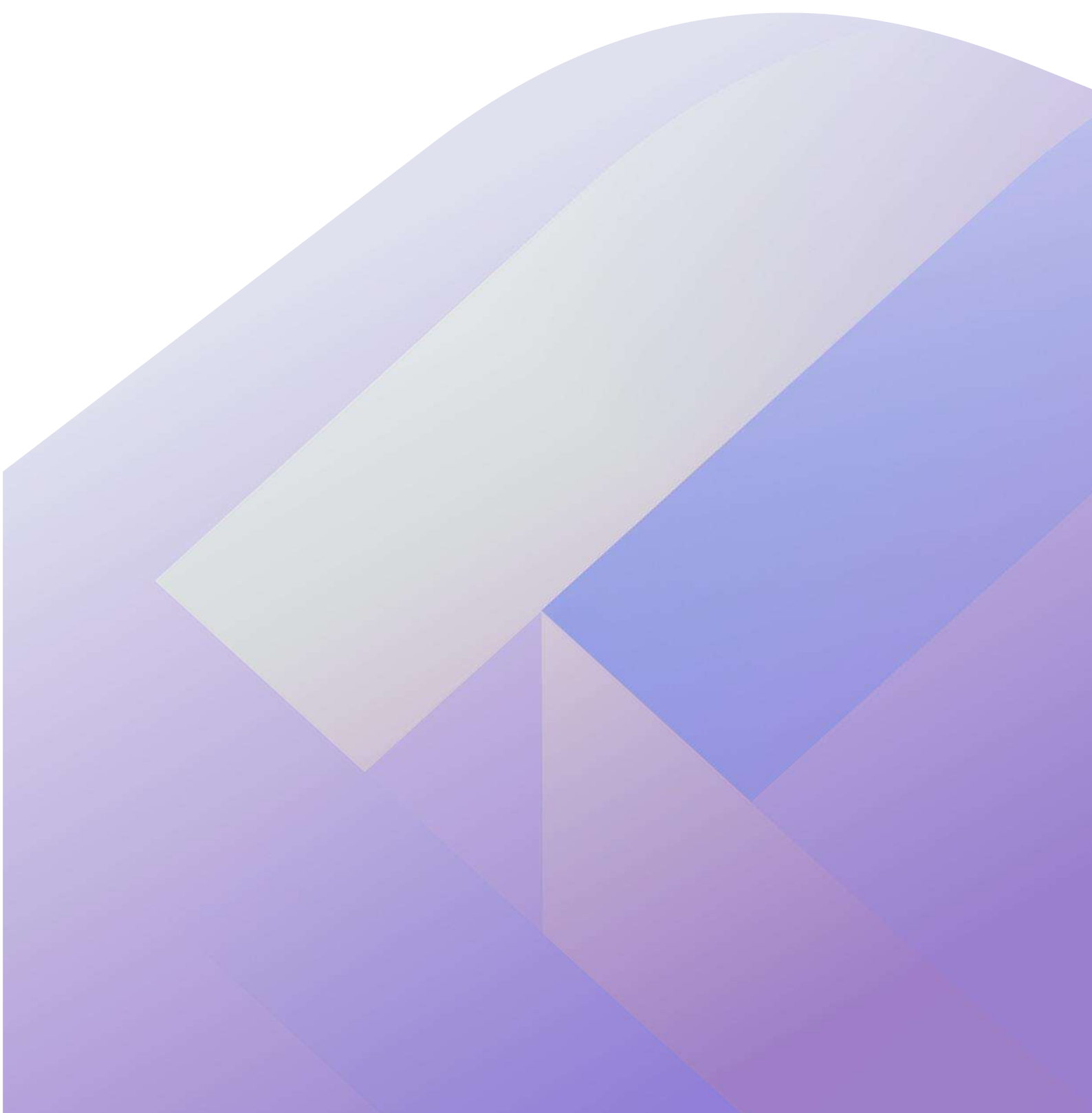


# Consultation Paper

Draft regulatory technical standards under the revised ELTIF Regulation



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 24 August 2023.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

### **Who should read this paper?**

This document will be of interest to (i) ELTIF managers and their trade associations, (ii) alternative investment funds managers and their trade associations, as well as (iii) institutional and retail investors investing into ELTIFs and their associations.

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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 the following:

- criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purpose;
- 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.

This consultation paper represents the first stage in the development of the draft RTS and sets out proposals for their content on which ESMA is seeking the views of external stakeholders.

## Contents

Section 2 explains the background to our proposals and gives detailed explanations on the content of the proposals and seeks stakeholders’ input through specific questions.

Annex I sets out the list of questions contained in this paper.

Annex II contains the legislative mandate to develop draft RTS.

Annex III provides for the cost-benefit analysis related to the draft RTS.

Annex IV contains the full text of the draft RTS.

### **Next Steps**

ESMA will consider the feedback it received to this consultation in Q3/Q4 2023 and expects to publish a final report and submit the draft technical standards to the European Commission for endorsement by 10 January 2024.

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<sup>1</sup> [Publications Office \(europa.eu\)](https://publications-office.europa.eu)

## 2 Background

1. On 25 November 2021, the European Commission adopted a package of legislative proposals focused on the CMU, including on the targeted review of Regulation (EU) 2015/760 (hereinafter: the ELTIF Regulation).<sup>2</sup>
2. The draft proposal for a Regulation amending the ELTIF Regulation included the following main areas of reforms:
  - Certain demand-side barriers for (retail) investors are removed (in particular the EUR 10,000 minimum investment threshold and the 10% maximum exposure cap for retail investors);
  - Removal of the ad hoc suitability test and the “appropriate investment advice” requirement, and their substitution with the MiFID II suitability test;
  - Carve-outs for “professionals only ELTIF”, particularly regarding the diversification requirements and borrowing of cash requirements;
  - Eligibility of assets: restrictions on eligibility of certain assets and investments are removed (such as removal of restrictions for real assets and listed portfolio undertakings, inclusion of eligible securitisation, etc.);
  - Product design rules: other fund rules, such as portfolio composition, diversification and concentration limits, borrowing of cash, conflicts of interest and other fund rules are made more flexible; notably, with respect to the provision of liquidity via secondary markets, the Commission’s proposal introduced the conditions for limited redemptions under the liquidity window mechanism (specific mandate for ESMA, please see below).
3. Following the adoption of the ELTIF proposal, in May 2022, the Council<sup>3</sup> adopted its General Approach and in June 2022 the ECON Committee of the European Parliament (EP) adopted a draft Final Report on the review of the amending ELTIF Regulation. Both co-legislators were supportive of the ELTIF reform and were broadly in line with the Commission’s original proposal. The final version of the revised ELTIF Regulation was published in the Official Journal on 20 March 2023<sup>4</sup>.

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<sup>2</sup> [https://ec.europa.eu/info/publications/211125-capital-markets-union-package\\_en](https://ec.europa.eu/info/publications/211125-capital-markets-union-package_en)

<sup>3</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/05/24/european-long-term-investment-funds-council-adopts-its-position/>

<sup>4</sup> [Publications Office \(europa.eu\)](https://publications-office.europa.eu/)

4. The key aspects of the revised ELTIF Regulation can be summarised as follows:

Eligible assets

- Broadening the scope of the definition of “real assets” and the removal of the EUR 10 million value threshold for real assets, i.e. the new ELTIF Regulation has no value thresholds for real assets;
- The market capitalisation threshold for listed portfolio undertakings is set to EUR 1,5 bn; To promote the EU FinTech strategy, ELTIFs are able to invest in certain financial undertakings of less than 5 years;
- ELTIFs are able to pursue a 100% fund-of-funds investment strategies, but investments are solely limited to EuSEFs, EuVECAs, ELTIFs, UCITS and EU AIFs managed by EU AIFMs.

Portfolio composition and diversification

- Minimum 55% of investments in eligible assets;
- The individual maximum diversification limits on investments has been set at 20%.

Master-feeder/ funds of funds

- The ELTIF Regulation allow master-feeder structures, whereby both the feeder fund and the master fund will always have to be an ELTIF fund;
- For ELTIF master/feeder structures, no maximum limits were set on investment in funds other than ELTIFs.

ELTIFs which may provide for the possibility of redemptions during the life of the ELTIF

- The ELTIF Regulation makes a clear distinction between two distinct structures for ELTIFs:
  - first, in Article 18(1), ELTIFs the investors of which “*shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF*”, and;
  - second, in Article 18(2), those ELTIFs the rules or instruments of incorporation of which “*may provide for the possibility of redemptions during the life of the ELTIF*” provided that all of the conditions of Article 18(2) are fulfilled. In Article 18(2) of the ELTIF Regulation, unlike in Article 18(1), there is no reference to the “end of the life of the ELTIF”.
- The above distinction is key from the perspective of the application of the ELTIF Regulation. While the revised ELTIF Regulation has no explicit references to open-ended or “evergreen” ELTIF<sup>5</sup>, the ELTIF Regulation now includes distinct provisions

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<sup>5</sup> Please note that in the intervention from the rapporteur of the proposal for a review of the ELTIF Regulation at the European Parliament on 14 February 2023 ([https://www.europarl.europa.eu/doceo/document/CRE-9-2023-02-14-ITM-021\\_EN.html](https://www.europarl.europa.eu/doceo/document/CRE-9-2023-02-14-ITM-021_EN.html)), reference is made to “open-ended” and/or “evergreen” ELTIFs – however, these terms do not appear explicitly in the amended ELTIF Regulation.

for ELTIFs not permitting redemptions before the end of the fund's life (Article 18(1)) and those ELTIFs which can allow redemptions before the end of the ELTIF's life-cycle under certain conditions and provided liquidity management tools are used to avoid liquidity mismatches.

#### Borrowing of cash

- The limit for cash borrowing for ELTIFs marketed to retail investors are set at 50% of the NAV;
- The borrowing of cash threshold for professionals-only ELTIFs was set at 100% of the NAV of the ELTIF;

#### Retail investor protection

- Requirement that a suitability assessment has to be always carried out is included, in line with the MiFID II requirements, including the communication of the suitability assessment to the investor;
- Requirement of an express investor consent that indicates that the retail investor understands the risks of investing in an ELTIF;
- Requirement to provide a single written alert that the product might not be suitable for retail investors that are unable to sustain a 10 year commitment and that diversification of an investment portfolio is recommended.

#### Sustainability

- Accelerated review clause (2 years as of the entry into application date) to assess the contribution of the ELTIF Regulation to the Green Deal and the possibility/viability/desirability of an optional sub-category of "ELTIFs marketed as environmentally sustainable";
- Explicit inclusion of green bonds as a category of eligible investment assets, provided such bonds fully comply with the eligibility requirements of the ELTIF Regulation, including on the ELTIF issuance characteristics and long-term focus.

#### Review

- Standard review of the ELTIF Regulation is to take place in 7 years (notwithstanding the accelerated review clause).

#### Final provisions:

- Entry into application: 9 months from the entry into force;
- Deadline for ESMA to deliver RTS: 9 months;
- Introduction of the grandfathering clause for ELTIFs authorised under the current ELTIF framework.



5. Regarding the entry into application of the amending ELTIF Regulation, it is important to specify that neither the authorisation of an ELTIF nor the marketing of the units or shares of ELTIFs according to the revised ELTIF regime is possible before the entry into application of the amending ELTIF Regulation. The fourth sub-paragraph of Article 2 of the amending Regulation sets out a derogation from the third subparagraph pertaining to the grandfathering clause, rather than the second subparagraph pertaining to the entry of the ELTIF Regulation into application. This implies that “ELTIF 1.0” (ELTIFs subject to the requirements of the initial ELTIF Regulation 2015/760) may choose to relinquish their 5-year grandfathering faculty and transform into “ELTIF 2.0” (ELTIFs subject to the requirements of the amending ELTIF Regulation 2023/606) right after the entry into application. But the ELTIF Regulation does not authorise the “transformation” of newly authorised ELTIFs 1.0 into ELTIF 2.0 before the entry into application, and an AIFM cannot seek authorisation of an ELTIF 2.0 and/or start the marketing of the units or shares of the authorised ELTIF as of the moment of entry into force of the amending ELTIF Regulation, published in March 2023 (as opposed to from the entry into application of the amending ELTIF Regulation, in January 2024).

*New ESMA requirements (ELTIF register and RTS empowerments)*

6. The revised ELTIF Regulation includes the following new requirements for ESMA:
- Specifications of the additional fields to be reported by NCAs and to be included by ESMA in ESMA’s central register of ELTIFs<sup>6</sup>;
  - New RTS empowerments: ESMA shall develop new draft RTS:
    - specifying certain aspects of the redemption policy to be put in place by the manager of the ELTIF in line with the mandate set out in Article 18(6); and
    - specifying the circumstances under which the newly introduced matching mechanism for the units/shares of ELTIFs under Article 19(2a) shall be applied, including the information that ELTIFs need to disclose to investors. This new article 19(2a) relates to a “policy for matching requests”, 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, under certain conditions.

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<sup>6</sup> Additional fields are to be included, such as LEI of the ELTIF and, where available, of the manager, ISIN or security code of the ELTIF, and whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors.

7. These new empowerments are further detailed and discussed in the following sections 2.1 to 2.4.

## **2.1 Existing ESMA empowerments under Articles 9(3), 21(3) and 26(2)**

8. It has to be recalled that Articles 9(3), 18(7), 21(3), 25(3) and 26(2) of the initial version of the ELTIF Regulation (EU) 2015/760 already provided that ESMA shall develop draft RTS. These RTS determined (i) the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, (ii) the circumstances in which the life of an ELTIF is considered sufficient in length, (iii) the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets, (iv) the costs disclosure and (v) the facilities available to retail investors.
9. ESMA consulted stakeholders shortly after the publication of the ELTIF Regulation in the *Official Journal* and its entry into force<sup>7</sup>. ESMA published its final report on the draft RTS under Articles 9(3), 18(7), 21(3), and 26(2) of the ELTIF Regulation on 8 June 2016<sup>8</sup>.
10. The corresponding Commission Delegated Regulation (EU) 2018/480 was published in the *Official Journal* of the EU dated 23 March 2018<sup>9</sup>. Notwithstanding the new RTS empowerments focus on certain specific provisions, ESMA undertook an assessment of whether the existing RTS deserved any update in light of the revised ELTIF provisions.
11. The view of ESMA is that the RTS submitted to the Commission under Articles 9(3) (circumstances in which the use of financial derivative instruments shall be considered as solely serving the purpose of hedging the risks inherent to investments of ELTIFs) appear to be still relevant under the revised ELTIF Regulation, given the revised ELTIF Regulation has not amended these requirements, or related requirements that would affect the appropriateness of the corresponding RTS. On the other hand, ESMA is of the view that the RTS submitted under Article 26(2) should be withdrawn, since Article 26 (facilities available to investors) was removed in the revised version of the ELTIF Regulation.
12. In relation to the RTS under Article 21 (disposal of ELTIF assets), and more specifically with respect to RTS relating to Article 21(2)(c) (the criteria to be used for the valuation of assets to be divested in the itemised schedule for the orderly disposal of the assets of an

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<sup>7</sup> <https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1239.pdf>

<sup>8</sup> [https://www.esma.europa.eu/sites/default/files/library/2016-935\\_final\\_report\\_on\\_eltif\\_rts.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-935_final_report_on_eltif_rts.pdf)

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0480&from=EN>

ELTIF in order to redeem investors' units), it is to be noted that the corresponding article 4(1) of the Commission Delegated Regulation 2018/480 states that:

*“For the purpose of Article 21(2)(c) of Regulation (EU) 2015/760, the valuation of the assets to be divested shall comply with the following criteria:*

*(a) it shall start as soon as it is appropriate and well in advance of the deadline for the disclosure of the itemised schedule for the orderly disposal of the ELTIF assets to the competent authority of the ELTIF;*

*(b) it shall be concluded no more than 6 months before the deadline referred to in point (a).”*

13. ESMA is of the view that the term “disclosure” (underlined above) is not fully appropriate anymore since the Article 21 (first paragraph) of the revised ELTIF Regulation now reads as follows:

*“An ELTIF shall inform the competent authority of the ELTIF of the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, at the latest one year before the date of the end of the life of the ELTIF. Upon the request of the competent authority of the ELTIF, the ELTIF shall submit to the competent authority of the ELTIF an itemised schedule for the orderly disposal of its assets”<sup>10</sup>*

14. This means that under the new article 21 of the ELTIF Regulation, the submission of the itemised schedule for the orderly disposal of the assets of the ELTIF to the competent authority is not automatic anymore. What is mandatory is now solely the information of the orderly disposal of the assets of the ELTIF to the competent authority.
15. As a consequence, and in order to be in line with the new drafting of article 21 of the ELTIF Regulation, ESMA suggest i) to replace the words “*disclosure of the itemised schedule for*” with the words “*information on*” in the article 4(1) of the Commission Delegated Regulation 2018/480; ii) specify that the contents of the RTS on this issue applies, according to the revised version of the article 21 of the ELTIF Regulation, only “*upon request of the competent authority of the ELTIF*”. ESMA is also of the view that the same type of specification as under ii) above needs to be included in Article 3 of the Commission Delegated Regulation 2018/480 on the criteria for the assessment of the market for potential buyers under Article 21(2)(a) of the ELTIF Regulation, since this requirement also

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<sup>10</sup> The previous version of this paragraph was “An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to the competent authority of the ELTIF at the latest one year before the date of the end of the life of the ELTIF”

relates to the abovementioned itemised schedule for the orderly disposal of assets of the ELTIF.

16. In addition, it has to be noticed that from a legal standpoint, it was considered more appropriate to repeal the existing Commission Delegated Regulation (EU) 2018/480, and to replace it with a new Delegated Act that would include both i) the RTS corresponding to the empowerments under the ELTIF Regulation 2015/760 (under Article 9(3) – the corresponding Article 1 in Annex IV is the Article 1 of the Commission Delegated Regulation (EU) 2018/480, without any change, 21(3) and 25(3)), and ii) the RTS corresponding to the new empowerments under the Amending ELTIF Regulation 2023/606. This new Delegated Act is included in Annex IV of this consultation paper.

**Q1: Do you agree with the proposed approach in relation to the RTS under the abovementioned Articles 9(3), 21, and 26(2) of the ELTIF Regulation?**

## 2.2 ESMA empowerment under Article 25(3) on cost disclosure

17. 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”. Therefore, in 2016, and then in 2019, ESMA considered necessary to wait for the finalisation of the PRIIPs RTS before the work to develop these RTS could continue.
18. The corresponding PRIIPs Delegated Regulation<sup>11</sup> was indeed published in the Official Journal of the EU dated 12 April 2017, and then further amended, so that the updated version of the PRIIPs Delegated Regulation (2021/2268)<sup>12</sup> was finally published in the Official Journal of the EU dated 20 December 2021 and entered into application on 1 January 2023.
19. Taking into account this new 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

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<sup>11</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>12</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0653&from=EN>  
[Publications Office \(europa.eu\)](http://publications-office.europa.eu)

of the ELTIF Regulation, ESMA is now in a position to consult again<sup>13</sup> stakeholders on proposals on the requirements on cost disclosure under Article 25(3) of the ELTIF Regulation. The revised wording of Article 25(2) is “*The prospectus shall disclose an overall cost ratio of the ELTIF*”, while the previous wording of that Article was “*The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF*”.

### Level 1 provisions

20. Article 25 of the ELTIF Regulation reads as follows:

#### *Cost disclosure*

1. *The prospectus shall prominently inform investors of the level of the different costs borne directly or indirectly by the investors. The different costs shall be grouped according to the following headings:*

- (a) *costs of setting up the ELTIF;*
- (b) *costs related to the acquisition of assets;*
- (c) *management and performance related fees;*
- (d) *distribution costs;*
- (e) *other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs.*

2. *The prospectus shall disclose an overall cost ratio of the ELTIF.*

3. *ESMA shall develop draft regulatory technical standards to specify the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2.*

*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.*

### Proposed regulatory technical standards

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<sup>13</sup> The previous consultation paper on the cost disclosure requirements published by ESMA was published in 2019: [esma-34-46-89 - cpcost\\_on\\_eltif\\_rts\\_3.pdf \(europa.eu\)](https://www.esma.europa.eu/press-material/press-conferences-and-events/consultation-papers/consultation-paper-on-cost-disclosure-requirements)

21. The cost disclosure requirements referred to in Article 8(5) of the PRIIPs Regulation are specified in Article 5 and in the Annex VI and VII of the PRIIPs Delegated Regulation. Points 24 to 26 of Annex VI in particular lay down common definition and calculation methodologies of performance fees and carried interest of investment funds while points 1 to 6 include lists of one-off and ongoing costs of investment funds for the purpose of that Regulation.
22. ESMA also notes that the requirements of the PRIIPs Delegated Regulation in relation to cost disclosure were partly inspired by the rules on cost disclosure under the UCITS Directive (applying to all UCITS funds until 1 January 2023, and to UCITS funds marketed to professional investors only after that date), and more specifically the CESR guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document. In order to best meet the requirements of Article 25(3) of the ELTIF Regulation, and to ensure consistency between the different EU regulatory frameworks, ESMA is therefore of the view that it is also appropriate to refer partly to the work on cost disclosure under the UCITS Directive.
23. More generally, ESMA is of the view that existing relevant pieces of EU legislation and the associated regulatory framework include:
  - a. The aforementioned requirements on cost disclosure of the PRIIPs Delegated Regulation (2017/653 and 2021/2268);
  - b. CESR's guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document (10-674) and CESR's template for the key investor information document (10-1321);
  - c. Implementing Regulation 583/2010 as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (hereafter the KII Regulation) of the UCITS Directive.

**Q2: Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIF Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose)?**

24. Under Article 25(3) of the ELTIF Regulation ESMA is requested to develop draft RTS to specify:

- a. the common definitions;
  - b. calculation methodologies [of the costs referred to in paragraph 1 of Article 25];
  - c. presentation formats of the costs referred to in paragraph 1 of Article 25;
  - d. and the overall cost ratio referred to in paragraph 2 of Article 25.
25. It is to be noted that the summary cost indicators defined in the PRIIPs Delegated Regulations 2017/653 and 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>14</sup>), and on the other hand, cost ratios defined as cost / “capital<sup>15</sup>” or cost / “investment<sup>16</sup>” (as for the cost indicators disclosed in the table 2 “Composition of costs” of the Annex VII of the aforementioned Delegated Regulation). Both references are therefore relevant with respect to the overall cost ratio referred to in Article 25(2) of the ELTIF Regulation, and ESMA is of the view that this overall cost ratio 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 aggregated to obtain the overall cost indicator.
26. The PRIIPs Delegated Regulation also defines the way to calculate certain cost components, which could be relevant for the purpose of Article 25 of the ELTIF Regulation. This is the case for performance-related fees and carried interest (in points 24 to 26 of the Annex VI of this Delegated Regulation), and for transaction costs (in points 7 and following of Annex VI of this Delegated Regulation).
27. The PRIIPs Delegated Regulation lays down in points 1 to 5 of Annex VI a detailed list of cost components which are to be included in the list of one-off and ongoing costs of investment funds for the purpose of the calculation of the PRIIPs summary cost indicators. However, this list differs from the list of costs included in Article 25(1) of the ELTIF Regulation and the interaction between those two ways of categorising cost may not be straightforward. The list of costs included in points 1 to 5 of Annex VI of the PRIIPs Delegated Regulation could, however, be used to determine the cost components to be included in the “other costs” referred to in Article 25(1) (e) of the ELTIF Regulation.

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<sup>14</sup> with a grow assumption equal to 0.

<sup>15</sup> as per the term used in Article 2(1) of the ELTIF Regulation.

<sup>16</sup> as per the term used in table 2 of the Annex VII of the PRIIPs Delegated Regulation 2021/2268.

28. ESMA is of the view that points 1 to 26 of Annex VI of the PRIIPs Delegated Regulation should be taken into account. ESMA is also of the view that elements of paragraphs 2 to 9 of the CESR guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document (KIID) (the CESR guidelines) could also be taken into account. This should be complemented by information on the types of cost (costs of setting up the ELTIF, distribution costs, certain types of costs related to the acquisition of assets) included in Article 25(1) of the ELTIF Regulation that were not referred to in the CESR guidelines.
29. ESMA suggests adding the general principles governing the internal procedures of the ELTIF manager in relation to defining and calculating the costs of the ELTIF. These could be based on the equivalent rules for UCITS set out in paragraph 1 of the CESR guidelines.
30. With respect to the overall costs ratio referred to in Article 25(2) of the ELTIF Regulation, ESMA is of the view that the cost indicators defined in the table 2 “Composition of costs” of Annex VII of the amended PRIIPs Delegated Regulation are the most appropriate reference and also appear to be in line with certain parts of paragraphs 10 to 18 of the CESR guidelines, which should therefore also be also taken into account. More specifically, ESMA considers that some of the costs covered by Article 25(2) are entry costs borne by the investor, and that a specific methodology should therefore be set up to include such costs in the overall ratio, together with the other types of costs that are on-going charges, in a consistent way. In that respect, in order to obtain the most meaningful number for the investor, it might be necessary to make an assumption on the duration of the holding period of the investment, and the amortisation methodology for these costs. A reasonable assumption would appear to be that the duration of the holding period of the investment equals the life of the ELTIF as referred to in Article 18(1) of the ELTIF Regulation. However, for ELTIFs benefiting from the derogation specified in Article 18(2) of the ELTIF Regulation, the recommended holding period<sup>17</sup> would appear to be more relevant, given that the life of such ELTIFs could be very long. Given that for ELTIFs under Article 18(1), the recommended holding period would equal the life of the ELTIF, this concept seems more appropriate to cover the variety of ELTIFs introduced by the new Article 18 of the revised ELTIF Regulation. Finally, so that investors can more easily compare and understand the information on costs provided to them, in the case of ELTIFs marketed to retail investors, ESMA is of the view that there should be in the prospectus narratives presenting both the PRIIPs RIY overall cost figure and the ELTIF overall cost ratio figure, and explanations of any potential differences between those figures.

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<sup>17</sup> “recommended holding period” as it is used in the PRIIPs Regulation (Article 8(3)(g)) and its Delegated Regulation 2017/653



31. ESMA is also of the view that the costs listed in Article 25(1) are the costs borne by the ELTIF (the fund, taken as a whole), as opposed to the fees paid by a specific investor investing in this ELTIF.

**Q3: Do you agree with the abovementioned assumptions? In relation to the ELTIF cost ratio figures to be expressed as yearly percentages (of the capital of the ELTIF), would you see merit in expressing it instead in terms of maximum percentages (and, in the prospectus, only refer to the corresponding yearly figures included in the KID, or in the annual report of the ELTIF)?**

32. ESMA considers that the following types of costs mentioned in Article 25(1) of the ELTIF Regulation are annual costs ('ongoing charges'), that could be for example expressed as a percentage of the capital, and where an assumption on the duration of the investment is not necessary to calculate the corresponding costs to be included in the numerator of the overall ratio referred to in Article 25(2), provided that this overall ratio is a yearly ratio:

- a. management and performance related fees (as referred to in Article 25(1)(c)). In relation to performance fees, the definition and calculation methodologies could be those included in points 24 to 26 of Annex VI of the PRIIPs Delegated Regulation;
- b. other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs (as referred to in Article 25(1)(e)). These other costs would include the relevant corresponding cost components mentioned in points 4 and 5 of Annex VI of the PRIIPs Delegated Regulation. These other costs would also include costs related to providers of valuation, fund accounting services and fund administration, providers of property management and similar services, transaction costs (other than acquisition costs), prime-brokerage services, providers of collateral management services, securities lending agents, provisioned fees for specific treatment of gain and losses, operating costs under a fee-sharing arrangement with a third party.

**Q4: Do you agree that the types of cost mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital? What are your views on the list of "other costs" referred to above in paragraph 32(b) which are suggested to be added, as compared to the list of "other costs" referred to in Article 25(1)(e) of the ELTIF Regulation?**

33. In contrast, ESMA considers that the following types of cost are fixed costs (entry costs) where an assumption on the duration of the investment is necessary to calculate the corresponding costs to be included in the numerator of the overall ratio referred to in Article 25(2), provided that this overall ratio is a yearly ratio:
- a. costs of setting up the ELTIF (as referred to in Article 25(1)(a));
  - b. distribution costs (as referred to in Article 25(1)(d));

**Q5. Do you agree that the types of cost mentioned in paragraph 33 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall cost ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio? Would you see merit in specifying what is to be meant by the “setting-up” of the ELTIF, as referred to in Article 25(1)(a) of the ELTIF Regulation? If yes, could you indicate which elements of the “setting-up” of the ELTIF should be clarified?**

34. ESMA considers that exit costs should be indicated (please also refer to the sections 2.3 and 2.4 on the RTS on the redemption policy under Article 18(2), and matching mechanism under Article 19(2a) of the ELTIF Regulation).
35. Provided that the overall cost ratio mentioned in Article 25(2) is a yearly ratio the costs mentioned in paragraph 33 should be calculated by dividing the total value of these costs by the recommended holding period (in years).
36. Regarding the costs related to the acquisition of assets as referred to in Article 25(1)(b), ESMA is of the view that, due to the nature and overall strategy of an ELTIF as defined in the ELTIF Regulation, the part of these costs that are fixed (i.e. the costs related to the acquisition of the main assets of the portfolio of the ELTIF) largely exceeds the part of these costs that are ongoing charges. As a result, ESMA considers that these costs should be calculated following the same methodology that will apply to the types of costs listed in paragraph 33. ESMA also considers that the methodology set out in points 19 b) and 20 of Annex VI of the PRIIPs RTS could be used in relation to the calculation of the costs related to the acquisition of assets.

**Q6. Do you agree that the types of costs mentioned in paragraph 36 may be considered as fixed costs in the case of an ELTIF?**

37. In relation to the presentation formats of the costs referred to in paragraph 1 of Article 25, ESMA is of the view that the presentation format included in the PRIIPs Delegated Act cannot be directly used since, as for total cost indicator referred to in table 1 of the Annex VII “Costs over time” of the amended PRIIPs Delegated Regulation, it relies on the use of the reduction in yield indicator, and as for cost indicators per type of costs, referred to in the table 2 “Composition of costs” of Annex VII of the amended PRIIPs Delegated Regulation, it is expressed in terms of costs in EUR after one year. However, ESMA is of the view that this presentation format referred to in that table 2 “Composition of costs”, as far as cost indicators per type of costs is concerned, is in line with the costs section of the CESR’s template for the KIID, which could also be used as a basis, given also it is more specific to investment funds (as opposed to the abovementioned table 2 “Composition of costs”, which applies to all PRIIPs). However, ESMA also considers that the detailed design of the presentation formats should not be fully standardised in the RTS because the purpose and issues at stake in relation to the prospectus of the ELTIF are different from those in relation to the PRIIPs KID or the UCITS KII.

*Entry into force of the requirements on cost disclosure under Article 25 of the ELTIF Regulation, as specified by the requirements of the regulatory technical standards*

38. Regarding the abovementioned RTS requirements relating to costs disclosure under Article 25(3) of the ELTIF Regulation, these requirements are mainly based on requirements laid down in the original ELTIF Regulation 2015/760. If no specific derogation is foreseen in the draft RTS, these new provisions on costs (in Article 12 of the draft RTS) will also apply to ELTIFs benefiting from the grand-fathering clause provided for in Article 2 third subparagraph of Regulation (EU) 2023/606. In practice, this would mean that ELTIFs benefitting from the grand-fathering clause would have to modify their prospectus when the revised Delegated Regulation starts applying (to insert the template foreseen in the draft RTS). ESMA is therefore seeking the views of stakeholders on the opportunity to include in the draft RTS a specific grand-fathering clause (in relation to the RTS under Article 25(3)) for ELTIFs benefitting from the grand-fathering clause provided for in Article 2 of Regulation 2023/606.

**Q7. Would you see merit in including a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand-fathering clause provided for in Article 2 of Regulation 2023/606?**

## 2.3 ESMA empowerment under Article 18 on redemption policy

### Level 1 provisions

39. The new wording of Article 18, as included in the revised version of the ELTIF Regulation, is as follows:

*“Article 18*

*Redemption of units or shares of ELTIFs*

- (1) Investors in an ELTIF shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF. Redemptions to investors shall be possible as from the day following the date of the end of the life of the ELTIF.

*The rules or instruments of incorporation of the ELTIF shall clearly indicate a specific date for the end of the life of the ELTIF and may provide for the right to extend temporarily the life of the ELTIF and the conditions for exercising such a right.*

*The rules or instruments of incorporation of the ELTIF and disclosures to investors shall lay down the procedures for the redemption of units or shares and the disposal of assets, and state clearly that redemptions to investors shall be possible as from the day following the date of the end of life of the ELTIF.*

- (2) By way of derogation from paragraph 1 of this Article, the rules or instruments of incorporation of an ELTIF may provide for the possibility of redemptions during the life of the ELTIF provided that all of the following conditions are fulfilled:

- (a) redemptions are not granted before the end of a minimum holding period or before the date specified in Article 17(1), point (a));
- (b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authority of the ELTIF 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;
- (c) the redemption policy of the ELTIF clearly indicates the procedures and conditions for redemptions;

- (d) the redemption policy of the ELTIF ensures that redemptions are limited to a percentage of the assets of the ELTIF referred to in Article 9(1), point (b)<sup>18</sup>;
- (e) the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the requests for redemptions exceed the percentage referred to in point (d) of this subparagraph.

*The condition of a minimum holding period referred to in point (a) of the first subparagraph shall not apply to feeder ELTIFs investing in their master ELTIFs.*

- (3) The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be compatible with the life-cycles of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF.
- (4) Investors shall always have the option to be repaid in cash.
- (5) Repayment in kind out of an ELTIF's assets shall be possible only where all of the following conditions are met:
  - (a) the rules or instruments of incorporation of the ELTIF offer that possibility, provided that all investors are treated fairly;
  - (b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;
  - (c) no specific rules restrict the transfer of those assets.
- (6) ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF, as referred to in paragraph 3.

*ESMA shall also develop draft regulatory technical standards specifying the following:*

- (a) the criteria to determine the minimum holding period referred to in paragraph 2, first subparagraph, point (a);

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<sup>18</sup> These are, according to Article 9(1)(b) the "assets referred to in Article 50(1) of Directive 2009/65/EC" (eligible assets for a UCITS)

- (b) the minimum information to be provided to the competent authority of the ELTIF under paragraph 2, first subparagraph, point (b);
- (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 2, first subparagraph, point (d), taking into account amongst others the ELTIF's expected cash flows and liabilities.

*ESMA shall submit the draft regulatory technical standards referred to in the first and second subparagraphs to the Commission by 10 January 2024.*

*Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”*

40. The above provision is accompanied by Recital (31) of the ELTIF Regulation, which reads as follows:

*“At present, Regulation (EU) 2015/760 is unclear about the criteria to assess the redemption percentage in any given period of time, and about the minimum information to be provided to competent authorities about the possibility of redemptions. Given the central role of the European Supervisory Authority (European Securities and Markets Authority) (ESMA) in the application of Regulation (EU) 2015/760 and its expertise in relation to securities and securities markets, it is appropriate to entrust ESMA with the drawing up of draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF; the criteria to determine the minimum holding period; the minimum information to be provided to the competent authority of the ELTIF; the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools; and the criteria to assess the redemption percentage. It should be noted that where the rules or instruments of incorporation of an ELTIF provide for the possibility of redemptions during the life of that ELTIF, the provisions on liquidity risk management and liquidity management tools set out in Directive 2011/61/EU apply.”*

## **(a) Existing ESMA empowerment – first paragraph of Article 18(6)**

41. Regarding the first paragraph of Article 18(6)<sup>19</sup> related to the already existing ESMA empowerment, it should be reminded that the previous version of the ELTIF Regulation<sup>20</sup> stated that (emphasis added):

*“ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, as referred to in paragraph 3”*

42. In this context, and given that the wording of this sentence has been replaced in the revised Regulation with “*compatible with the life-cycles of each of the individual assets of the ELTIF*” and given the new abovementioned structure of Article 18(1) and Article 18(2), ESMA is of the view that Article 2 of Commission Delegated Regulation (EU) 2018/480, that contains the level 2 measures related to that empowerment, should be amended.

43. The Article 2 of the Delegated Regulation 2018/480 reads as follows:

### **“Sufficient length of the life of the ELTIF**

*For the purpose of Article 18(3) of Regulation (EU) 2015/760, the life of an ELTIF shall be considered sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF where the following conditions are met:*

*(a) the ELTIF aligns the date for the end of its life to the date of the end of the investment horizon of the individual asset within the ELTIF portfolio which has the longest investment horizon at the time of the submission of the application for authorisation as an ELTIF to the competent authority of the ELTIF;*

*(b) any investment made by the ELTIF after the date of its authorisation as an ELTIF does not have a residual investment horizon exceeding the remaining life of the ELTIF at the time that investment is made.”*

44. While the title of this Article 2, the references to “end of the life” of the ELTIF, and the “sufficient length” of the life of the ELTIF shall be amended, given the new wording of Article 18 of the ELTIF Regulation, it is also appropriate to consider how to amend the drafting of

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<sup>19</sup> “ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF, as referred to in paragraph 3”.

<sup>20</sup> Article 18(7) of the current ELTIF Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0760&from=en>)

this Article 2 given in particular, there could now be, under the revised ELTIF Regulation, ELTIFs benefiting from the derogation specified in Article 18(2) of the ELTIF Regulation.

45. More specifically, ESMA is of the view that several types of modifications should be considered, as follows. First, the words “*sufficient in length to cover*” (in the first paragraph and in the title) should be replaced with the words “*compatible with*” in accordance with the drafting of the new article 18(3).
46. In addition, and more importantly, the newly formulated requirement set out in Article 18(3)<sup>21</sup> should be taken into account, and ESMA therefore proposes that the manager of an ELTIF shall consider the following circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of its individual assets:
- the long-term nature of the ELTIF;
  - 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;
  - the timing of the acquisition and the disposal of each of the individual assets of the ELTIF;
  - the stated investment objective and, where the rules or instruments of incorporation of an ELTIF provide for the possibility of redemptions during the life of the ELTIF, the redemption policy of the ELTIF, provided that investors have the ability to redeem their investment in the ELTIF in a manner consistent with the fair treatment of ELTIF’s investors and in accordance with the ELTIF’s redemption policy and its obligations;
  - the cash management needs and expected cash-flow and liabilities of the ELTIF;
  - the possibility to roll over or to terminate the economic exposure of the ELTIF to the individual assets of the ELTIF;
  - the availability of a reliable, sound and updated valuation of the assets in the ELTIF’s portfolio; other operational, financial and economic factors that may affect the portfolio composition and life-cycle management of the ELTIF’s assets throughout the life-cycle of the ELTIF.

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<sup>21</sup>“The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be compatible with the life-cycles of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF”



47. For all types of ELTIFs, the abovementioned condition (b) of Article 2 appears to be incongruent with the wording of the new ELTIF Regulation and should therefore be deleted.
48. The accordingly proposed revised version of Article 2 of the Delegated Regulation 2018/480 is included in the Annex IV of this consultation paper.

**Q8. Do you agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation?**

### **(b) New ESMA empowerments – second paragraph of Article 18(6)**

#### Background

49. Article 18(1) of the ELTIF Regulation sets out that investors in an ELTIF shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF. Redemptions to investors shall be possible as from the day following the date of the end of the life of the ELTIF. The rationale behind this requirement is that some ELTIFs under Article 18(1) can, in certain cases, be less liquid due to the illiquid nature of the ELTIF's underlying eligible investment assets.
50. In accordance with Article 18(2) of the revised ELTIF Regulation, ELTIFs may provide for the possibility of redemptions during their life subject to specific conditions laid down in that paragraph. One of these conditions limits redemptions to a percentage of assets of the ELTIF which are referred to in point (b) of Article 9(1) of the ELTIF Regulation (i.e. UCITS-eligible assets). The investment quota in such assets is capped at a maximum of 45% of the ELTIF's capital in Article 13(1) of the revised ELTIF Regulation.
51. The option left in Article 18(2) is set out as a derogation from the requirements of Article 18(1) of the revised ELTIF Regulation. Open-ended investment structures (such as UCITS) generally provide investors with a right to redeem periodically their capital. For funds investing in liquid markets this can be done on a daily basis with short-term notice periods before capital is returned to investors. In this context, ELTIFs under Article 18(2) will be able to provide redemptions during the life of the ELTIF provided that the conditions set out in Article 18(2) are fulfilled. Such approaches are not suitable for ELTIFs investing a relative high percentage of their assets in illiquid assets that have longer investment horizons or maturities and cannot be sold to meet redemptions in such a short time and for which it can be difficult to have a reliable and correct valuation with a frequency comparable to that of liquid assets.

52. The manager of an ELTIF therefore needs to strike a balance between exposing the ELTIF to illiquid assets in order to generate returns, while ensuring the ability to pay out redeeming investors in line with Article 18(2), should the rules or instruments of incorporation foresee this derogation during the life of the ELTIF. Hence, the various conditions under Article 18(2) point clearly at the necessary liquidity risk management approaches to be implemented to be able to install such redemption features during the life of an ELTIF: notably a potential minimum holding period, an appropriate redemption policy, liquidity management tools, procedures and conditions for redemptions.
53. Liquidity risk management generally aims to ensure consistency between the liquidity of a fund's portfolio on the one hand (asset side), and its liabilities and redemption policy on the other (liability side). In this respect, it should be underlined that ELTIFs are EU AIFs which must be managed by an EU AIFM authorised under the AIFMD. The manager of the ELTIF, as an authorised EU AIFM, is subject to the liquidity risk management requirements set out in the AIFMD for all AIFs (including ELTIFs) it manages falling within the scope of Article 16 of the AIFMD.
54. The manager of the ELTIF shall therefore, as an authorised AIFM, under the requirements of article 16 of the AIFMD:
- employ an appropriate liquidity management system and adopt procedures which enable it to monitor the liquidity risk of the ELTIF and to ensure that the liquidity profile of the investments of the ELTIF complies with its underlying obligations. This requirement is supplemented by articles 46 and 47 of the Delegated Regulation (EU) No 231/2013.
  - regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of the ELTIF and monitor the liquidity risk of the ELTIF accordingly. Further details on the stress tests are provided by article 48 of the Delegated Regulation (EU) No 231/2013 and ESMA's guidelines on liquidity stress testing in UCITS and AIFs.
  - ensure that the investment strategy, the liquidity profile and the redemption policy of the ELTIF are consistent. In accordance with article 49 of the Delegated Regulation (EU) No 231/2013, the investment strategy, liquidity profile and redemption policy shall be considered to be aligned when investors have the ability to redeem their investments in a manner consistent with the fair treatment of all investors and in accordance with the ELTIF's redemption policy and its obligations.
55. Besides its portfolio composition, there are multiple ways to align the liquidity profile of the ELTIF with the liquidity profile of its assets. Article 46 of the Delegated Regulation (EU) No 231/2013 refers in this regard to tools and arrangements, including special arrangements,

necessary to manage the liquidity risk and the need to identify the types of circumstances where these tools and arrangements may be used in both normal and exceptional circumstances, considering the fair treatment of all investors.

56. As regards disclosure to investors, the manager of the ELTIF shall, under Article 23 of the AIFMD, make available to the ELTIF investors a description of the ELTIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors. The manager of the ELTIF shall furthermore periodically disclose to investors, the percentage of the ELTIF's assets which are subject to special arrangements arising from their illiquid nature as well as any new arrangements for managing the liquidity of the ELTIF.
57. As an authorised AIFM, the manager of the ELTIF is also subject to the general AIFMD reporting requirements. Besides information on the main categories of assets in which the ELTIF is invested, the AIFMD reporting requires more specific data on redemptions, liquidity profiles (assets and liabilities), special arrangements (liquidity management tools: "LMTs") and stress tests.
58. With respect to the competences of the national authorities, Article 18(2)(b) of the revised ELTIF regulation requires that the manager of the ELTIF shall, at the time of authorisation and throughout the life of the ELTIF, be able to demonstrate to the competent authority of the ELTIF that the ELTIF has an appropriate redemption policy and liquidity management tools, which are compatible with the long-term investment strategy of the ELTIF. In accordance with Article 46 of the Delegated Regulation (EU) No 231/2013, the same manager, as an authorised AIFM, shall be able to demonstrate to the competent authorities of its home Member State (which might be different from the competent authority of the ELTIF) that an appropriate liquidity management system and effective procedures referred to in Article 16(1) of the AIFMD are in place taking into account the investment strategy, the liquidity profile and the redemption policy of the ELTIF.
59. Finally, it has to be noted that under the ongoing process on the review of the AIFMD<sup>22</sup>, a number of the aforementioned AIFMD requirements, including those on liquidity management (Article 16 of the AIFMD), and in particular liquidity management tools, are being revised. In that respect, the initial proposal from the Commission, as well as the last published positions of the Council<sup>23</sup> and the European Parliament<sup>24</sup> on the AIFMD review, includes the requirement, for an open-ended AIF to select LMTs within a pre-defined list

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<sup>22</sup> Please see the initial proposal from the European Commission: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers_en)

<sup>23</sup> [pdf \(europa.eu\)](#)

<sup>24</sup> [REPORT on the proposal for a directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds | A9-0020/2023 | European Parliament \(europa.eu\)](#)

including redemption gates, notice periods, redemption fees, swing pricing, anti-dilution levies and redemption in kinds. However, it should be emphasised that the negotiations on the review of the AIFMD have not yet been completed.

*Criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a))*

60. Given the wording of the new Article 18(2), ELTIFs may impose a certain/fixed minimum holding period on investors.
61. There is an interaction between the ramp-up period of a given ELTIF and the duration of the abovementioned minimum holding period as Article 18(2)(a) indicates that “redemptions are not granted before the end of a minimum holding period or before the date specified in point (a) of Article 17(1)<sup>25</sup>”. The criteria that ESMA shall specify under the empowerment of Article 18(6)(a) are therefore key to ensure investors’ protection.
62. In relation to these “*criteria to determine the minimum holding period*<sup>26</sup>, ESMA is of the view that the rationale behind this requirement is that the minimum holding period referred to above could be different from one type of ELTIF to another (as asset classes, sectors and markets will have an impact on the duration of the minimum holding periods and some may require longer or shorter minimum holding periods). The manager of the ELTIF should therefore be able to set the duration of the minimum holding period based on the criteria to be set by the RTS to determine a minimum holding period. ESMA is of the view that the criteria referred to in this Article 18(6)(a) could reflect the abovementioned potential variety of the minimum holding period, depending inter alia on the type, investment strategy and liquidity profiles of ELTIFs. Such criteria would include:
  - the long-term nature and investment strategy of the ELTIF, the underlying asset class(es) of the ELTIF, and their liquidity profile/ position in their life cycle, the investment policy and, for private equity ELTIF, how the ELTIF intends to engage in their investments;
  - the investor base of the ELTIF, in particular if the ELTIF can be marketed to retail investors, and if so, the aggregate concentration of retail investors, or whether the ELTIF can solely be marketed to professional investors, and if so, information on the concentration of these professional investors in the ELTIF;

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<sup>25</sup> “The investment limit laid down in Article 13(1) shall: (a) apply by the date specified in the rules or instruments of incorporation of the ELTIF”

<sup>26</sup> referred to in point (a) of paragraph 2” (Article 18(6)(a))

- the liquidity profile of the ELTIF;
- the valuation of the ELTIF's assets and the time needed to produce a reliable, sound and updated valuation of the investments;
- the extent to which the ELTIF lends or borrows cash, grants loans, and enters into securities lending, securities borrowing, repurchase transactions, or any other agreement which has an equivalent economic effect and poses similar risks.
- the portfolio composition and diversification of the ELTIF;
- the average and mean length of life of the assets of the portfolio of the ELTIF;
- the duration, frequency and the characteristics of the life-cycle and the redemption policy of the ELTIF;
- the timeframe for the investment phase of the strategy of the ELTIF, in particular in relation to the assets listed in Article 9(1) of Regulation (EU) 2015/760;

63. In addition, ESMA is of the view that when setting the length of the minimum holding period, the asset manager should also consider the following criteria:

- whether the minimum holding period at least covers the initial investment phase of the ELTIF and, unless duly justified by the manager of the ELTIF, whether the minimum holding period at least lasts until the ELTIF's aggregate capital contributions have been invested;
- whether the minimum holding period is consistent and commensurate with the time necessary to complete the investment of the ELTIF's capital contributions;
- whether the minimum holding period takes place in strict accordance with the valuation policy and the redemption policy of the ELTIF.

64. The proposed RTS related to these "*criteria to determine the minimum holding period referred to in point (a) of paragraph 2*" (Article 18(6)(a)) are included in Annex IV (article 3) of this consultation paper. In addition to this list of criteria, and even though the minimum holding period referred to above should be different from one type of ELTIF to another, ESMA sees merit in seeking the views of stakeholders on setting a minimum number of X years (with X equal to 3, for example), for all ELTIFs, with respect to this minimum holding period. This would in particular ensure that investors acknowledge that ELTIFs have a long-term investment horizon. In addition, from a supervisory standpoint, ESMA sees merits in setting such a common standard, with respect to this minimum holding period, which could be used as a metric against which the minimum holding periods set by managers of ELTIFs

could be more easily compared. In that case, the minimum holding period would be, as a minimum, of X years, except if the manager of the ELTIF is able to justify that it could be shorter, taking into account the criteria referred to above.

**Q9. Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation? What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the abovementioned minimum holding period?**

Minimum information to be provided to the competent authority of the ELTIF under point (b) of paragraph 2

65. In relation to the “the minimum information to be provided to the competent authority of the ELTIF under point (b) of paragraph” (Article 18(6)(b)), ESMA sets out the following considerations.
66. One source of inspiration for the abovementioned “minimum information” should be the AIFMD reporting, since ELTIFs are AIFs, and the purpose of the AIFMD reporting is, to some extent, consistent with the minimum information referred to above. In this context, the fields of the AIFMD reporting related to liquidity, liquidity profiles, composition of the portfolio of assets or investment objectives are relevant.
67. Two types of information should be distinguished: the information to be provided *at the time of authorisation of the ELTIF* on the one hand, and the information *to be provided throughout the life of the ELTIF* on the other hand. The corresponding requirements are indeed likely to differ to a significant extent.
68. There should not be any duplication of requirements on reporting for managers of ELTIFs (who are also managers of AIFs), as a general principle, which implies that if certain types of information are already available as such under an existing EU framework (such as the AIFMD), this information should be used, instead of introducing new requirements that would be similar.
69. The “minimum information” referred to in Article 18(6)(b) should be restricted to the extent to which it allows the manager to be “*able to demonstrate to the competent authority of the ELTIF that the ELTIF has an appropriate redemption policy and liquidity management tools, which are compatible with the long-term investment strategy of the ELTIF*”- and this additional information should therefore not constitute an undue burden for the manager of the ELTIF.

70. In addition, ESMA is of the view that the purpose of Article 18(2)(b) of the ELTIF Regulation is in particular to allow the competent authority of the ELTIF, at the time of authorisation, to perform an upfront check to determine whether the foreseen redemption policy and LMTs are appropriate for authorising the ELTIF to allow investors' redemptions before the end of the life of the ELTIF as foreseen under article 18(2), but also to be consistent with the long-term nature of the investments in an ELTIF. The information provided to the competent authority of the ELTIF should therefore be updated, and complemented with any other relevant information (such as the results of previous liquidity stress tests, information on the actual use of the liquidity management tools, or on the actual use, until that point of time, of the derogation granted under Article 18(2) on redemptions), in case of material changes.
71. During the life of the ELTIF, ad hoc controls should be possible and carried out by the competent authority of the ELTIF to the same end. These ad hoc controls will in practice be performed most likely on a risk-based approach and especially in situations of stress, situations where a suspicion of inadequacy has been established and possibly on the basis of spot checks.
72. The wording in Article 18(2)(b) refers to and focuses on the redemption policy of the ELTIF and LMTs and not the general liquidity management system of the AIFM. The manager of the ELTIF is submitted to the framework of the AIFMD and therefore to all the provisions governing liquidity management. The controls performed by the competent authority of the ELTIF should not interfere or overlap with the liquidity management controls that have to be performed by the competent authority of the AIFM according to the AIFMD.
73. It is also to be noted that the ESRB recommendation on liquidity and leverage risks in investment funds (ESRB/2017/6)<sup>2728</sup> contains relevant requirements on the information to be transmitted by managers of AIFs, including in particular ELTIFs, to NCAs. Indeed, its recommendation B *“is designed to mitigate and prevent excessive liquidity mismatches in open-ended AIFs. Some open-ended AIFs hold a large proportion of their investments in inherently less liquid assets. This includes investment funds that invest in real estate, unlisted securities, loans and other alternative assets. There is a need for such investment funds to demonstrate their capacity to NCAs during both the approval process, and/or after approval, to maintain their investment strategy under stressed market conditions”*.

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<sup>27</sup> [https://www.esrb.europa.eu/pub/pdf/recommendations/esrb.recommendation180214\\_ESRB\\_2017\\_6.en.pdf](https://www.esrb.europa.eu/pub/pdf/recommendations/esrb.recommendation180214_ESRB_2017_6.en.pdf)

<sup>28</sup> Please also note that the ESRB has now published another recommendation on the vulnerabilities in the commercial real estate sector in the European Economic Area ([Recommendation of the European Systemic Risk Board of 1 December 2022 on vulnerabilities in the commercial real estate sector in the European Economic Area \(ESRB/2022/9\) \(europa.eu\)](#))

74. The abovementioned recommendation B includes the following elements, and specifically refers to ELTIFs:

*“Where an investment fund offers exposure to less liquid assets, the fund manager may have access to provisions it can introduce to address liquidity risk. Managers would then need to demonstrate to the relevant NCAs, both at the inception of the investment fund and on an ongoing basis (i.e. during the approval process and after approval for investment funds subject to an approval procedure), that they can follow their investment strategy under any foreseeable market conditions. Having taken into account any regulation applying to the investment fund and following their investment policy, fund managers have different ways to ensure consistency between their investment strategy and the investment fund's redemption profile, both during the design phase and on an ongoing basis. These include: a) the type of vehicle (e.g. closed-ended investment fund, ELTIF) ; b) redemption policies; c) investment policy including internal limits for assets included in the list, liquid asset buffer, diversification (exposures or counterparty) and limits on the size of the investment fund relative to the underlying market; d) implementation of a-LMT; e) liquidity risk management processes including, for example, defining relevant thresholds, classifying assets into liquidity buckets, monitoring the concentration of investors and expected redemption patterns”*

75. ESMA is of the view that the abovementioned extracts from the ESRB recommendation on liquidity and leverage risks in investment funds allow to better specify the meaning of the word “demonstrate” in the empowerment under Article 18(6) of the ELTIF Regulation.

76. As a result, ESMA is of the view that the following information should be provided to the competent authority of the ELTIF at the time of authorisation of the ELTIF, and updated during the life of the ELTIF in case of material changes:

- the redemption policy of the ELTIF as well as information on the frequency and the duration of the redemption windows, the conditions and modalities for requesting redemptions and for processing the redemption requests received, and the person(s) responsible for managing the redemption process, and the systems put in place to document the redemptions;
- a description of how an adequate balance of the assets and liabilities of the ELTIF is maintained in case of redemptions and of the procedures put in place to prevent that redemptions lead to possible dilution effects for investors;
- the valuation policy of the ELTIF, demonstrating that at each valuation date, the ELTIF has substantial, reliable, sound and up-to-date data on each of its assets. This information shall not duplicate the corresponding information already transmitted by the manager of the ELTIF in accordance with Article 24 and 25 of



the AIFMD, where the competent authority of the ELTIF and that of the ELTIF manager, as a manager of an AIF, are the same;

- the results, as well as the assumptions and inputs used for carrying out liquidity stress tests illustrating whether and how, in severe but plausible scenarios, the assets of the ELTIF might allow to honour the redemption requests. This includes the stress scenarios for the assets and liabilities, including redemption and collateral shocks, and the decrease in the value of the assets;
- the liquidity profiles for liabilities and assets considering in particular the target investors, and the portfolio under stressed conditions;
- the description and procedures for implementation of the available liquidity management tools, the calibration of the liquidity management tools and the conditions to activate them;

77. In relation to liquidity stress tests, it is to be noted that given ELTIFs are AIFs, the ESMA Guidelines 34-39-897 on liquidity stress testing in UCITS and AIFs<sup>29</sup> would apply, and in particular the section V.1.14 on funds investing in less liquid assets, and the section V.1.10 on product development. According to this section V.1.10, *“During product development, a manager of a fund which requires authorisation from an NCA should: a. be able to demonstrate to NCA that key elements of the fund, including its strategy and dealing frequency enable it to remain sufficiently liquid during normal and stressed circumstances; and b. where appropriate, undertake LST<sup>30</sup> on the asset side (using a model portfolio) as well as on the liability side, incorporating the expected investor profile both from the early and late stages of the fund’s existence”*.

78. During the life of the ELTIF, ESMA is of the view that the manager of the ELTIF should also provide the following information, upon request of the NCAs or via the reporting under Articles 24 and 25 of the AIFMD, where the competent authority of the ELTIF and that of the ELTIF manager, as a manager of an AIF, are the same:

- updated information on the valuation of assets and on whether and how this proved to be substantial and reliable, to ensure redemptions in accordance with the ELTIF redemption policy and prevent any possible dilution effects for existing investors in the ELTIF;

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<sup>29</sup>[https://www.esma.europa.eu/sites/default/files/library/esma34-39-897\\_guidelines\\_on\\_liquidity\\_stress\\_testing\\_in\\_ucits\\_and\\_aifs\\_en.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-39-897_guidelines_on_liquidity_stress_testing_in_ucits_and_aifs_en.pdf)

<sup>30</sup> Liquidity stress tests

- up-to-date and detailed information on whether, and if so, in which circumstances and how the liquidity management tools of the ELTIF had been activated and used to manage redemption requests;
- the up-to-date results, as well as the updated assumptions and inputs used for carrying out the liquidity stress tests performed, under normal and exceptional/stressed market conditions;

79. During the life of the ELTIF, the ELTIF manager should also inform in advance the competent authority of the ELTIF if redemptions in line with the ELTIF redemption policy cannot be granted, explaining the reasons thereof.
80. The proposed RTS related to the “*minimum information to be provided to the competent authority of the ELTIF under point (b) of paragraph*” (Article 18(6)(b)), are included in Annex IV (Article 4) of this consultation paper.

**Q10. Do you agree with the proposed approach in relation to the minimum information to be provided to the competent authority of the ELTIF (referred to in point (b) of paragraph 2 - Article 18(6)(b) of the ELTIF Regulation)?**

*Requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2)*

81. In relation to the “requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2)” (Article 18(6)(c)), the following considerations can be made.
82. Article 16 of the AIFMD applies to ELTIFs benefitting from the derogation provided for in Article 18(2) of the revised ELTIF Regulation. This means in particular that the redemption policy of the ELTIF is therefore required to be aligned with the nature and the level of liquidity of the ELTIF’s underlying assets in order to avoid liquidity mismatches, so that redemption requests are met at all times unless exceptional circumstances occur.
83. One of the objectives of Article 18(2)(c) relates to the clarity of disclosures to be provided to investors in order to ensure they fully understand the redemption policy. In this regard, it should be noted that in accordance with Article 24 of the ELTIF Regulation, which mirrors Article 23(1)(h) of the AIFMD, the ELTIF prospectus shall include a description of the AIF’s liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors. The potential use of LMT should therefore be detailed in the ELTIF’s prospectus. The prospectus shall

furthermore indicate e.g. the conditions, timeframes and formalities applicable to requests and processing of redemptions.

84. With respect to redemption price and valuation dates, the requirements of Article 19 of the AIFMD would apply to ELTIFs. With respect to the frequency of redemptions, ESMA would also see merit in seeking the views of stakeholders on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs. From a supervisory standpoint, ESMA sees indeed merits in the setting of such a common standard, because there are benefits in aligning the frequency of redemptions with substantial, relevant, reliable and up-to-date valuation, and for illiquid funds, such data is not available frequently. In that case, the redemption frequency would be, as a maximum, quarterly, except if the manager of the ELTIF is able to justify that it could be higher, taking into account the individual specificities of the ELTIF.
85. In addition to the abovementioned requirements applying to ELTIFs as AIFs under the AIFMD, ESMA is of the view that the empowerment on the “*requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2)*” raises the issue of the extent to which additional requirements shall be imposed to ELTIFs benefiting from the derogation under Article 18(2), given the specificities of these vehicles, on the asset side in particular, and given ELTIFs can be marketed to retail investors. These additional requirements could relate to the notice period to be given by each investor before redemptions are granted and the use of LMTs. This is also relevant in the context of the ongoing international work on liquidity risk management, conducted at FSB and IOSCO level<sup>31</sup>.

#### *Notice period*

86. ESMA is of the view that redemptions of the ELTIF units or shares shall only be possible after a certain notice period given by each investor to the manager of the ELTIF. The redemption policy shall therefore include a clear notice period given by investors in line with the liquidity of the underlying assets of the ELTIF. ESMA sees merit in seeking the views of stakeholders on a notice period of Y months for all ELTIFs (with Y equal to 12, for example). From a supervisory standpoint, ESMA sees indeed merits in setting such a common standard, since in order to meet the redemption requests, the ELTIF may need to dispose of some of its eligible assets. The sale of eligible assets may take some time, sometimes several months, as they are not liquid instruments. Therefore, redemptions requests may need to be issued with a sufficient prior notice period given to the ELTIF. For the avoidance of doubt, the proposal in the draft RTS included in Annex IV only introduce the requirement to have a notice period (see Article 5(6) therein), but the aforementioned

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<sup>31</sup> <https://www.fsb.org/2022/12/fsb-proposes-strengthening-the-liquidity-management-framework-for-open-ended>

requirement of having a notice period of Y months is not included in the draft RTS pending the outcome of the present consultation.

87. ESMA also acknowledges that the liquidity mismatch could be reduced with shorter notice periods in certain circumstances or under certain conditions i.e., provided the ELTIF meets certain specific requirements. ESMA would like to seek the views of stakeholders on the setting of such possible specific requirements, set out in the following paragraphs 88 to 91. It should be noted that, at this stage of the development of the regulatory technical standards, these options are not included in the draft RTS presented in Annex IV.
88. One possible option (**option 1**) would be that the ELTIF holds a minimum proportion of liquid assets in order to offer redemptions. The length of the notice period could be reduced according to the minimum amount of liquid assets held by the ELTIF. The relation between the two variables could be set conservatively enough so that all redemption requests would be met at all times, unless exceptional circumstances occur beyond the control of the manager, in which case, redemption gates could be activated. To avoid any negative threshold, it would be proposed to borrow from the wording of Article 25(2) of the Money Market Funds Regulation so that if the percentage of liquid assets breaches its threshold, the manager “*shall adopt as a priority objective the correction of that situation, taking due account of the interests of its unit holders or shareholders*”. The details of the relationship between the length of the notice period and the minimum amount of liquid holdings could be presented as follows:

*In order to meet redemption requests, the ELTIF shall hold at all times a minimum amount of liquid assets as referred to in Article 9(1)(b) of Regulation (EU) 2015/760. The length of the notice period could be reduced depending on the minimum amount of liquid assets that the ELTIF commits to hold at all times in accordance with the table below:*

<b>Redemption Notice period</b>	<b>Minimum of liquid assets</b>
$\geq 1 Y$	$Z(1)\%$ (with $Z(1)^{32} = 0$ , for example)
$]1Y ; 9 M]$	$Z(2)(\%)$ (with $Z(2) = 13$ , for example)

<sup>32</sup> The figures Z(1) to Z(4) are mere examples and derived from only one national practice, where it is required a 40% buffer of liquid assets for real estate funds and open-ended private equity funds, and where the other figures in the table simply follow from an arithmetic formula (i.e.  $40/3 = 13\%$  for 3 months).

J9M ; 6 M]	Z(3)% (with Z(3) =27, for example)
J6M ; 3M]	Z(4)% (with Z(3) =40, for example)

*If the amount of liquid assets of the ELTIF breaches those minimum requirements, the ELTIF manager shall adopt as a priority objective the correction of that situation, taking due account of the interests of its unit or shareholders.*

89. Another possible option (**option 2**) could be, instead of setting minimum proportion of liquid assets to be held by the ELTIF, to calibrate the amount of possible redemption requests, if the duration of this notice period is less than one year. The same wording borrowed from Article 25(2) of the Money Market Fund Regulation would also be used. The details of such a calibration of redemptions requests is presented in the following paragraphs 90 and 91.
90. This approach would consider the requirement of Article 18(6) of the ELTIF Regulation that mandates the development of draft RTS specifying in particular the criteria to assess the percentage referred to in Article 18(2), point (d), taking into account the ELTIF's expected cash flows and liabilities (please also see the corresponding section below on this empowerment). Under this approach, ELTIFs would be able to choose their exposure to long-term assets (with a minimum of 55%), without having to set a liquidity buffer. However, the liquidity of the ELTIF would be limited by its strategy and in particular the size of their liquid assets. Given the long-term nature of the ELTIF strategy and the need to ensure the accurate valuation of both the liquid and illiquid parts of the ELTIF, a minimum notice period of Y month would be set for all ELTIFs, but it would be the responsibility of the manager of the ELTIF to select a notice period (of therefore, at least, Y months) adapted to the ELTIF investment strategy, and to demonstrate that it is accurately calibrated, given the access to data and time needed to implement a sound valuation process, and that is compatible with the life-cycle of the assets and the investment strategy of the ELTIF.
91. A formula would be set whereby the percentage referred to in Article 18(2)(d) should not exceed the amount of the liquid assets referred to in Article 9(1)(b) less foreseeable cash flows, if they are likely to reduce such liquid assets, divided by the number of redemption days over 12 months. The number of redemption days over 12 months would be assessed by taking into account (i) the frequency of redemptions (e.g. a quarterly ELTIF has 4 redemption days per year), (ii) the length of the notice period (e.g. a quarterly ELTIF with a notice period of 3 months offers only 3 redemptions over 12 months). As an illustration of the application of this formula, a quarterly ELTIF with a 3 months notice period offers 3

redemptions over 12 months. Thus, in this example, ELTIF's liquid assets of 20% would limit redemptions at 6,7% (20% divided by 3).

#### *Liquidity management tools*

92. ESMA is also of the view that the manager of the ELTIF shall select and implement at least one anti-dilution liquidity management tool from the list set out in the following paragraph, to avoid any potential first mover advantage, and protect the remaining investors of the ELTIF from material dilution. ESMA is also of the view that in stressed market conditions in particular, the manager of the ELTIF shall implement redemption gates, to reduce the likelihood of having to sell assets at discounted prices and mitigating, therefore any potential risk to financial stability. While the use of redemption gates should remain exceptional, considering in particular that the investors of ELTIFs may be retail investors, because the exact circumstances when such redemption gates should be used are difficult to predict ex ante, these circumstances should not be specified in all details in the draft regulatory technical standards. In addition, the manager is free to implement further tools as deemed appropriate and necessary.
93. The anti-dilution liquidity management tools referred to in the previous paragraph should be anti-dilution levies, swing pricing and redemption fees, as referred to in the Annex V of the Directive 2011/61, as referred to in the Commission proposal 2021(721) for a review of the AIFMD<sup>33</sup>.
94. The manager of an ELTIF shall implement detailed policies and procedures for the activation and deactivation of any such selected liquidity management tool and the operational and administrative arrangements for the use of such tool. The liquidity management tool(s) that is put in place by the manager of an ELTIF, as well as the conditions under which the manager of the ELTIF would activate this (these) tool(s), shall be clearly described in the fund rules or instruments of incorporation, as well as in the prospectus of the ELTIF.
95. ESMA is also of the view that the redemption policy of the ELTIF should take into account the composition of the portfolio of the ELTIF, all of its assets, including assets referred to in Article 9(1)(b) of Regulation (EU) 2015/760, the ELTIF life-cycle, its liquidity profile and the documented process for the valuation of assets of the ELTIF. The redemption policy of

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<sup>33</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers_en); If this Annex V is not in place when the RTS would need to be adopted, the definition of each of these liquidity management tools, as include in the abovementioned Annex V, would need to be included in the RTS. The exact language of the cross reference would depend on the final text of the AIFMD review that would be adopted by legislators.

the ELTIF should also consider the market conditions, and material events that may affect the possibility of the ELTIF to implement its redemption policy.

96. ESMA is of the view that this redemption policy should be sound, well-documented and consistent with the ELTIF's investment strategy and the liquidity profile of the ELTIF throughout the life of the ELTIF. The different features of the redemption policy, including the redemption frequency and the minimum holding period, as well as the ramp-up period referred to in Article 17(1), point (a) of Regulation (EU) 2015/760, and the abovementioned notice period should be consistent with the nature and the level of liquidity of the ELTIF's underlying assets.
97. In this context, ESMA considers that the manager of the ELTIF should 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 ensure that the redemption policy of the ELTIF is consistent with its valuation frequency. To this end, the ELTIF manager should ensure that:
- the frequency of redemptions is consistent with the actual possibility to have a valuation of assets that is reliable, sound and up-to-date.
  - when performing the valuation of the assets in which the ELTIF invests, the ELTIF manager uses all reasonably available data including, but not limited to, the financial information of the qualifying portfolio undertakings, where available;
  - the costs of the asset valuation and the impact of the disposal of assets on the ELTIF are taken into account.
98. The proposed RTS related to the "requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2)" (Article 18(6)(c)), that mirror the content of the above paragraphs, are included in Annex IV of this consultation paper.

*Summary of proposals on redemptions and liquidity management tools*

## **Summary of proposals on redemptions and liquidity management tools**

### **1. Minimum holding period**

<p>Minimum holding period of X years, except if the manager of the ELTIF is able to justify it could be less, taking into account the criteria specified in RTS (i.e. taking into account the individual specificities of the ELTIF)</p>
<p><b>2. <u>Redemption frequency</u></b></p>
<p>Maximum quarterly redemption frequency, except if the manager of the ELTIF is able to justify it could be different, taking the individual specificities of the ELTIF</p>
<p><b>3. <u>Notice period</u></b> (the draft text of these proposals is not included at this stage in the RTS in Annex IV, given several options are considered)</p>
<p>Mandatory notice period for all ELTIFs, of a minimum of Y months (e.g. Y=3 months) and options of additional more stringent liquidity requirements if the notice period is comprised between Y and 12 months:</p> <p><u>Option 1</u>: minimum amount of liquidity assets, depending on the length of the notice period;</p> <p><u>Option 2</u>: limits on the maximum redemption amounts, depending on the length of the notice period, and the frequency of redemptions.</p>
<p><b>4. <u>Liquidity management tools</u></b></p>
<p>Mandatory implementation of at least one anti-dilution mechanism (in addition to notice period), and redemption gates (in exceptional circumstances)</p>

**Q11. a) Do you agree with the proposed approach in relation to the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2) - Article 18(6)(c) of the ELTIF Regulation)?**

**b) What are your views on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs, irrespective of their individual specificities, as suggested in paragraph 84?**



**c) What are your views on the setting of a notice period of Y months for all ELTIFs (with Y equal to 12, for example)? What are your views on the options 1 and 2, set out in paragraphs 88 to 91, in relation to the specific requirements/circumstances where the notice period could be less than one year, and the numerical values of the parameters Z(1) to Z(4), under option 1, and Y, under option 2?**

**d) In your view, how do these requirements on the redemption policy and liquidity management tools of the ELTIF would compare to those applying to existing long-term investment AIFs which would be similar to ELTIFs (e.g. in terms of eligible assets)?**

**Where possible, please support your answers by providing examples of current liquidity set-up for similar long-term funds marketed to retail investors, analyses of the data available to assess the value of ELTIF long term assets and the length of the valuation process.**

*Criteria to assess the percentage referred to in point (d) of Article 18(2), taking into account among others the ELTIF's expected cash flows and liabilities (Article 18(6)(d))*

99. Under the requirements of Article 18(2), ESMA understand that it will be the responsibility of the manager of the ELTIF to decide on the percentage and the frequency of redemption windows. ESMA is of the view that, with respect to the “*criteria to assess the percentage referred to in point (d) of Article 18(2)*”, there is a need to clarify how to interpret these requirements firstly in relation to the threshold set in Article 13(1) of the revised ELTIF Regulation and secondly in order to ensure a fair treatment of all investors (redeeming and remaining investors) in the ELTIF.
100. ESMA is of the view that the corresponding RTS shall make sure that the redemption policy allows meaningful redemptions given the duration of the ELTIF and strikes an acceptable balance between the interests of investors (leaving and remaining) and the liquidity of assets, the stability of the portfolio and the duration of the ELTIF. The redemption policy should hence ensure possible redemptions while keeping the investment strategy (portfolio allocation) stable and foreseeable for the remaining investors.
101. ESMA understands that the percentage referred to in point (d) of Article 18(2) should be computed by the manager of the ELTIF before the redemptions are performed, but this should not mean that this computation is conducted at the beginning of the life of the ELTIF. As a result, the criteria referred to above in Article 18(6)(d) would need to reflect, not only the variety of ELTIFs (as in the case of the criteria referred to in Article 18(6)(a)), but also

the specific point of time when the percentage would be determined. In addition, the criteria should also reflect considerations by the manager to keep the investment strategy stable and foreseeable across the life-time of the product, even after redemptions, especially to protect interests of all investors in the ELTIF (leaving and remaining). These criteria could include:

- the liquidity profile of the ELTIF, the assets and the liabilities of the ELTIF, and the possibility for liquidity mismatches, as well as the expected inflows and outflows of the ELTIF;
- the life-cycle of the ELTIF, the overall stability of the investment strategy of ELTIF throughout the life of the ELTIF and potential market events that may affect the ELTIF;
- the planned and expected frequency of redemptions of the ELTIF and the risks of the dilution effects for investors;
- the availability and nature of existing liquidity management tools;
- the financial performance of the ELTIF, including the free cash-flows and the balance sheet of the ELTIF;
- potential market circumstances and conditions that would affect the ELTIF at the time when the percentage is being set or the extent to which the units or shares of the ELTIF can be redeemed;
- the availability of reliable information on the valuation of the assets;
- the stability and the investment strategy, as well as the portfolio composition of the ELTIF following the potential redemptions throughout the life-cycle to ensure the interests of the remaining investors are protected; and
- any other information deemed necessary to assess that percentage in a stressed market situation scenario and a normal market situation scenario.

102. In addition, ESMA is of the view that the further specifications shall be added to the abovementioned list of criteria:

- ELTIF managers shall ensure that a minimum amount of the assets referred to in article 9, paragraph 1, point b) of Regulation 2015/760 (i.e. the assets referred to in Article 50(1) of the UCITS Directive) is preserved, in line with the investment strategy of the ELTIF. These assets shall not be used up to meet redemption requests during the life of the ELTIF.

- The percentage of allowed redemptions defined in Article 18(2) of Regulation 2015/760 may vary depending on the life-cycle of the ELTIF and shall be assessed in accordance with the redemption policy and the valuation policy of the ELTIF.
- Expected changes in any of the abovementioned elements, between the assessment date and the applicable redemption date shall be taken into account in the calculation of the percentage of allowed redemptions. Expected cash outflows between the assessment date and the applicable redemption date should be deducted from the calculation of the percentage of allowed redemptions.

103. The proposed RTS related to the “*criteria to assess the percentage referred to in point (d) of Article 18(2)*” are included in Annex IV of this consultation paper.

**Q12. Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) - Article 18(6)(d)?**

## 2.4 ESMA empowerment under Article 19 on the matching mechanism

### Level 1 provisions

104. The new recitals (32) and (33), and Article 19(2a) of the ELTIF Regulation foresee that the rules or instruments of incorporation of the ELTIF may provide for 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, provided that certain conditions are met:

*“2a. The rules or instruments of incorporation of an ELTIF may provide for the possibility, during the life of the ELTIF, of full or partial matching of transfer requests of units or shares of the ELTIF by exiting investors with transfer requests by potential investors, provided that all of the following conditions are fulfilled:*

*(a) the manager of the ELTIF has a policy for matching requests which clearly sets out all of the following:*

*(i) the transfer process for both exiting and potential investors;*

*(ii) the role of the manager of the ELTIF or the fund administrator in conducting transfers, and in matching of requests;*

*(iii) the periods of time during which exiting and potential investors are able to request the transfer of units or shares of the ELTIF;*

*(iv) the rules determining the execution price;*

*(v) the rules determining the pro- ration conditions;*

*(vi) the timing and the nature of the disclosure of information with respect to the transfer process;*

*(vii) the fees, costs and charge, if any, related to the transfer process;*

*(b) the policy and procedures for matching the requests of the ELTIF's exiting investors with those of potential investors ensure that investors are treated fairly and that, where there is a mismatch between exiting and potential investors, matching is carried out on a pro rata basis;*

*(c) the matching of requests allows the manager of the ELTIF to monitor the liquidity risk of the ELTIF and the matching is compatible with the long-term investment strategy of the ELTIF;"*

105. Recital (32) and (33) further highlights the background of these new requirements:

*(32) "At present, Regulation (EU) 2015/760 requires that the rules or instruments of incorporation of an ELTIF do not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility. Despite that possibility, managers of ELTIFs, as well as investors and market participants, have hardly used the secondary trading mechanism for the trading of units or shares of ELTIFs. To promote the secondary trading of ELTIF units or shares, it is appropriate to allow managers of ELTIFs to provide for the possibility of an early exit of ELTIF investors during the life of the ELTIF. In order to ensure the effective functioning of such a secondary trading mechanism, an early exit should be possible only where the manager of the ELTIF has put in place a policy for matching potential investors and exit requests. That policy should, amongst others, specify the transfer process, the role of the manager of the ELTIF or the fund administrator, the periodicity and duration of the liquidity window during which the units or shares of the ELTIF can be exchanged, the rules determining the execution price and pro-ration conditions, the disclosure requirements, and the fees, costs and charges and other conditions related to such a liquidity window mechanism. ESMA should be entrusted with the drawing up of draft regulatory technical standards specifying the circumstances for the use of matching, including the information that ELTIFs are required to disclose to investors."*

*(33)"In order to avoid any misunderstanding by retail investors regarding the legal nature of, and the potential liquidity allowed for by, the secondary trading mechanism, the distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF should issue a clear written alert to retail investors that*

*the availability of a matching mechanism does not guarantee the matching or entitle retail investors to exiting or redeeming their units or shares of the ELTIF concerned. That written alert should be part of a single written alert that also informs retail investors that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment, where the life of an ELTIF offered or placed to retail investors exceeds 10 years. When presented in marketing communication to retail investors, the availability of a matching mechanism should not be promoted as a tool that guarantees liquidity upon request.”*

106. The written alert referred to in recital (31) is explicitly mentioned in Article 30(2)(b)<sup>34</sup> of the revised ELTIF Regulation:

*“The distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall issue a clear written alert informing the retail investor about the following:*

*(a) where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment;*

*(b) where the rules or instruments of incorporation of an ELTIF provide for the possibility of the matching of units or shares of the ELTIF as referred to in Article 19(2a), that the availability of such a possibility does not guarantee or entitle the retail investor to exit or redeem its units or shares of the ELTIF concerned”*

107. Article 19(5) specifies the role of ESMA in developing regulatory technical standards on this issue:

*“ESMA shall develop draft regulatory technical standards specifying the circumstances for the use of matching provided for in paragraph 2a, including the information that ELTIFs need to disclose to investors”*

108. ESMA understands that the “circumstances” referred to in Article 19(5) above relate in particular to the abovementioned list of circumstances/situations set out in Article 19(2a).

*Currently existing “matching requests” mechanism(s) in the fund space*

109. ESMA understands that there is currently no existing regulation of a similar *matching of requests* mechanism (or liquidity window mechanism) at EU level. This makes the specification of *“the circumstances for the use of the possibility provided for in Article*

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<sup>34</sup> Article 30 is entitled “Additional requirements for marketing ELTIFs to retail investors”

19(2a)” and the above requirements of Articles 19(2a) and 19(5) a new task, and the role of ESMA in developing technical standards on these is therefore especially crucial.

110. ESMA also understands that there are, however, similar existing *matching requests* mechanisms at national level, in certain Member States, which could constitute a source of inspiration for ESMA to develop its RTS. These examples are presented in the following paragraphs as an illustration of existing arrangements, but should not be taken as a one-to-one proxy in setting up the window mechanism under Article 19(2a) of the ELTIF regulation.

#### *France*

111. In France, a secondary market organised by the manager is allowed for French Real Estate Investment Companies<sup>35</sup>. The corresponding operational framework is different to the one included in Article 19(2a) of the ELTIF Regulation, and the execution price is based on offer and demand, instead of a NAV.
112. The relevant French applicable legal framework is specified in Articles [L.214-86 to L.214-118](#) and R.214-130 to R.214-160 of the French Code Monétaire et Financier (in particular, articles L214-93 to L214-97)<sup>36</sup>.
113. An overview of the French regulatory framework for Real Estate Investment Companies (*Sociétés Civiles de Placement Immobilier* - SCPI) is provided in the following paragraphs. SCPIs with fixed capital are considered closed-ended AIFs and their shares can be exchanged in a secondary market organised by the fund manager.

#### *Collecting and processing orders*

114. An order to sell shall be valid for a period of twelve months. Any shareholder having made or passed on an order shall be informed of the expiry date of the order beforehand. The validity period for the order may be extended for a maximum of twelve months if expressly requested by the shareholder.<sup>37</sup>

#### *Determination of the execution price*

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<sup>35</sup> Sociétés Civiles de Placement Immobilier - SCPI

<sup>36</sup> And Articles [422-189 to 422-249-5](#) of the AMF General Regulation (in particular 422-204 to 422-214) (In English), and [AMF Doctrine 2019-04 \(in English\)](#)

<sup>37</sup> AMF General Regulation art. [422-205](#)

115. The execution price shall be the price at which the greatest quantity of shares may be traded. The execution price, and the quantities of shares traded, shall be made public by any appropriate means on the day on which the price is determined.<sup>38</sup>
116. Orders shall be executed immediately when the execution price is determined, and at this price alone. Execution shall relate to: as a priority, purchase orders recorded with the highest price and sale orders recorded with the lowest price. Orders with equal prices shall be executed in their chronological order of record in the register.<sup>39</sup>

*Frequency of the determination of the execution price*

117. The fund manager shall occasionally, at regular intervals and at a specific time, establish an execution price on the basis of orders recorded in the register. It shall establish the frequency with which execution prices are determined; however, this shall not be more than three months or less than one working day. This frequency shall be specified in the fund documentation.<sup>40</sup>
118. The only grounds for change to the frequency established shall be market constraints. The fund manager shall make clients, intermediaries and the general public aware of this change no later than six days prior to its effective date.<sup>41</sup>

*Public register*

119. During the order reception period, the fund administrator is required to transmit to any person who requests it the 5 highest purchase prices and the 5 lowest sale prices as well as the quantities requested and offered.<sup>42</sup>

*Hedging against risk*

120. To avoid any risk of non-payment or late payment, the fund manager can subordinate the recording of a purchase order to the payment of funds, or establish a deadline by which funds must be received before the cancellation of the order.<sup>43</sup>

*Italy*

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<sup>38</sup> AMF General Regulation art. [422-213](#)

<sup>39</sup> AMF General Regulation art. [422-214](#)

<sup>40</sup> AMF General Regulation art. [422-229](#)

<sup>41</sup> AMF General Regulation art. [422-212](#)

<sup>42</sup> AMF General Regulation art. [422-206](#)

<sup>43</sup> AMF General Regulation art. [422-208](#)

121. In Italy as well, a similar, but different mechanism has been put in place. Article 11 of the Ministerial Decree n. 30/2015<sup>44</sup> establishes that closed-ended Italian AIFs can include in their regulation the possibility of early redemptions in the following cases:
- a) on the manager's initiative, to all investors, pro rata in relation to the units or shares held;
  - b) upon request of the single participants, for an amount not exceeding the value of new subscriptions and, for AIFs whose units or shares are not listed, for an amount not exceeding the borrowing of the funds only up to a limit of 10% of the value of the AIF. If the fund issues new units or shares, the early redemptions are made with the same frequency and in the same period of the issuance. At the same date, the NAV of the AIF is calculated for determining the value of the units or shares. If the requests for redemptions are larger in amount than the new subscriptions, early redemptions are made pro rata according to the criteria set in the fund regulation, to ensure fair treatment of investors willing to redeem their units/shares.
122. In addition, according to the Bank of Italy's regulation on collective asset management (RGCR)<sup>45</sup>, when a closed-ended AIF issues new units/shares or permits early redemptions, the valuation of the AIF shall reflect the current value of the fund assets, which shall be the value that can presumably be realised at the date of the valuation (RGCR, Title V, Chapter 4, Section II, par. 3).
123. ESMA is of the view that all these abovementioned requirements may be useful in the context of the development of the abovementioned ESMA RTS.

*Principle-based approach vs prescriptive approach*

124. Given the above assessment on the absence of any existing similar *matching requests* mechanism at EU level, ESMA is of the view that it is relevant to make a choice ex ante on the extent to which the RTS that ESMA will develop on this issue should be more or less prescriptive.
125. ESMA is of the view that the approach ESMA could take on this issue is a principle-based one.

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<sup>44</sup> <https://www.normattiva.it/uri-res/N2Ls?urn:nir:ministero.economia.e.finanze:decreto:2015-03-05:30!vig> (in Italian)

<sup>45</sup> [https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/regolamenti/20120508/RGCR\\_Versione\\_integrale\\_al\\_4\\_agg.to\\_28.11.2022.pdf](https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/regolamenti/20120508/RGCR_Versione_integrale_al_4_agg.to_28.11.2022.pdf) (in Italian)



126. This proposal to develop a principle-based approach is based on the reasoning detailed in the following paragraphs.
- Given there is no existing similar mechanism at EU level, EU managers of investment funds, and their supervisors, currently do not have the proper experience to assess any potential prescriptive requirements that would apply to ELTIFs on this matching policy. Their experience at national level on similar mechanisms would surely help, but given the scope of the funds that apply these similar mechanisms is different (e.g. real estate funds in the case of France), this experience might not be sufficient to assess any prescriptive rules on all ELTIFs on this issue;
  - It could also be argued that the liquidity window mechanism could be subject to national differences and fund-specific circumstances (e.g. fund investment strategy, investor base, liquidity profile, etc.) and that a principle-based approach is therefore more appropriate;
  - In case prescriptive measures would be included in the ESMA RTS, and given the current absence of a similar mechanism at EU level, it is likely that the actual implementation of the measures might lead to the conclusion that some of these requirements need to be slightly adjusted. Indeed, in the absence of any precedent, it is difficult to anticipate the exact way it would be implemented in practice, and the consequences of such implementation for ELTIFs. Any adjustment could only take place after the RTS are further revised, which make take another few years, constituting therefore a barrier to the implementation of this tool;
  - On the contrary, a principle-based approach could also be seen as a first step in the implementation of the new type of measures on matching requests. Once these measures are properly applied, it will be perhaps time (e.g. in the context of the second review of the ELTIF Regulation) to define more prescriptive rules, based on the experience of the first years of implementation of these rules at EU level by ELTIF managers.
127. If need be, the principles set out in this principle-based approach could also be potentially specified, in the meantime, in level 3 measures.

**Q13. Do you agree with the principle-based approach suggested above, in relation to the ESMA RTS under Article 19(2a)?**

*Contents of a principle-based approach on matching requests*

128. Article 18(1) of the ELTIF Regulation sets out that investors in an ELTIF shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF. The policy rationale behind this requirement is the generally illiquid nature of the ELTIF's underlying eligible investment assets. An ELTIF is required, according to the threshold set out in Article 13(1) of the revised ELTIF Regulation, to invest at least 55% of its capital in long-term eligible investment assets.
129. Nevertheless, possibilities for redemption are provided for in Article 18(2) of the ELTIF Regulation, but subject to conditions, as discussed in section 2.3. The co-legislators have deemed necessary to supplement the redemption possibilities set out in Article 18(2) with the additional possibilities for the liquidity for investors in the form of a matching mechanism set out in Article 19. Investors with a temporary need for cash would therefore have to rely on secondary markets to provide additional liquidity, where possible.
130. The ELTIF Regulation does not prevent investors from selling or transferring their shares or units on secondary markets. Article 19 foresees three different types of secondary markets, namely the regulated market/multilateral trading facility, the free transfer to third parties and the newly introduced matching mechanism provided for in Article 19(2a) of the revised ELTIF Regulation.
131. This matching mechanism was introduced in the ELTIF Regulation in order to promote secondary trading of ELTIF units or shares, knowing that the two other secondary markets mentioned above have been little used in the past. The matching mechanism provided for in Article 19(2a) aims to provide more flexibility for investors who want or need to exit the ELTIF while minimising the potential impact of more frequent redemptions on the ELTIF.
132. This matching mechanism is a unit or share matching mechanism, which means that the ownership of existing shares or units is transferred from exiting investors to new investors but no shares or units are created or cancelled. The mechanism does not lead to dilution by reducing the percentage of participation of any investor in the ELTIF since the number of shares or units issued remains the same. It should be emphasised that the matching mechanism provided for in Article 19(2a) is of voluntary nature. It can, but in no manner must, be set up by the ELTIF<sup>46</sup>.
133. The matching mechanism cannot be assimilated to the redemption regime provided for in Article 18(2) of the ELTIF Regulation. Unlike the redemption regime, the matching mechanism does not grant investors an enforceable right or claim to redeem shares or units at any point in time. Investors cannot act against the ELTIF or existing ELTIF investors to compel or force an exit, as any exit is always conditional and subject to the existence of

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<sup>46</sup> According to Article 19(2a) "The rules or instruments of incorporation of an ELTIF may provide for the possibility, during the life of the ELTIF, of full or partial matching..."

sufficient purchase requests at the precise time an investor wishes to exit. In addition, the voluntary nature of the matching mechanism implies that the availability of such a possibility of a matching mechanism being put in place does not per se guarantee or entitle the retail investor to exit or transfer its units or shares of the ELTIF concerned.

134. In addition, unlike a redemption mechanism, under the matching mechanism, the ELTIF does not have to sell assets or disburse its cash to repay exiting investors, as exiting investors will be paid with the money received from newly “purchasing” investors. The mechanism does not generate liquidity mismatches or stress conditions requiring forced sales of assets.
135. The matching mechanism is aimed at being a valuable supplement to the redemption regime. A well-functioning matching mechanism could provide additional liquidity opportunities for investors especially if the frequency of exit opportunities is increased and orders uncapped. It could also allow for faster settlement compared to the traditional redemption regime.
136. The matching mechanism should not be confused with a normal transfer of shares or units between a transferor and a transferee, which is explicitly foreseen in Article 19(2) of the ELTIF Regulation. A private transfer of units or shares between a transferor and a transferee occurs outside the sphere of the ELTIF as a private transaction and is not subject to any specific requirements at the level of the ELTIF.
137. The matching mechanism could therefore be seen as a new way of exiting the ELTIF that is different from the traditional redemption regime and the traditional secondary markets. It is less formal than a regulated market but more organised than free transfers to third parties. Such a matching mechanism is aimed at broadening the investor base.
138. Rules detailing the functioning of the matching mechanism which would be too prescriptive might, however, and as discussed in the previous subsection, make this tool unrealistic, costly and of little use. To be useful, the matching mechanism should allow sufficient flexibility to adapt to national differences as well as to the specific characteristics of the ELTIF, such as for example the investment strategy, investor base, or liquidity profile.
139. In addition, the matching mechanism is a contingent mechanism as exits are only permitted to the extent that a corresponding purchase interest is available to match the redeeming existing investors’ units or shares in the ELTIF. As a result, disclosure on the matching mechanism will be of utmost importance. The availability of such a matching mechanism should not be promoted as a tool guaranteeing liquidity upon request. The clear written warning required by the Article 30(2)(b) of the revised ELTIF Regulation informs the retail investor that the availability of such a possibility does not guarantee or entitle the retail investor to exit or redeem its units or shares of the ELTIF concerned.

140. ESMA suggests that the contents of the principle-based approach related to this matching mechanism (and the corresponding RTS under Article 19(2a)), as referred to above, could be based on the list of requirements a) (i) to (vii), b) and c) set out in the abovementioned Article 19(2a), which are, according to this Article, the elements that the manager of the ELTIF has to set out clearly in the policy for matching requests that it would establish, and the conditions that need to be fulfilled to set out such a matching request.

*Transfer process for both exiting and potential investors (Article 19(2a) a) i)), and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests (Article 19(2a) a) ii))*

141. In accordance with the ELTIF Regulation, the manager of the ELTIF shall set out a policy for matching requests which clearly sets out the management of matching requests and the transfer process for both exiting and potential investors as well as the role of the manager of the ELTIF and of the fund administrator and any third parties involved in the process, in conducting the matching of respective requests and the relevant transfers.
142. ESMA is of the view that the policy for matching requests should lay down the procedures, format, process and the timing description of the matching mechanism, the frequency, periodicity and the duration of the matching window, the dealing dates, modalities for the submission of purchase and exit requests, the deadlines for the submission of purchase and exit requests, settlement and pay-out periods and the modalities which avoid undue risks for the ELTIF.
143. ESMA is also of the view that the manager of the ELTIF shall ensure that the policy for matching requests is sound, appropriate and calibrated, ensures a fair treatment of investors, and that there are procedures in place in order to prevent, manage and monitor conflicts of interest.
144. The manager of the ELTIF may also impose a notice period for receiving purchase and exit requests. Details of information regarding notice periods shall be set out in the prospectus of the ELTIF.
145. ESMA is of the view that the proposed RTS under Article 19(2a) should include the various elements suggested above which all relate to operational aspects of the matching mechanism, but should not specify it in a detailed manner, in accordance with the approach explained above in relation to the principle-based approach chosen by ESMA in relation to the RTS under Article 19(2a).
146. The proposed RTS related to the “Transfer process for both exiting and potential investors (Article 19(2a) a) i)), and the role of the manager of the ELTIF or the fund administrator in

conducting transfers, and the matching of respective requests (Article 19(2a) a) ii))” are included in Annex IV of this consultation paper.

**Q14. Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both exiting and potential investors, and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests?**

*Periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF (Article 19(2a) a) iii)*

147. For ELTIFs covered by Article 18(1) of the ELTIF Regulation, the matching mechanism might be attractive given the fact that redemptions to investors are only possible from the day following the date of the end of life of the ELTIF. By implementing a matching mechanism, the ELTIF would allow additional flexibility for exits for existing investors.
148. For ELTIFs benefitting from the derogation provided for in Article 18(2) of the ELTIF Regulation, the matching mechanism could also be of interest given the fact that redemptions are subject to conditions set out in Article 18(2). According to this article, redemptions are not granted at the beginning of the life (ramp-up/minimum holding period) of the ELTIF and are limited to the percentage of assets of the ELTIF which are referred to in point b) of Article 9(1) of the ELTIF Regulation. A matching mechanism might expand exit possibilities beyond these periods or percentages.
149. During the ramp-up, the matching mechanism could be potentially used to ensure a smooth transition from the ramp-up period, where redemptions are not allowed, to the investment period, where redemption are allowed. Exit opportunities could hence be offered by the ELTIF throughout the lifetime of the ELTIF. Since no assets would have to be sold and no cash disbursed, the matching mechanism would not expose ELTIFs and their investors to undue risks and would not interfere with core investment strategies or hamper the proper setting-up of a stabilised portfolio.
150. After the ramp-up, the matching mechanism could be used, as an additional liquidity mechanism complementing the liquidity management toolkit as well as the redemption possibilities provided under Article 18(2). The redemptions possibilities provided for in Article 18(2) may prove insufficient in practice to meet the liquidity needs of investors given the barriers and thresholds set. They may furthermore favour cash hoarding as the ELTIF would have to hold enough liquid assets to meet redemptions. This could penalise investors who remain in the ELTIF as their returns could be reduced as a result. Exits through the matching mechanism would enable the ELTIF to stay fully invested.

151. As a general principle, the choice of the frequency of exit opportunities through the matching mechanism will depend on the specific characteristics of the ELTIF and should therefore be left to the manager of the ELTIF.
152. As a consequence, ESMA is of the view that the starting point of the RTS under Article 19(2a) should not be to specify specific periods of time during which the matching mechanism could be used since Article 19(2a) indicates that “*Rules or instruments of incorporation of the ELTIF may provide for the possibility of full or partial matching, during 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*”.
153. However, the coexistence of both mechanisms under Article 18(2) and 19(2a) might raise specific issues related to investor protection that also need to be addressed in the RTS ESMA shall develop. In that context, specific safeguards could be introduced, including the requirements to restrict the use of the matching mechanism in certain periods of the life of the ELTIF, for example in case during these same periods, redemptions under Article 18(2) are allowed by the ELTIF, and in case the coexistence of both mechanisms would raise potential investor protection related issues.
154. The proposed RTS related to the “Periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF (Article 19(2a) a) iii)” are included in Annex IV of this consultation paper.

**Q15. Do you agree with the proposed approach and corresponding draft RTS, in relation to the periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF? If both systems under Article 18(2) and 19(2a) coexist, how could the risk of arbitrage between different prices in the primary and the secondary markets be, in your view, mitigated? How could (retail) investors be ensured that the purchase or sale of shares on the secondary market will be executed at prices that reflect the value of the ELTIF?**

*Determination of the execution price and the proration conditions (Article 19(2a) a) iv) and v)) and the level of the fees, costs and charge, if any, related to the transfer process (Article 19(2a) a) vii))*

155. According to Article 19(2a) of the ELTIF Regulation, the manager of the ELTIF shall set out a policy for matching requests which clearly sets out the rules determining the execution price and the rules determining the proration conditions.

156. With regard to the determination of the execution price, different options should be available to the manager of the ELTIF. The main option could consist in aligning the rules for determining the execution price with those determining the redemption price. The execution price will, in this case, be based on the value of the ELTIF's assets and correspond to the net asset value (NAV) per share or unit applicable for the respective exit date.
157. ESMA is of the view that the rules or instruments of incorporation of an ELTIF shall set out the rules determining the execution price related to the transfer process. In times and situations where the NAV may not be reliable, the execution price may be determined using other tools. If the execution price is based on the NAV, the matching mechanism should be aligned with the valuation dates of the ELTIF. However, if the execution price is not based on the NAV, the matching mechanism shall be implemented outside the valuation dates of the ELTIF, in order to avoid any arbitrage.
158. ESMA is also of the view that the rules or instruments of incorporation of an ELTIF shall set out the rules determining any exit or purchase fee related to the transfer process. With respect to pro rata conditions, the ELTIF manager should set clear rules in the matching policy on how the requests will be dealt with to ensure the fair treatment of investors. To this end, the procedure should establish:
- when there are purchasing orders but no redemption orders, or vice versa, whether the requests are cancelled or carried over,
  - when exit orders are lower than purchasing orders, exit requests are carried out and purchasing orders to be satisfied are selected according to the criterion established by the ELTIF manager in the matching policy and;
  - when exit orders are higher than purchasing orders, the manager of the ELTIF execute the exit requests on a pro rata basis, proportionally.
159. ESMA is of the view that the proposed RTS under Article 19(2a) could include the various elements suggested above in relation to the determination of the execution price and the proration conditions and the level of the fees, costs and charge, if any, related to the transfer process.
160. These proposed RTS related to the “Determination of the execution price and the proration conditions (Article 19(2a) a) iv) and v)) and the level of the fees, costs and charge, if any, related to the transfer process (Article 19(2a) a) vii))” are included in Annex IV of this consultation paper.

**Q16. Do you agree with the proposals above and the corresponding draft RTS, in relation to the determination of the execution price and the proration conditions and the level of the fees, costs and charge, if any, related to the transfer process?**

*Timing and the nature of the disclosure of information with respect to the transfer process conditions (Article 19(2a) a) vi)*

161. As indicated above, in the context of the setting of the matching policy of an ELTIF, disclosure is of utmost importance. The manager of the ELTIF shall put a clear focus on explaining the mechanism to existing and potential investors in an understandable way in a manner set out in the ELTIF Regulation. It is important to ensure that investors, especially retail investors, fully understand this matching mechanism and do not confound it with an enforceable redemption right. This is all the more true as this mechanism is, as indicated in the previous sections, new in most Member States, and therefore currently unknown to a majority of investors.
162. In relation to disclosure, it should also be noted that the matching mechanism may represent marketing (regarding the collection of subscription's requests) and, hence, if activated and marketed, the notification procedure referred to in Article 31 of the ELTIF regulation would apply to it. Indeed, the definition of "marketing" in the AIFMD (which is referred to in Article 31 of the ELTIF Regulation) is broad<sup>47</sup> and may include units or shares that would be "marketed" under the matching mechanism.
163. In this context, and in addition to the written alert referred to in Article 30(2)(b) of the revised ELTIF Regulation<sup>48</sup>, ESMA is of the view that the information that the manager of an ELTIF shall disclose to investors shall, at least, include the following information:
- predefined dealing dates, and settlement/pay-out periods;
  - deadlines for the submission of purchase or exit forms;
  - frequency at which the matching mechanism is available;

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<sup>47</sup> According to Article 4(1)(x) of the AIFMD marketing means "a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the Union"

<sup>48</sup> informing the retail investor that the availability of such a possibility does not guarantee or entitle the retail investor to exit or redeem its units or shares of the ELTIF concerned



- that the execution price may deviate from the NAV, and if so, the manner in which investors will be clearly informed thereof;
- any exit or subscription fees and charges or costs borne by existing or potential investors related to the transfer process and the matching of requests;
- any notice period for receiving purchase and exit requests imposed to investors;
- where the full or partial matching took place, by when, whom and how the new investors will be informed of acquiring the units or shares of the ELTIF and the exiting investors will receive the corresponding amount for their units or shares of the ELTIF;
- the rules on the pro rata conditions; if unexecuted requests are not automatically carried over to the next exit date, investors can be offered an opportunity to take either of the following actions: a) restate their orders; b) leave their residual matching requests in place in anticipation of future matching; and c) withdraw their residual/outstanding matching interest.
- Where the ELTIF also permits redemptions according to Article 18(2) of Regulation (EU) 2015/760, the ELTIF manager shall clearly present the differences between the matching mechanism and the redemptions mechanism, especially as regards the frequency and periods for the matching mechanism.

164. In addition, ESMA is of the view that if the information foreseen in the previous paragraph is not contained in the prospectus of the ELTIF, the prospectus of the ELTIF shall include a direct link to the webpage where the abovementioned information can be found. This information should also be kept updated.

165. These proposed RTS related to the “Timing and the nature of the disclosure of information with respect to the transfer process conditions (Article 19(2a) a) vi)” are included in Annex IV of this consultation paper.

**Q17. Do you agree with the proposals above, and the corresponding draft RTS, in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions?**

## 3 Annexes

### 3.1 Annex I

#### Summary of questions

**Q1: Do you agree with the proposed approach in relation to the RTS under the abovementioned Articles 9(3), 21, and 26(2) of the ELTIF Regulation?**

**Q2: Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIF Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose)?**

**Q3: Do you agree with the abovementioned assumptions? In relation to the ELTIF cost ratio figures to be expressed as yearly percentages (of the capital of the ELTIF), would you see merit in expressing it instead in terms of maximum percentages (and, in the prospectus, only refer to the corresponding yearly figures included in the KID, or in the annual report of the ELTIF)?**

**Q4: Do you agree that the types of cost mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital? What are your views on the list of “other costs” referred to above in paragraph 31(b) which are suggested to be added, as compared to the list of “other costs” referred to in Article 25(1)(e) of the ELTIF Regulation?**

**Q5: Do you agree that the types of cost mentioned in paragraph 32 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall cost ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio? Would you see merit in specifying what is to be meant by the “setting-up” of the ELTIF, as referred to in Article 25(1)(a) of the ELTIF Regulation? If yes, could you indicate which elements of the “setting-up” of the ELTIF should be clarified?**

**Q6: Do you agree that the types of costs mentioned in paragraph 35 may be considered as fixed costs in the case of an ELTIF?**

**Q7. Would you see merit in including a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand-fathering clause provided for in Article 2 of Regulation 2023/606?**

**Q8: Do you agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation?**

**Q9: Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation? What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the abovementioned minimum holding period?**

**Q10: Do you agree with the proposed approach in relation to the minimum information to be provided to the competent authority of the ELTIF (referred to in point (b) of paragraph 2 - Article 18(6)(b) of the ELTIF Regulation)?**

**Q11: a) Do you agree with the proposed approach in relation to the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2) - Article 18(6)(c) of the ELTIF Regulation)?**

**b) What are your views on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs, irrespective of their individual specificities, as suggested in paragraph 83?**

**c) What are your views on the setting of a notice period of Y months for all ELTIFs (with Y equal to 12, for example)? What are your views on the options 1 and 2, set out in paragraphs 87 to 90, in relation to the specific requirements/circumstances where the notice period could be less than one year, and the numerical values of the parameters Z(1) to Z(4), under option 1, and Y, under option 2?**

**d) In your view, how do these requirements on the redemption policy and liquidity management tools of the ELTIF would compare to those applying to existing long-term investment AIFs which would be similar to ELTIFs (e.g. in terms of eligible assets)?**

**Where possible, please support your answers by providing examples of current liquidity set-up for similar long-term funds marketed to retail investors, analyses of the data available to assess the value of ELTIF long term assets and the length of the valuation process.**

**Q12: Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) - Article 18(6)(d))?**

**Q13: Do you agree with the principle-based approach suggested above, in relation to the ESMA RTS under Article 19(2a)?**

**Q14: Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both exiting and potential investors, and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests?**

**Q15: Do you agree with the proposed approach and corresponding draft RTS, in relation to the periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF? If both systems under Article 18(2) and 19(2a) coexist, how could the risk of arbitrage between different prices in the primary and the secondary markets be, in your view, mitigated? How could (retail) investors be ensured that the purchase or sale of shares on the secondary market will be executed at prices that reflect the value of the ELTIF?**

**Q16:m Do you agree with the proposals above and the corresponding draft RTS, in relation to the determination of the execution price and the proration conditions and the level of the fees, costs and charge, if any, related to the transfer process?**

**Q17: Do you agree with the proposals above, and the corresponding draft RTS, in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions?**

**Q18: Are you of the view that any of the requirements of the draft RTS under the amending ELTIF Regulation should be adjusted to take into account the specificities of listed ELTIF? If yes, could you specify which requirement should, in your view, be amended?**

**Q19: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the redemption policy of ELTIF under Article 18(2) of the ELTIF Regulation? Which other types of costs or benefits would you consider in this context?**

**Q20: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the matching mechanism of ELTIF under Article 19(2a) of the ELTIF Regulation? Which other types of costs or benefits would you consider in this context?**

**Q21: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards common definitions, calculation methodologies and presentation formats of costs of ELTIFs? Which other types of costs or benefits would you consider in this context?**

## 3.2 Annex II

### Legislative mandate to develop technical standards:

#### Article 18(6) of the ELTIF Regulation

*“ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life- cycles of each of the individual assets of the ELTIF, as referred to in paragraph 3.*

*ESMA shall also develop draft regulatory technical standards specifying the*

*following:*

*(a) the criteria to determine the minimum holding period referred to in paragraph 2, first subparagraph, point (a);*

*(b) the minimum information to be provided to the competent authority of the ELTIF under paragraph 2, first subparagraph, point (b);*

*(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 2, first subparagraph, point (d), taking into account amongst others the ELTIF’s expected cash flows and liabilities.*

*ESMA shall submit the draft regulatory technical standards referred to in the first and second subparagraphs to the Commission by 10 January 2024 .”*

#### Article 19(5) of the ELTIF Regulation

*“ESMA shall develop draft regulatory technical standards specifying the circumstances for the use of matching provided for in paragraph 2a, including the information that ELTIFs need to disclose to investors.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 10 January 2024.”*

#### Article 21(3) of the ELTIF Regulation

*“ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and the valuation in point (c) of paragraph 2”*

Article 25(3) of the ELTIF Regulation

*“ESMA shall develop draft regulatory technical standards to specify the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2.*

*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.”*

### 3.3 Annex III

#### Cost-benefit analysis

##### 1. Introduction

1. The ELTIF Regulation sets out a comprehensive framework for the regulation of ELTIFs within Europe. ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.
2. The ELTIF Regulation establishes uniform rules regarding the operation of ELTIFs, in particular on the composition of their portfolio and the investment instruments that they are allowed to use in order to gain exposure to long-term assets. It mandates ESMA to develop RTS on certain aspects of its functioning.
3. This consultation paper sets out proposals for the RTS required in particular under Articles 18(6), 19(5) and 25(3) of the ELTIF Regulation which relate to the redemption policy of the ELTIF, the circumstances for the use of the matching mechanism, and the costs disclosure (calculation methodologies for costs borne by investors, as well as presentation of cost disclosures).
4. This draft CBA is qualitative in nature. However, specific questions have been introduced in the text below in order to elicit market participants' input on the quantitative impact of the proposals. Should relevant data be received through the consultation process, ESMA will take it into account when finalising its RTS and will include it in the CBA accompanying the final report.
5. Finally, it has to be noticed that under Article 19(1) of the ELTIF Regulation, the ELTIFs may be listed on a regulated market or on a multilateral trading facility (MTF). ESMA would therefore like to seek the views of stakeholders on the impact of the requirements of the draft RTS set out in this consultation paper on these types of ELTIFs, and whether any of these requirements would need to be amended or supplemented, and if so, how, in order to take into account the potential specificities of the ELTIFs which would be listed on a regulated market or on a MTF.

**Q18. Are you of the view that any of the requirements of the draft RTS under the amending ELTIF Regulation should be adjusted to take into account the specificities of listed ELTIF? If yes, could you specify which requirement should, in your view, be amended?**



## 2. Technical options on the redemption policy (RTS under Article 18(2) of the ELTIF Regulation)

6. The following options were identified and analysed by ESMA in order to address the policy objectives of the RTS required under Article 18(2) of the ELTIF Regulation.
7. In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant provisions of the ELTIF Regulation.

<b>Policy Objective</b>	<p>Under Article 18(2), the ELTIF Regulation indicates that by way of derogation from paragraph 1 of this Article, the rules or instruments of incorporation of an ELTIF may provide for the possibility of redemptions during the life of the ELTIF provided that all of the conditions specified in Article 18(2) are fulfilled.</p> <p>Under Article 18(6), ESMA is requested to develop draft regulatory technical standards specifying i) the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF, and ii) the following:</p> <ul style="list-style-type: none"> <li>- <b>the criteria to determine the minimum holding period referred to in Article 18(2)</b></li> <li>- <b>the minimum information to be provided to the competent authority of the ELTIF under Article 18(2)(b);</b></li> <li>- <b>the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in Article 18(2)(b) and (c); and</b></li> <li>- <b>the criteria to assess the percentage referred to Article 18(2)(d), taking into account amongst others the ELTIF's expected cash flows and liabilities</b></li> </ul>
<b>Baseline scenario</b>	The baseline scenario should be understood for this CBA as the application of the requirements in the Level 1 Regulation (i.e. the provisions of Article 18(2) of the ELTIF Regulation) without any

	<p>further specification. This would leave discretion to ELTIF managers to determine all the specificities of the redemption policy referred to in Article 18(2). This could clearly lead to a lack of harmonisation in the application of a key provision of the ELTIF Regulation. Indeed, the investors of an ELTIF would not be able to compare, and understand the way the redemption policy is implemented by ELTIFs, since the way the redemption policy would be presented in the documentation of the ELTIF would likely to differ significantly, at least from one Member State to another. The way the redemption policy would be implemented, and enforced, would also likely to differ significantly from one Member State to another.</p> <p>Uncertainty on the above-mentioned item could for instance lead to a situation where some managers of ELTIFs would adopt stricter rules than others on the redemption policy, leading to greater uncertainty for investors of ELTIFs in the different Member States. For instance, some managers of ELTIF could consider very different types of information to be disclosed to investors in relation to the redemption policy, and very different liquidity management tools and use of this redemption opportunities, which would be particularly problematic in the context of the EU passport, and the financial stability of the EU markets.</p>
<p><b>Options</b></p>	<p>The RTS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across Member States, which will help ensure that the redemption policy under Article 18(2) is consistently applied. This should reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Level 1 Regulation.</p> <p>In order to address this issue and comply with the objectives identified above, ESMA not only considered the idea of providing clarification on the criteria which may be extracted from the Level 1 provisions, but also identified some topics for which additional guidance could be beneficial for the purposes of harmonised application of the ELTIF Regulation. These topics included:</p>

	<ul style="list-style-type: none"> <li>- The extent to which the RTS on the specifications of the redemption policy should be more or less prescriptive;</li> <li>- The extent to which managers of ELTIFs, who are also managers of AIFs, have been subject to existing requirements on the redemption policy and liquidity management tools;</li> <li>- The extent to which ELTIF, as a specific type of AIFs that can be marketed to retail investors, and that also do not have to be closed funds (under Article 18(2) of the ELTIF Regulation), while investing in illiquid assets, may raise specific investor protection related issues.</li> </ul>
<b>Preferred Option</b>	<p>ESMA decided to consult on the option in which the level of prescriptiveness of the measures related to the redemption policy and the liquidity features of the ELTIF is high, ensuring an adequate level of investor protection, in the context of the requirements set in the level 1 ELTIF Regulation and the corresponding RTS empowerments for ESMA. ESMA also included specific dedicated questions to stakeholders on certain more prescriptive measures, such as setting of a minimum of X years with respect to the minimum holding period referred to in Article 18(2), a maximum of quarterly redemption frequency, or a notice period of Y years common for all ELTIFs.</p>

### 3. Assessment of the impact of the various options on the redemption policy (RTS under Article 18(2) of the ELTIF Regulation)

Options	Qualitative description
<b>Benefits</b>	<p>The main benefits of the option proposed are to standardise the operational and regulatory processes that the managers of an ELTIF will set up to determine the redemption policy they will put in place under the requirements of Article 18(2) (lowering the costs related to cross-border marketing), while ensuring an</p>

	adequate level of investor protection, without going against the CMU objectives of the revised level 1 ELTIF Regulation.
<b>Costs</b>	<p>ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the ELTIF Regulation, except in relation to the setting of certain LMTs. However, given ELTIFs are AIFs, these funds would in any case be subject to the revised requirements on LMTs included in the revised AIFMD, and the additional costs imposed to ELTIF managers is therefore, in this respect, low, as compared to the clear benefit of the use of such tools for the benefit of investor protection.</p> <p>As compared to the baseline scenario, it is also unlikely that: i) at their own initiative and without further coordination, managers of ELTIFs across all Member States implement in the same way the redemption policy requirements of Article 18(2) of the ELTIF Regulation; and ii) this same approach would prove to be less costly for the manager of the ELTIF than the approach taken by ESMA in the present CP.</p>
<b>Costs to regulator</b>	The proposed approach will lead to additional costs for regulators, in particular with respect to the initial and ongoing supervision of the liquidity and redemption features of ELTIF but the benefits of such tasks, in terms of mitigation of any investor protection and financial stability related issues related to ELTIFs, clearly outweigh these costs.
<b>Compliance costs</b>	Compared with the current framework, the proposed approach will add certain compliance costs for managers of ELTIFs, in particular in relation to the supervision of their redemption policy and liquidity features, but the benefits of such duties, in terms of mitigation of any investor protection and financial stability related issues related to ELTIFs, clearly outweigh these costs.
<b>ESG-related aspects</b>	ESG-related aspects are not of direct relevance to the specific nature of the proposed RTS on redemption policy.

<b>Innovation-related aspects</b>	Innovation-related aspects are not of direct relevance to the specific nature of the proposed RTS on redemption policy
<b>Proportionality-related aspects</b>	The identified benefits outweigh the comparably limited costs, hence no proportionality-related aspects are expected to be impacted by this option.

**Q19. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the redemption policy of ELTIF under Article 18(2) of the ELTIF Regulation? Which other types of costs or benefits would you consider in this context?**

**4. Technical options on the matching mechanism (RTS under Article 19(2a) of the ELTIF Regulation)**

8. The following options were identified and analysed by ESMA to address the policy objectives of the RTS required under Article 19(2a) of the ELTIF Regulation.
9. In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant provisions of the ELTIF Regulation.

<b>Policy Objective</b>	<p>Under Article 19(2a), the ELTIF Regulation indicates that the rules or instruments of incorporation of an ELTIF may provide for the possibility, during the life of the ELTIF, of full or partial matching of transfer requests of units or shares of the ELTIF by exiting investors with transfer requests by potential investors, provided that all of the conditions specified in Article 19(2a) are fulfilled.</p> <p>Under Article 19(5), ESMA is requested to develop draft regulatory technical standards specifying the circumstances for the use of matching provided for in Article 19(2a), including the information that ELTIFs need to disclose to investors.</p>
<b>Baseline scenario</b>	The baseline scenario should be understood for this CBA as the application of the requirements in the Level 1 Regulation (i.e. the provisions of Article 19(2a) of the ELTIF Regulation) without any further specification. This would leave discretion to ELTIF

	<p>managers to determine all the specificities of the matching policy referred to in Article 19(2a). This could clearly lead to a lack of harmonisation in the application of a key provision of the ELTIF Regulation. Indeed, the investors of an ELTIF would not be able to compare, and understand the way the matching policy is implemented by ELTIFs, and enforced, since the way the matching policy would be presented in the documentation of the ELTIF would likely to differ significantly, at least from one Member State to another. The way the matching policy would be implemented would also likely to differ significantly from one Member State to another.</p> <p>Uncertainty on the above-mentioned item could for instance lead to a situation where some managers of ELTIFs would adopt stricter rules than others on the matching policy, leading to greater uncertainty for investors of ELTIFs in the different Member States. For instance, some managers of ELTIF could consider very different types of information to be disclosed to investors in relation to them matching mechanism, which would be particularly problematic in the context of the EU passport.</p>
<p><b>Options</b></p>	<p>The RTS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across Member States, which will help ensure that the way the matching mechanism under Article 19(2a) is consistently applied is harmonised. This should reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Level 1 Regulation.</p> <p>In order to address the problem and comply with the objectives identified above, ESMA not only considered the idea of providing clarification on the criteria which may be extracted from the Level 1 provisions, but also identified some topics for which additional guidance could be beneficial for the purposes of harmonised application of the ELTIF Regulation. These topics were as follows:</p> <ul style="list-style-type: none"> <li>- The extent to which the RTS on the specifications of the matching mechanism should be more or less prescriptive;</li> </ul>

	<ul style="list-style-type: none"> <li>- The extent to which there has been some precedent in the fund space on the application of any similar matching mechanism.</li> </ul>
<b>Preferred Option</b>	ESMA decided to consult on the option in which the RTS on the specifications of the matching mechanism should be principle-based, given in particular there has not been precedent in the EU regulatory fund space on the application of any similar matching mechanism.

#### 5. Assessment of the impact of the various options on the matching mechanism (RTS under Article 19(2a) of the ELTIF Regulation)

Options	Qualitative description
<b>Benefits</b>	The main benefits of the option proposed are to standardise the operational and regulatory processes that the managers of an ELTIF will set up to determine the matching mechanism they will put in place under the requirements of Article 19(2a). However, ESMA decided to propose RTS on the specifications of the matching mechanism which would be principle-based, given in particular there has been no precedent in the EU regulatory fund space on the application of any similar matching mechanism. Any prescriptive approach would have led to additional costs related to the necessary adjustment of the rules (set at level 2, and therefore not straightforward to amend rapidly), when there would have been more experience on the practical implementation of this new mechanism.

<b>Costs</b>	<p>ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions, that it is a principle-based approach, and that it does not impose additional obligations beyond those already set by the ELTIF Regulation.</p> <p>As compared to the baseline scenario, it is also unlikely that: i) at their own initiative and without further coordination, managers of ELTIFs across all Member States implement in the same way the matching mechanism under Article 19(2a) of the ELTIF Regulation; and ii) this same approach would prove to be less costly for the manager of the ELTIF than the approach taken by ESMA in the present CP.</p>
<b>Costs to regulator</b>	<p>The proposed approach will lead to additional costs for regulators, in terms of initial and ongoing supervision of ELTIF managers, with respect to the implementation of the matching mechanism, but given the proposed approach is principle-based, these costs would be limited (as compared, for example, to the costs related to the approach set out under Article 18(6) of the ELTIF Regulation).</p>
<b>Compliance costs</b>	<p>Compared with the current framework, the proposed approach will lead to additional costs for managers of ELTIFs, in relation to the initial and ongoing supervision of the ELTIF they manage, with respect to the implementation of the matching mechanism, but also in relation to disclosure requirements vis a vis their investors. However, given the proposed approach is principle-based, these costs would be limited (as compared, for example, to the costs related to the approach set out under Article 18(6) of the ELTIF Regulation).</p>
<b>ESG-related aspects</b>	<p>ESG-related aspects are not of direct relevance to the specific nature of the proposed RTS on matching mechanism.</p>
<b>Innovation-related aspects</b>	<p>Innovation-related aspects are not of direct relevance to the specific nature of the proposed RTS on matching mechanism</p>
<b>Proportionality-related aspects</b>	<p>The identified benefits outweigh the comparably limited costs, hence no proportionality-related aspects are expected to be impacted by this option.</p>



**Q20. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the matching mechanism of ELTIF under Article 19(2a) of the ELTIF Regulation? Which other types of costs or benefits would you consider in this context?**

**6. Technical options on the common definitions, calculation methodologies and presentation formats of costs (RTS under Article 25 of the ELTIF Regulation)**

10. The following options were identified and analysed by ESMA to address the policy objectives of the RTS required under Article 25 of the ELTIF Regulation.

11. In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant provisions of the ELTIF Regulation.

<b>Policy Objective</b>	<p>Under Article 25, the ELTIF Regulation indicates that the prospectus of the ELTIF shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investors. The ELTIF Regulation specifies that the different costs shall be grouped according to the following headings:</p> <ul style="list-style-type: none"><li>a. costs of setting up the ELTIF;</li><li>b. the costs related to the acquisition of assets;</li><li>c. management and performance related fees;</li><li>d. distribution costs;</li><li>e. other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs.</li></ul> <p>Under Article 25(3) of the ELTIF Regulation ESMA is requested to develop draft RTS to specify:</p> <ul style="list-style-type: none"><li>a. the common definitions;</li></ul>
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	<ul style="list-style-type: none"> <li>b. calculation methodologies [of the costs referred to in paragraph 1 of Article 25];</li> <li>c. presentation formats of the costs referred to in paragraph 1 of Article 25;</li> <li>d. and the overall cost ratio referred to in paragraph 2 of Article 25.</li> </ul>
<p><b>Baseline scenario</b></p>	<p>The baseline scenario should be understood for this CBA as the application of the requirements in the Level 1 Regulation (i.e. the provisions of Article 25 of the ELTIF Regulation) without any further specification. This would leave discretion to ELTIF managers to determine the definitions, calculation methodologies, and presentation formats of the different types of cost mentioned above, as well as the calculation methodology of the overall ratio referred to in paragraph 2 of Article 25. This could clearly lead to a lack of harmonisation in the application of a key provision of the ELTIF Regulation. Indeed, the investors of an ELTIF would not be able to compare the costs of different ELTIFs, since the cost disclosure as presented in the prospectus of the ELTIF would be likely to differ, at least from one Member State to another.</p> <p>Uncertainty on the above-mentioned item could for instance lead to a situation where some ELTIFs in some Member States would adopt stricter rules than others on cost disclosure, leading to greater uncertainty for investors of ELTIFs in the different Member States who would not know the extent to which the costs of the ELTIF as presented in the prospectus reflect a specific feature of the ELTIF in which they would invest or to a certain extent a specific feature of the cost disclosure regulatory framework in place in the Member State of this ELTIF. For instance, some Member States could consider that only some types of cost should be disclosed or aggregated in the above-mentioned overall ratio, while other Member States would consider that all types of cost should be disclosed and included in this overall ratio. This would clearly lead to a situation where the cost figures of the prospectus of ELTIFs of different Member States would not be comparable, which would be particularly problematic in the context of the EU passport.</p>

<b>Options</b>	<p>The RTS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across Member States, which will help ensure that the cost disclosure information as presented in the prospectus of the ELTIF is harmonised. This should reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Level 1 Regulation.</p> <p>In order to address the problem and comply with the objectives identified above, ESMA not only considered the idea of providing clarification on the criteria which may be extracted from the Level 1 provisions, but also identified some topics for which additional guidance could be beneficial for the purposes of harmonised application of the ELTIF Regulation. These topics were as follows:</p> <ul style="list-style-type: none"> <li>- The extent to which the cost disclosure framework could be strictly aligned with the cost disclosure information that is requested by the PRIIPs Regulation;</li> <li>- The extent to which the cost disclosure information as requested by the ELTIF Regulation could be similar to the cost disclosure information as presented in the PRIIPs KID, but also in other pieces of EU legislation, such as the UCITS KIID.</li> </ul>
<b>Preferred Option</b>	<p>ESMA decided to consult on the option in which the cost disclosure information as requested by the ELTIF Regulation is similar to the cost disclosure information as presented in the PRIIPs KID, but also in other pieces of EU legislation, such as the UCITS KIID, notably because the cost disclosure framework as requested by the PRIIPs Regulation is not entirely consistent with the purpose of Article 25 of the ELTIF Regulation. However, parts of the section on cost disclosure of the PRIIPs Delegated Regulation is referred to in the ELTIF RTS.</p>

**7. Assessment of the impact of the various options on the common definitions, calculation methodologies and presentation formats of costs (RTS under Article 25 of the ELTIF Regulation)**

Options	Qualitative description
<b>Benefits</b>	<p>The impact of the final RTS should not be material in most of the Member States, since ESMA’s proposal is to consider that the scope of risks to be covered by the manager of an ELTIF should be similar to the cost disclosure information as presented in the PRIIPs KID and the UCITS KIID.</p> <p>The main benefits of the option proposed are to: i) standardise the operational and regulatory processes that the managers of an ELTIF will set up to disclose the costs for the ELTIF in the prospectus, as well as to standardise the cost disclosure information in itself for the investors of the ELTIF; and ii) take full advantage of the existing cost disclosure framework under the PRIIPs KID and the UCITS KIID.</p>
<b>Costs</b>	<p>ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the ELTIF Regulation, except the clarification that the cost disclosure information mentioned in the ELTIF Regulation should be similar to the cost disclosure information as presented in the PRIIPs KID and the UCITS KIID.</p> <p>As compared to the baseline scenario, it is indeed unlikely that: i) on their own initiative and without further coordination, all Member States implement in the same way the cost disclosure requirements of Article 25 of the ELTIF Regulation; and ii) this same approach would prove to be less costly for the manager of the ELTIF than the approach taken by ESMA in the present CP.</p>
<b>Costs to regulator</b>	<p>It is unlikely that the proposed approach would lead to additional significant costs for regulators. The costs for regulators would be limited to the supervision of the cost disclosure section of the prospectus of ELTIFs.</p>

<b>Compliance costs</b>	Compared with the current framework, the proposed approach would not cause additional material costs to managers of ELTIFs, to the extent that it provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the ELTIF Regulation, except the clarification that the cost disclosure information mentioned in the ELTIF Regulation should be similar to the cost disclosure information as presented in the PRIIPs KID and the UCITS KIID.
<b>ESG-related aspects</b>	ESG-related aspects are not of direct relevance to the specific nature of the proposed RTS on the disclosure of information.
<b>Innovation-related aspects</b>	Innovation-related aspects are not of direct relevance to the specific nature of the proposed RTS on matching mechanism
<b>Proportionality-related aspects</b>	The identified benefits outweigh the comparably limited costs, hence no proportionality-related aspects are expected to be impacted by this option.

**Q21. Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards common definitions, calculation methodologies and presentation formats of costs of ELTIFs? Which other types of costs or benefits would you consider in this context?**

### 3.4 Annex IV

**Draft regulatory technical standards:**

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

**of [...]**

**(Text with EEA relevance)**

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

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<sup>49</sup>, and in particular the third paragraph of Article 9(3), the fourth subparagraph of Article 18(6), the third subparagraph of Article 19(5), the third subparagraph of Article 21(3) and the fourth subparagraph of Article 25(3) thereof,

Whereas:

(1) Regulation (EU) 2023/606 of 15 March 2023 amends Regulation (EU) 2015/760 by replacing, amongst others, Article 18 on the redemption of units or shares of ELTIFs allowing the implementation of redemptions during the life of the ELTIFs and inserting in Article 19 a new paragraph for the possibility, during the life of the ELTIF, of full or partial matching mechanism of units or shares of the ELTIF,

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<sup>49</sup> OJ L123, 19.5.2015, p. 98.

(2) In order to ensure a common approach to the application of Regulation (EU) 2023/606, it is necessary to lay down provisions to specify the criteria to determine the minimum holding period in case of redemptions during the life of an ELTIF, the minimum information to be provided to the competent authority of the ELTIF in relation to its redemption policy and liquidity management tools, the requirements to be fulfilled by the ELTIF in relation to its redemption policy and the liquidity management tools, the criteria to assess the redemption percentage as well as provisions to specify the circumstances for the use of the matching mechanism, including the information that ELTIFs are required to disclose.

(3) In order to ensure a common approach to the application of Regulation (EU) 2015/760, it was necessary to lay down provisions to specify the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, the circumstances in which the life of a European long-term investment fund ('ELTIF') is considered sufficient in length, the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets and the facilities available to retail investors by the adoption of Commission Delegated Regulation (EU) 2018/480 of 4 December 2017 supplementing Regulation (EU) 2015/760<sup>50</sup>.

(4) In the interest of clarity, coherence and legal certainty, it is appropriate to repeal Delegated Regulation (EU) 2018/480 while integrating in a new consolidated text the specific provisions of this rule that do not need to be amended or deleted in light of Regulation (EU) 2023/606 along with the new regulatory technical standards to be adopted by the European Commission.

(5) With respect to the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments of an ELTIF, it is necessary to take into account financial derivative instruments whose underlying corresponds to the assets in which the ELTIF has invested and whose exposures are intended to be hedged, as well as trades in assets that, albeit not being the same in which the ELTIF has invested, relate to the same asset class. This is the case, in particular, where a financial derivative instrument to hedge an exposure to a specific item is not available as a dedicated type of derivative, but rather as an item among other items 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 constitute a hedging strategy only if it is pursued in combination with trades in some assets, whereby that type of strategy should not be prohibited. In order 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 manager of the ELTIF should take all reasonable steps to

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<sup>50</sup> Commission Delegated Regulation (EU) 2018/480 of 4 December 2017 supplementing Regulation (EU) 2015/760 of the European Parliament and the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors. OJ L81, 23.03.18, p. 1.

ensure that the financial derivative instruments used effectively reduce the relevant risk at the ELTIF level and are also efficient in stressed market conditions. The reduction of risk should be verifiable through the use of adequate risk management systems identifying the risk intended to be mitigated and the way in which the derivative would mitigate such risk.

(6) Delegated Regulation (EU) 2018/480 provided for regulatory technical standards on the sufficient length of the life of the European long-term investment funds. In order to take into account the new provisions of Article 18(2) of Regulation (EU) 2015/760, as amended by Regulation (EU) 2023/606, that allows ELTIF managers to set up ELTIFs that may provide for the possibility of redemptions during the life of the ELTIF, it is necessary to lay down provisions to specify the criteria for establishing the circumstances in which the life of an ELTIF is considered 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.

(7) The criteria to be used to determine the minimum holding period referred to in Article 18(2)(a) should be clarified with a view to ensure, amongst other criteria, that the length of the minimum holding period is consistent with the time necessary to complete the investment of the ELTIF's capital contributions; the longer this latter, the longer the minimum holding period should be. This minimum holding period is a period that locks the capital at investor level which the ELTIF applies at the beginning of its life. Although this minimum holding period is aimed at the beginning of the life of the ELTIF, managers can implement lock-up periods for subsequent investors and apply the same criteria as defined here if they deem it appropriate in view of equal treatment, financial stability, or other factors.

(8) The abovementioned criteria should also take into account whether the ELTIFs may allow for redemptions throughout the life-cycles of the assets, and the life of the ELTIF, as well as the redemption policy, the valuation procedure and other circumstances and conditions, such as the investor base of the ELTIF, under which the ELTIF may allow redemptions. However, given in particular the eligible assets of an ELTIF, and its investor base, in order to set in particular a common standard against which the minimum holding periods set by managers of ELTIFs could be more easily compared, this minimum holding period should be, as a minimum, of X years, except if the manager of the ELTIF is able to justify that it could be shorter, taking into account the criteria referred to above.

(9) Both at the time of authorisation, and throughout the life of the ELTIF, the minimum information to be provided by the manager of the ELTIF to the competent authority of the ELTIF as referred to in Article 18(2)(b) should be clarified with the purpose that it is sufficient to demonstrate to that competent authority that the ELTIF has in place an appropriate redemption policy and liquidity management tools compatible with the long-term investment strategy of the ELTIF, while safeguarding the interests of the investors at the same time.



(10) This minimum information should relate in particular to the valuation procedures of the ELTIF, the liquidity stress tests conducted by the manager of the ELTIF and the methodology and parameters used, and the procedures detailing which liquidity management tools are available, as well as their calibration and activation. In order to facilitate and improve the supervision of ELTIFs, when receiving information from the manager of the ELTIF, the competent authority of the home Member State of the ELTIF may request the competent authority of the home Member State of the manager of the ELTIF, where different from the competent authority of the ELTIF, to supplement and integrate the set of information provided by the manager of the ELTIF.

(11) The requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools referred to in Article 18(2)(c) of Regulation 2015/760 should be clarified, in particular with a view to ensure that the redemption policy and the valuation procedures of the ELTIF take into consideration all of the assets to be comprised in the ELTIF's portfolio along with the effect of potential successive redemptions requests on the ELTIF's portfolio, which should not compromise the ELTIF's investment strategy.

(12) In addition, in order to avoid liquidity mismatches, the redemption policy and the valuation procedures of an ELTIF should ensure an appropriate level of liquidity of the ELTIF's underlying assets, allowing redemptions of the ELTIF's units or shares only after a notice period given by each investor.

(13) The valuation should ensure that the redemption prices reflect the latest available market values, in order to ensure a fair treatment of remaining and leaving investors. The ELTIF manager should also ensure consistency between the frequency of calculation of the NAV, the availability of a reliable, sound and updated valuation of ELTIF's assets, and the frequency of redemptions during the life of the ELTIF.

(14) In order to protect investors, and in particular the remaining investors of the ELTIF, and mitigate any potential risk to financial stability, driven by first mover advantage related issues, the manager of the ELTIF should select and implement at least one anti-dilution liquidity management tool, which could be anti-dilution levies, swing pricing or redemption fees.

(15) In addition, in particular in stress market situations, such as 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 low price, but not only in these circumstances, and while the use of such tool should remain exceptional, given in particular investors of ELTIFs may be retail investors, the manager of the ELTIF should also be able to implement redemption gates, in order to reduce the probability of suspension of the ELTIF.

(16) The criteria to assess the redemption percentage referred to Article 18(2)(d) of Regulation 2015/760 should be clarified with the purpose to ensure that it takes into account in particular

the variety of ELTIFs, their liquidity profile, the position in the life of the ELTIF, the planned and expected frequency of redemptions of the ELTIF, and the financial performance of the ELTIF.

(17) In relation to the matching mechanism referred to in Article (2a) of Regulation 2015/760, it is important to clarify, in particular, the requirements related to the transfer process for both exiting and potential investors, the role of the manager of the ELTIF or the fund administrator 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, as well as the timing and the nature of the disclosure of information with respect to the transfer conditions.

(18) The assessment of the market for potential buyers to be included in the schedule for the orderly disposal of the ELTIF assets should take into account market risks including whether the potential buyers are typically 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 legislative changes, such as fiscal reforms, or political changes and whether there is a risk of deterioration of the economic situation in the market which is relevant to the ELTIF assets. No specific assessment of those risks should be requested under this Regulation for assets other than eligible investment assets since assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council<sup>51</sup> are supposed to be liquid by their nature.

(19) The valuation of the assets to be included in the schedule for the orderly disposal of the ELTIF assets should be carried out at a moment in time that is sufficiently close to the beginning of the disposal of the assets. However, if the ELTIF carried out a valuation in accordance with Directive 2011/61/EU of the European Parliament and of the Council<sup>52</sup> at a moment in time that is sufficiently close to the beginning of the disposal of the assets, an additional valuation should not be required. Nevertheless, the preparation of the schedule for the orderly disposal of the ELTIF assets should start as soon as it is appropriate and well in advance of the time-line for its disclosure to the competent authority of the ELTIF

(20) In order to take into account the new provisions of Article 21 of Regulation (EU) 2015/760, as amended by Regulation (EU) 2023/606, according to which the ELTIF shall submit to the competent authority of the ELTIF an itemised schedule for the orderly disposal of its assets, only when requested by the competent authority of the ELTIF, the references to the obligatory disclosure of the itemised schedule for the orderly disposal of the ELTIF assets, which were

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<sup>51</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 301, 17.11.2009, p. 32).

<sup>52</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)

included in Articles 3 and 4 of Commission Delegated Regulation (EU) 2018/480 should be amended.

(21) In order to ensure the consistency between the Commission Delegated Regulation (EU) 2018/480 and the amended Regulation (EU) 2015/760, Article 5 of the Commission Delegated Regulation (EU) 2018/480 on the specifications on the facilities available to retail investors should be deleted given the corresponding Article 26 of the Regulation 2015/760 was deleted.

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

(23) In addition, the disclosure of costs related to retail ELTIFs will be subject to the requirements of Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which implies that a Key Information Document needs to be provided to retail investors in addition to the prospectus.

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

(25) ESMA 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 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>53</sup>.

(26) It is necessary that this Regulation enters into force on the day, and not on the twentieth day, following that of its publication, given it is important that it enters into force as soon as possible after the date when the Regulation (EU) 2023/606 enters into force.

**HAS ADOPTED THIS REGULATION:**

### *Article 1*

## **Hedging derivatives**

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<sup>53</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).

1. The circumstances in which 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)(d) of Regulation (EU) 2015/760 are fulfilled when they meet all of the criteria set out in paragraphs 2, 3 and 4 of this Article.

2. A financial derivative instrument shall only be used for hedging risks arising from exposures to assets referred to in Article 9(1) of Regulation (EU) 2015/760.

The purpose of hedging the risks arising from exposures to assets referred to in the first subparagraph shall only be considered to be fulfilled where the use of that financial derivative instrument results in a verifiable and objectively measurable reduction of those risks at the ELTIF level.

Where financial derivative instruments to hedge the risks arising from the exposure to the assets referred to in the first subparagraph are not available, financial derivative instruments with an underlying of the same asset class may be used.

3. The use of the financial derivative instruments aimed to provide a return for the ELTIF shall not be deemed to serve the purpose of hedging the risks.

4. 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 investments of the ELTIF reduce the risks at the ELTIF level in accordance with paragraph 2, including in stressed market conditions

## *Article 2*

### **Circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of its individual assets**

For the purposes of Article 18(3) of Regulation (EU) 2015/760, the manager of an ELTIF shall consider the following circumstances:

(a) the long-term nature of the ELTIF, 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 provide for the possibility of redemptions during the life of the ELTIF, the redemption policy of the ELTIF, provided that investors have the ability to redeem their investment in the ELTIF in a manner consistent with the fair treatment of ELTIF's investors and in accordance with the ELTIF's redemption policy and its obligations;

(d) the cash management needs and expected cash-flow and liabilities of the ELTIF;

(e) the possibility to roll over or to terminate the economic exposure of the ELTIF to the individual assets of the ELTIF;

(f) the availability of a reliable, sound and updated valuation of the assets in the ELTIF's portfolio;

(g) other operational, financial and economic factors that may affect the portfolio composition and 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 paragraph 2, first subparagraph, point (a) of Article 18 of Regulation (EU) 2015/760**

1. The criteria that the manager of an ELTIF shall take into account when determining the minimum holding period referred to in paragraph 2, first subparagraph, point (a) of Article 18 of Regulation (EU) 2015/760 are the following:

(a) the long-term nature and investment strategy of the ELTIF, the underlying asset classes of the ELTIF, and their liquidity profile/ position in their life cycle, the investment policy and, for private equity ELTIF, how the ELTIF intends to engage in their investments;

(b) the investor base of the ELTIF, in particular if the ELTIF can be marketed to retail investors, or whether the ELTIF can solely be marketed to professional investors and:

(i) if the ELTIF can be marketed to retail investors, the aggregate concentration of retail investors; and

(ii) if the ELTIF can solely be marketed to professional investors, information on the concentration of these professional investors in the ELTIF;

(c) the liquidity profile of the ELTIF;

(d) the valuation of the ELTIF's assets and the time needed to produce a reliable, sound and updated valuation of the investments;

(e) the extent to which the ELTIF lends or borrows cash, grants loans, and enters into securities lending, securities borrowing, repurchase transactions, or any other agreement which has an equivalent economic effect and poses similar risks.

(f) the portfolio composition and diversification of the ELTIF;

(g) the average and mean length of life of the assets of the portfolio of the ELTIF;

(i) the duration, frequency and the characteristics of the life-cycle and the redemption policy of the ELTIF;

(j) the timeframe for the investment phase of the strategy of the ELTIF, in particular in relation to the assets listed in Article 9(1) of Regulation (EU) 2015/760.

2. When setting the length of the minimum holding period referred to in paragraph 1, the manager of the ELTIF shall also consider the following criteria:

(a) whether the minimum holding period is consistent and commensurate with the time necessary to complete the investment of the ELTIF's capital contributions, and in particular, whether it 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;

(b) whether the minimum holding period takes place in strict accordance with the valuation procedures and the redemption policy of the ELTIF.

3. The minimum holding period referred to in paragraph 1 shall be, as a minimum, of X years, except if the manager of the ELTIF is able to justify that it could be shorter, taking into account the criteria set out in paragraph 1.

#### *Article 4*

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

1. At the time of the authorisation of the ELTIF, the manager of an ELTIF shall provide to the competent authority of the ELTIF at least the following minimum information:

(a) the redemption policy of the ELTIF, information on the frequency and the duration of the redemption windows, the conditions and modalities for requesting redemptions and for processing the redemption requests received, the persons responsible for managing the redemption process, and the systems used to document the redemptions;

(b) a description of how an adequate balance of the assets and liabilities of the ELTIF is maintained in case of redemptions, and of the procedures used to prevent redemptions causing dilution effects for investors;

(c) the valuation procedures of the ELTIF, demonstrating that at each valuation date, the ELTIF has substantial, reliable, sound and up-to-date data on each of its assets. This information shall not duplicate the corresponding information already transmitted by the manager of the ELTIF in accordance with Article 24 of the AIFMD, where the competent authority of the ELTIF and that of the ELTIF manager, as a manager of an AIF, are the same;

(d) the results, assumptions and inputs used for carrying out liquidity stress tests demonstrating whether and how, in severe but plausible scenarios, the ELTIF is able to grant redemption requests. This includes the stress scenarios for the assets and liabilities, including redemption and collateral shocks, and the decrease in the value of the assets;

(e) the liquidity profiles for liabilities and assets considering in particular the target investors, and the portfolio under stressed conditions;

(f) the description and procedures for implementation of the available liquidity management tools, the calibration of the liquidity management tools and the conditions to activate them;

(g) any other information considered necessary by the competent authority of the ELTIF to assess whether the redemption policy of the ELTIF as well as the foreseen liquidity management tools meets the requirements set out in Regulation (EU) 2015/760 and the delegated acts adopted on the basis of this Regulation.

2. During the life of the ELTIF, in case of a material change in the elements listed in paragraph 1, or material changes in any other elements that affect the redemption policy, including the results of liquidity stress tests conducted after the authorisation of the ELTIF, the implementation of the liquidity management tools after the authorisation of the ELTIF or the implementation of the derogation granted under Article 18(2), the ELTIF shall provide to the competent authority of the ELTIF the updated information, where possible, before the application of such material changes, and in any case not later than 10 days from the date the respective material change became known or should have become known to the ELTIF manager.

3. During the life of the ELTIF, the manager of the ELTIF shall also provide the following information, upon request from the competent authority of the ELTIF or via the reporting under Article 24 of the AIFMD, where the competent authority of the ELTIF and that of the ELTIF manager, as a manager of an AIF, are the same:

(a) updated information on the valuation of assets and on whether and how this proved to be substantial and reliable, to ensure redemptions in accordance with the ELTIF redemption policy and prevent any possible dilution effects for existing investors in the ELTIF;

(b) updated and detailed information on whether, and if so, in which circumstances and how the liquidity management tools of the ELTIF have been activated and used to manage redemption requests;

(c) the updated results, as well as the updated assumptions and inputs used for carrying out the liquidity stress tests performed, under normal and exceptional/stressed market conditions.

4. During the life of the ELTIF, the ELTIF manager shall inform in advance the competent authority of the ELTIF if redemptions in line with the ELTIF redemption policy cannot be granted, explaining the reasons thereof.

#### *Article 5*

#### **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) of Article 18 of Regulation (EU) 2015/760**

1. An ELTIF shall put in place the redemption policy of the ELTIF and make it available to its investors at all times. The redemption policy of the ELTIF shall include at least the following elements:

(a) the conditions under which and the time window within which redemptions may occur during the life of the ELTIF;

(b) the frequency/ periodicity at which redemptions of the units or shares of the ELTIF may occur;

(c) the procedures, requirements and timing limitations, if any, applicable to the redemptions process, including the procedures, notice period and frequency for the redemption requests, and the role and responsibilities of the entities and persons involved in the redemption process;



(d) the description of the internal processes for the valuation of the assets of the ELTIF throughout the life of the ELTIF;

(e) the minimum holding period established by the ELTIF manager, and the considerations related to the determination of the minimum holding period;

(f) a description of the liquidity management tools available referred to in the following paragraphs 7 and 8, as well as of their calibration and conditions for their activation;

(g) the percentage referred to in paragraph 2, first subparagraph, point (d) of Article 18 of Regulation (EU) 2015/760, together with the considerations related to the determination of this percentage;

(h) a description of how redemptions occur on a pro rata basis, as well as the description of whether the requests that have not been satisfied fully, 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; the availability of any preferences in the redemption policy, and the description of how these preferences will be executed;

(i) the description of the liquidity stress test determining the soundness of the liquidity management of the ELTIF and the protection of the interests of its investors;

(j) a description of how and within which time investors will be repaid. Where the ELTIF rules or instruments of incorporation provide for the possibility of repayments in kind out of ELTIF's assets, in accordance with article 18, paragraph 5, of Regulation 2015/760, the information on the most recently available valuation of these assets at the moment of their delivery to investors as repayments.

2. The redemption policy of the ELTIF shall take into account the composition of the portfolio of the ELTIF, all of its assets, including assets referred to in Article 9(1)(b) of Regulation (EU) 2015/76, the life of the ELTIF, its liquidity profile and the documented process for the valuation of the assets of the ELTIF. The redemption policy of the ELTIF shall also consider the market conditions, and material events that may affect the possibility of the ELTIF to implement its redemption policy.

3. The redemption policy shall be sound, well-documented and consistent with the ELTIF's investment strategy and the liquidity profile of the ELTIF throughout the life of the ELTIF. The different features of the redemption policy, including the redemption frequency and the minimum holding period, as well as the ramp-up period referred to in Article 17(1), point (a) of Regulation (EU) 2015/760, and the notice period referred to in paragraph 6 shall be consistent with the nature and the level of liquidity of the ELTIF's underlying assets.

4. The redemption policy shall ensure an adequate balance between the assets and liabilities of the ELTIF, in accordance with Regulation (EU) 2015/760 during the life of the fund, both in normal market conditions and under stressed market conditions.

5. 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 ensure that the redemption policy of the ELTIF is consistent with its valuation frequency. To this end, the ELTIF manager 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 updated. The frequency of redemption shall be, as a maximum, quarterly, except if the manager of the ELTIF is able to justify that it could be higher, taking into account the individual features of the ELTIF set out in paragraph 2;

(b) when performing the valuation of the assets in which the ELTIF invests, the ELTIF manager uses all reasonably available data including, but not limited to, the financial information of the qualifying portfolio undertakings, where available;

(c) the costs of the asset valuation and the impact of the disposal of assets on the ELTIF are taken into account.

6. Redemptions of the ELTIF units or shares shall only be possible after a notice period given by each investor, which should be determined by the manager in accordance and alignment with the liquidity profile of the underlying assets of the ELTIF, and the time it takes to sell those assets.

7. In order to allocate the cost of liquidity to transacting investors and protect remaining investors, the manager of the ELTIF shall select and implement at least one anti-dilution liquidity management tool, among anti-dilution levies, swing pricing and redemption fees, as referred to in the Annex V of the Directive 2011/61/EU<sup>54</sup>.

8. In certain exceptional circumstances, the manager of the ELTIF shall also implement redemption gates. These circumstances include, but are not limited to, the situations when 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/or where the sale of

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<sup>54</sup> See the Commission proposal on the AIFMD review 2021(721) ([https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers_en).) If this Annex V is not in place when the RTS would need to be adopted, the definition of each of these liquidity management tools, as included in the abovementioned Annex V, would need to be included in the RTS. The exact language of the cross reference would depend on the final text of the AIFMD review that would be adopted by legislators

assets to meet those requests is either impossible or implies a sale at a highly discounted price.

9. [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 such tool]<sup>55</sup>. The liquidity management tool(s) that is (are) put in place by the manager of an ELTIF, as well as their calibration and the conditions under which the manager of the ELTIF would activate this (these) tool(s), shall be clearly described in the fund rules or instruments of incorporation, as well as in the prospectus of the ELTIF.

#### *Article 6*

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

1. The criteria that the manager of the ELTIF shall take into account when assessing the percentage referred to in paragraph 2, first subparagraph, point (d) of Article 18 of Regulation (EU) 2015/760 are as follows:

(a) the liquidity profile of the ELTIF, the assets and the liabilities of the ELTIF, and the risk of liquidity mismatches, as well as 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 ELTIF throughout the life of the ELTIF and potential market events that may affect the ELTIF;

(c) the planned and expected frequency of redemptions of the ELTIF and the risks of the dilution effects 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;

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<sup>55</sup> This first sentence of paragraph 9 might not be needed if the revised AIFMD enters into force before the date of application of the ELTIF revised delegated Regulation, given these requirements are also included in the proposal for a review of the AIFMD ([https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers_en), p. 29 of the proposal for a directive, paragraph 2b)

(f) potential market circumstances and conditions that would affect the ELTIF at the time when the percentage is being 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;

(h) the stability and the investment strategy, as well as the portfolio composition of the ELTIF following the potential redemptions throughout the life-cycle to ensure the interests of the remaining investors are protected; and

(i) any other information deemed necessary to assess that percentage in stressed market conditions and normal market conditions.

2. ELTIF managers shall ensure that a minimum amount of the assets referred to in article 9, paragraph 1, point b), of Regulation 2015/760 is preserved, in line with the investment strategy of the ELTIF. These assets shall not be used up to meet redemption requests during the life of the ELTIF.

3. The percentage of allowed redemption defined in Article 18(2) of Regulation 2015/760 may vary depending on the life-cycle of the assets of the ELTIF, and the life of the ELTIF, and shall be assessed in accordance with the redemption policy and the valuation procedures of the ELTIF.

4. Expected changes in any of the elements referred to in the paragraph 1, between the date of the assessment of the percentage referred to in paragraph 2, first subparagraph, point (d) of Article 18 of Regulation (EU) 2015/760 and the applicable redemption date shall be taken into account in the calculation of the percentage of allowed redemptions. Expected cash outflows between the assessment date and the applicable redemption date shall be deducted from the calculation of the percentage of allowed redemptions.

### *Article 7*

#### **Circumstances for the use of the matching mechanism under Article 19(2a) of Regulation (EU) 2015/760, in relation to the transfer process, the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of requests**

1. The manager of the ELTIF shall set out a policy for matching requests which clearly sets out the management of matching requests and the transfer process for both exiting and potential investors as well as the role of the manager of the ELTIF and of the fund administrator and any third parties involved in the process, in conducting the matching of respective requests

and the relevant transfers. The rules and the procedures for the use of the matching mechanism shall be set out in the rules or instruments of incorporation of the ELTIF.

2. The policy for matching requests referred to in the previous paragraph shall lay down the procedures, format, process and the timing description of the matching mechanism, the frequency/periodicity and the duration of the matching window, the dealing dates, modalities for the submission of purchase and exit requests deadlines, the deadlines for the submission of purchase and exit requests, settlement and pay-out periods and the modalities which avoid undue risks for the ELTIF. When the rules or instruments of incorporation of an ELTIF also provide for the possibility of redemptions during the life of the ELTIF according to Article 18(2) of Regulation (EU) 2015/760, the differences between these the redemptions under article 18(2) of Regulation (EU) 2015/760 and the matching mechanism referred to in Article 19(2a) of the same regulation shall be clearly set out in the rules or instruments of incorporation of the ELTIF and the specific criteria for the definition of execution price in case of matching mechanism.

3. The manager of the ELTIF shall ensure that the policy for matching requests is sound, appropriate and calibrated, ensures a fair treatment of investors, and that there are procedures in place in order to prevent, manage and monitor conflicts of interest.

4. The manager of the ELTIF may impose a notice period for receiving purchase and exit requests. Details of information regarding notice periods shall be set out in the rules or instruments of incorporations of the ELTIF, as well as in the prospectus of the ELTIF.

#### *Article 8*

#### **Circumstances for the use of the matching mechanism under Article 19(2a) of Regulation (EU) 2015/760, in relation to the determination of the execution price and the pro-ratio conditions, and the level of the fees, costs and charge, if any, related to the transfer process**

1. Rules or instruments of incorporation of an ELTIF shall set out the rules determining the execution price related to the transfer process. In times and situations where the NAV may not be reliable or appropriate, the execution price may be determined using other tools, provided that the fair treatment of all investors, including exiting and remaining investors of the ELTIF, is ensured, especially when the ELTIF also allows for redemptions during the life of the fund according to article 18(2) of Regulation 2015/760.

2. If the execution price is based on the NAV, the matching mechanism shall be aligned with the valuation dates of the ELTIF. If the execution price is not based on the NAV, such as in the cases where buy and sell factors (including bid/ask mechanisms) are taken into account, the

matching mechanism shall be implemented outside the valuation dates of the ELTIF, in order to avoid any arbitrage.

3. Rules or instruments of incorporation of an ELTIF shall set out the rules determining any exit or purchase fee related to the transfer process.

4. With respect to pro rata conditions, the ELTIF manager shall set clear rules in the matching policy on how the requests will be dealt with to ensure the fair treatment of investors. To this end, the procedure shall establish:

(a) when there are purchasing orders but no sale orders, or vice versa, whether the requests are cancelled or carried over,

(b) when exit orders are lower than purchasing orders, that exit requests are carried out and purchasing orders to be satisfied are selected according to the criterion established by the ELTIF manager in the matching policy, whether the excess purchasing orders are carried over, and;

(c) when exit orders are higher than purchasing orders, that the manager of the ELTIF execute the exit requests on a pro rata basis, proportionally, and whether the excess exit orders are carried over.

The rules determining the pro rata conditions shall be based on the size of each exit request.

#### *Article 9*

#### **Circumstances for the use of the matching mechanism under Article 19(2a) of Regulation (EU) 2015/760, in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions (Article 19(2a) a) vi))**

1. When using the matching mechanism under Article 19(2a) of Regulation (EU) 2015/760, the manager of the ELTIF shall communicate to investors and publish in his website or in another clearly indicated place the following information, where applicable, depending on whether the execution price is based on NAV or not:

- predefined dealing dates, and settlement/pay-out periods;
- deadlines for the submission of purchase or exit forms;
- frequency at which the matching mechanism is available;

- if the execution price is calculated by using method/tools different, and may deviate, from the NAV and the specific criteria on the basis of which the execution price is determined, and if so, the manner in which investors will be clearly informed thereof;
- any exit or subscription fees and charges or costs borne by existing or potential investors related to the transfer process and the matching of requests;
- any notice period for receiving purchase and exit requests imposed to investors;
- where the full or partial matching took place, by when, whom and how the new investors will be informed of acquiring the units or shares of the ELTIF and the exiting investors will receive the corresponding amount for their units or shares of the ELTIF;
- the rules on the pro rata conditions; if unexecuted requests are not automatically carried over to the next exit date, investors can be offered an opportunity to take either of the following actions:
  - a) restate their orders;
  - b) leave their residual matching requests in place in anticipation of future matching; and
  - c) withdraw their residual/outstanding matching interest.
- where the ELTIF also permits redemptions according to Article 18(2) of Regulation (EU) 2015/760, the ELTIF manager shall clearly present the differences between the matching mechanism and the redemptions mechanism, especially as regards the frequency, periods, execution price and notice period for the matching mechanism.

2. If the information foreseen in paragraph 1 is not contained in the prospectus of the ELTIF, the prospectus of the ELTIF shall include a direct link to this webpage where the abovementioned information can be found. The KID of the ELTIF shall also include a direct link to the webpage where the abovementioned information can be found.

3. The information referred to in paragraph 1 shall be kept updated.

#### *Article 10*

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

1. For the purpose of Article 21(2)(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 schedule, expects the potential buyers to be dependent on external financing for buying the relevant asset;
- (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 schedule, 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) the manager's assessment of whether the elements listed under 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.

2. The paragraph 1 shall apply where the competent authority of the ELTIF requests an ELTIF to adopt an itemised schedule for the orderly disposal of its assets and to disclose this to the competent authority of the ELTIF.

### *Article 11*

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

1. For the purpose of Article 21(2)(c) of Regulation (EU) 2015/760, the valuation of the assets to be divested shall comply with the following criteria:

- (a) it shall start as soon as it is appropriate and well in advance of the deadline for the information on the orderly disposal of the ELTIF assets to the competent authority of the ELTIF;
- (b) it shall be concluded within no more than 6 months of the deadline referred to in point (a)

2. Valuations made in accordance with Article 19 of Directive 2011/61/EU may be taken into account where a valuation has been concluded no more than 6 months before the deadline referred to in paragraph 1 of this Article.



3. The paragraphs 1 and 2 shall apply where the competent authority of the ELTIF requests an ELTIF to adopt an itemised schedule for the orderly disposal of its assets and to disclose this to the competent authority of the ELTIF.

## *Article 12*

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

1. The costs of setting up the ELTIF referred to in Article 25(1)(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 any third party.

2. The costs related to the acquisition of assets referred to in Article 25(1)(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. These costs shall be calculated according to the methodology set out in point 19 b) and 20 of Annex VI of the PRIIPs Delegated Regulation 2017/653.

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)(c) of Regulation (EU) 2015/760 shall comprise all payments to the manager of the ELTIF, including any person to whom this function has been delegated, except the fees that are related to the acquisition of assets. These costs include also carried interest, as these costs are referred to in point 25 of Annex VI of the PRIIPs 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. The performance related fees and carried interest should be calculated as specified in points 24 and 25 of Annex VI of the PRIIPs Delegated Regulation, and expressed as a percentage of the capital of the ELTIF over a one-year period.

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

8. The distribution costs laid down in paragraph 7 shall be expressed as a percentage of the capital of the ELTIF.

9. Other costs, referred to in Article 25(1)(e) of Regulation (EU) 2015/760, including administrative, regulatory, depository, custodial, professional, service and audit costs shall comprise all payments to the following persons, including any person to whom they have delegated any function:

- (a) the depository;
- (b) the custodian(s);
- (c) any investment adviser;
- (d) providers of valuation, fund accounting services and fund administration;
- (e) providers of property management and similar services;
- (f) other providers that trigger transaction costs;
- (g) prime-brokerage services providers;
- (h) providers of collateral management services;
- (i) securities lending agents;
- (j) provisioned fees for specific treatment of gain and losses;
- (k) operating costs under a fee-sharing arrangement with a third party.

10. These other costs laid down in paragraph 9 shall not include the costs related to the setting up the ELTIF, the acquisition of assets and management and performance related fees.

11. These other costs laid down in paragraph 9 shall also comprise all payments to any person providing outsourced services to any of the above, and all payments to legal and professional advisers, audit fees, registration fees, regulatory fees.

12. The other costs laid down in paragraph 9 shall be expressed as a percentage of the capital of the ELTIF over a one-year period.

13. The overall cost ratio of the ELTIF shall be the ratio of the total costs to the capital of the ELTIF, calculated according to the following paragraphs. The ratio shall be expressed as a percentage to two decimal places.

14. The overall ratio shall be calculated at least once a year.

15. The total costs shall equal the sum of the management and performance related fees and the other costs as referred to in paragraph 9 above, plus the sum of the costs of setting up the ELTIF, the costs related to the acquisition of assets and the distribution costs, divided by the recommended holding period of the ELTIF, as referred to in Article 8(2)(g)(ii) of Regulation (EU) 1286/2014.

16. If one type of cost is covered by two or more types of costs as referred to in the paragraphs 1 to 9 above, that type of cost shall only be accounted for once in the calculation of the overall ratio mentioned in paragraph 13.

17. For the purpose of this Article, the capital of the ELTIF shall relate to the same period as the costs. For the purpose of this Article, until the capital of the ELTIF is determined, the capital shall be the minimum target capital below which the ELTIF will not start operations.

18. The ratio shall be based on the most recent cost calculations by the manager of the ELTIF. The costs are assessed on an 'all taxes included' basis.

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

20. In the case of ELTIFs subject to the requirements of the PRIIPs Regulation (EU) 1286/2014, the prospectus of the ELTIF shall include narratives presenting both the PRIIPs overall RIY figure and the ELTIF overall cost ratio figure, and explanations of any potential differences between those figures.

#### *Article 13*

#### **Repeal**

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

References to the repealed Delegated Regulation shall be construed as references to this Delegated 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...

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

Done at Brussels, [date]

*[For the Commission*

*On behalf of the President*

*[Position]*

## ANNEX

### FORMAT FOR THE PRESENTATION OF COSTS

The different types of costs of the ELTIF, as well as the overall cost ratio, shall be presented in a table, as follows, under the headings “One-off costs” “Ongoing costs” and “Incidental costs”:

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

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

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