



Plenary sitting

A9-0196/2022

28.6.2022

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds

(COM(2021)0722 – C9-0435/2021 – 2021/0377(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Michiel Hoogeveen

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	47

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds (COM(2021)0722 – C9 0435/2021 – 2021/0377(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0722),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0435/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 23 March 2022¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0196/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

¹ Not yet published in the Official Journal.

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **||**.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Since the adoption of Regulation (EU) 2015/760 of the European Parliament and of the Council³, only a few European long-term investment funds (ELTIFs) have been authorised. The aggregate size of net assets of those funds was estimated at approximately EUR 2 400 000 000 in 2021.
- (2) The available market data indicate that the development of the ELTIF segment has not scaled up as expected, despite the Union's focus on promoting long-term finance in the Union.

² OJ C , , p. .

³ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

- (3) Certain characteristics of the ELTIF market, including the low number of funds, the small net asset size, the low number of jurisdictions in which ELTIFs are domiciled, and a portfolio composition that is skewed towards certain eligible investment categories, demonstrate the concentrated nature of that market, both geographically and in terms of investment type. It is therefore necessary to review the functioning of the ELTIF legal framework to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects. ***In addition, further action is needed to remove existing tax barriers and introduce tax incentives, in order to ensure an adequate level playing field across the Union that paves the way for a truly cross-border market for ELTIFs.***
- (3a) ***ELTIFs have not captured investment flows due to a lack of awareness and financial education, but most importantly due to a low level of trust and reliability in the finance industry. Promoting independent financial literacy is fundamental in order to make ELTIFs more accessible and popular among individual investors.***
- (4) ELTIFs have a potential to facilitate long-term investments in the real economy, ***in energy, transport and social infrastructure, in job creation, and the potential to make a significant contribution to the financing of the digital and green transition and to the achievement of the European Green Deal objectives, as well as to promoting the digital agenda for Europe and other Union initiatives.*** Long-term investments in projects, undertakings, and infrastructure projects in third countries can bring capital to ELTIFs and thereby benefit the economy of the Union. Such benefits can originate in multiple ways, including through investments that promote the development of border regions, enhance commercial, financial and technological cooperation and facilitate investments in environmental and sustainable energy projects. Investments in third country qualifying undertakings and eligible assets may bring benefits to investors and ELTIF managers and to the economies, infrastructure, climate and environmental sustainability and citizens of such third countries ***and*** should therefore be allowed. ***However, the main objective of Regulation (EU) 2015/760 is to channel capital towards European long-term investments in the real economy, and therefore it is preferred that a majority of ELTIF assets and investments or the main revenue or profit generation of such assets and investments should be located within the Union. Since certain long-term assets and investments that benefit the real economy of the Union***

will unavoidably be located in third countries, such as subsea fibre optic cables that connect Europe with other continents, or the construction of liquefied natural gas terminals and related infrastructure, or cross-border investments in renewable energy installations and facilities that contribute to the resilience of the electrical grid and the energy security of the Union, a majority of ELTIF assets and investments or the main revenue or profit generation of such assets and investments, might in such cases, also be located in a third country.

- (5) The rules for ELTIFs are almost identical for both professional and retail investors, including rules on the use of leverage, on the diversification of assets and composition of the portfolios, on concentration limits and on limits on the eligible assets and investments. Both types of investors, however, have different time horizons, risk tolerances, investment needs *and capabilities to analyse investment opportunities*. Because of those almost identical rules and the consequential high administrative burden and associated costs for ELTIFs destined for professional investors, asset managers have been reluctant to offer tailored products to *professional* investors. Professional investors have a higher risk tolerance than retail investors, *are able to perform thorough analyses of investment possibilities and due diligence of assets and their valuation*, and may have, due to their nature and activities, different time horizon and return objectives. It is therefore appropriate to provide for specific rules for ELTIFs that are destined to be marketed to professional investors, in particular with regard to the diversification and composition of the portfolio concerned, the minimum threshold for eligible assets, the concentration limits, and the borrowing of cash.
- (6) It is necessary to enhance the flexibility of asset managers in investing in a broad categories of real assets. Direct or indirect holdings of real assets should therefore be deemed to form a category of eligible assets, provided that those real assets have value due to their nature or substance. Such real assets comprise immovable property, communication, environment, energy or transport infrastructure, social infrastructure, including retirement homes or hospitals, as well as infrastructure for education, health and welfare support or industrial facilities, installations, and other assets, including intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property.

(7) Investments in commercial property, in facilities or installations for education, *counselling*, research, *development, including infrastructure and other assets that give rise to economic or social benefit, sports*, or in housing, including in senior residents or social housing, should also be deemed to be eligible assets due to the capacity of such assets to contribute to the objectives of smart, sustainable and inclusive growth, *while taking into consideration the issues raised by the further privatisation of quasi-public assets*. To enable real investment strategies in areas where direct investments in real assets are not possible or uneconomical, eligible investments in real assets should also comprise investments in water rights, forest rights, building rights and mineral rights. *Eligible investment assets should exclude works of art, manuscripts, jewellery and any other assets that do not represent long-term investments in the Union's real economy.*

(8) **I**

(8a) *To increase the attractiveness of ELTIFs, open-ended fund structures alongside the existing closed-end structure should be introduced. Combining the introduction of open-ended fund structures with clear rules for redemption rights would increase flexibility for investors and enable increased participation.*

(8b) *Hundreds of billions of euros in additional investments will be needed in order to cover the long-term financing gap in the Union and to reach the 2030 energy and climate targets. Investors, and in particular retail investors, are showing a growing interest in sustainable investment. The long-term horizon of ELTIFs makes them a suitable instrument to match investors' demand for sustainable products with the need to increase capital flows towards green investments. Therefore, an optional sub-category of ELTIFs marketed as environmentally-sustainable ELTIFs should be created, in order to collect capital from investors looking for sustainable investment. That optional sub-category should be subject to stricter requirements with regard to the list of eligible assets. ELTIFs marketed as environmentally sustainable should invest exclusively in assets that comply with the requirements laid down in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852. The creation of ELTIFs marketed as environmentally sustainable as an optional sub-category of ELTIFs should not result in more*

restrictive rules on, or limitations to, the ELTIF fund or on the distribution of ELTIFs.

- (9) It is necessary to increase the attractiveness of ELTIFs for asset managers and broaden the range of investment strategies available to ELTIF managers and thus to avoid the undue limitation of the scope of the eligibility of assets and investment activities of ELTIFs. The eligibility of real assets should not depend on their nature and objective or upon environmental, sustainability or social and governance related disclosures and conditions, which are already covered by Regulation (EU) 2019/2088 of the European Parliament and of the Council⁴ and by Regulation (EU) 2020/852 of the European Parliament and of the Council⁵. *Where ELTIFs marketed as environmentally sustainable invest in real assets, the eligibility of real assets should take into account the investments needed to finance the green transition and therefore, eligible assets of such ELTIFs should include assets that comply with the sustainability criteria defined in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852.*
- (9a) *The objective of Regulation (EU) 2015/760 is to channel capital towards long-term investments in the Union's real economy and ensure that ELTIFs channel capital flows towards projects that put the Union economy on a path towards smart, sustainable and inclusive growth.*
- (9b) *ELTIFs marketed as environmentally sustainable are intended to promote long-term economic growth in the Union and sustainability considerations are at their heart. ELTIFs marketed as environmentally sustainable thus either promote environmental or social characteristics, among others, or have sustainable investment as their objective, and should, therefore, be subject to the requirements of Article 9 of Regulation (EU) 2019/2088.*
- (9c) *In order to encourage private capital flows towards more environmentally sustainable investments, and in the interest of legal certainty, it is necessary to clarify that ELTIFs are also able to invest in green bonds to be issued under the prospective regulation*

⁴ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

⁵ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

based on the Commission proposal on European green bonds (COM(2021)0391) and in financial products that have sustainable investments as their objective, in accordance with Article 9 of Regulation (EU) 2019/2088. It is therefore proposed to complement Regulation (EU) 2015/760 so that green bonds and financial products that have sustainable investments as their objective are explicitly included in the list of eligible investment assets.

- (9d)** *Regulation (EU) 2015/760 currently prevents investments by ELTIFs in credit institutions, investment firms, insurance undertakings and other financial undertakings. However, innovative recently authorised financial undertakings such as FinTechs could play an important role in promoting digital innovation and the overall efficiency of Union financial markets, job creation and contributing to the resilience and stability of Union financial infrastructure and the capital markets union. It is therefore necessary to remove that restriction and permit ELTIFs to invest in innovative new financial undertakings where such undertakings are dedicated to promoting the objectives of Regulation (EU) 2015/760.*
- (9e)** *Green washing practices should be avoided and investors should be able to assess the investment practices of ELTIF managers. In that respect, and to ensure compliance with the sustainability rules, ELTIFs marketed as environmentally sustainable should be subject to additional disclosure requirements. In particular, ELTIFs marketed as environmentally sustainable should disclose the share of their assets that comply with the taxonomy requirements.*
- (10)** It is necessary to extend the scope of eligible assets and promote the investments of ELTIFs in securitised assets. It should therefore be clarified that, where the underlying assets consist of long-term exposures, eligible investment assets should also include simple, transparent and standardised (STS) securitisations as referred to in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council⁶. Those long-term exposures comprise securitisations of residential loans that are secured by one or more mortgages on residential immovable property (residential mortgage backed securities (RMBS)), commercial loans that are secured by one or more mortgages on

⁶ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

commercial immovable property, corporate loans, including loans which are granted to small and medium enterprises (SMEs), and trade receivables or other underlying exposures that the originator considers to form a distinct asset type, provided that the proceeds from securitising those trade receivables or other underlying exposures are used for financing or refinancing long-term investments.

(10a) In line with Regulations (EU) 2019/2088 and (EU) 2020/852, ELTIFs should, insofar as possible due to the nature and composition of the eligible investment assets, document and disclose specific information on the extent to which their eligible investment assets pursue environmental objectives, the agenda of the European Green Deal and the principle of do no significant harm, as well as the objectives of protecting social rights and guaranteeing minimum social safeguards.

(11) In order to improve access of investors to more up-to-date and complete information on the ELTIF market, it is necessary to increase the granularity and the timeliness of the central public register referred to in Article 3(3), second subparagraph, of Regulation (EU) 2015/760 ('ELTIF register'). The ELTIF register should therefore contain additional information to the information that that register contains already, including, where available, the Legal Entity Identifier ('LEI') and the national code identifier of the ELTIF, the name, address and the LEI of the ELTIF manager, the International Securities Identification Numbers ('ISIN') codes of the ELTIF and of each separate share or unit class, the competent authority of the ELTIF and the home Member State of that ELTIF, the Member States where the ELTIF is marketed, whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors, the date of the authorisation of the ELTIF, and the date on which the marketing of the ELTIF has commenced. In addition, to enable ELTIF investors to analyse and compare existing ELTIFs, the ELTIF register should contain up-to-date links to the ELTIF documentation, including to the rules or instruments of incorporation of the ELTIF concerned, the annual reports and, where available, the Key Information Document drawn up in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council⁷. To ensure an up-to-date status of the ELTIF register, it

⁷ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

is appropriate to require competent authorities to communicate to ESMA any changes to the information on an ELTIF, including authorisations and withdrawals, **and refusals** of such authorisations, on a **quarterly** basis.

- (12) Certain investments by ELTIFs can be conducted through the participation of intermediary entities, including special purpose vehicles and securitisation or aggregator vehicles or holding companies. Regulation (EU) 2015/760 currently requires that investments in equity or quasi-equity instruments of the qualifying portfolio undertaking can only take place where those undertakings are majority owned subsidiaries, which substantially limits the scope of the potential scope of the eligible asset base. ELTIFs should therefore have the possibility to conduct minority co-investment in investment opportunities. That possibility should enable ELTIFs to obtain additional flexibility in implementing their investment strategies, to attract more promoters of investment projects and to increase the range of possible eligible target assets, all of which is essential for the implementation of indirect investment strategies.
- (12a) The approach set out in Regulation (EU) 2015/760 whereby the investment limits of ELTIFs are determined based on capital does not always accurately reflect the evolution of the value of units or shares of ELTIFs. The reference value used for determining limits on diversification and borrowing should be relevant and provide an up-to-date and accurate image of an ELTIF. Therefore, net asset value should be used as the reference value for determining limits for an ELTIF, instead of the value of its capital.***
- (13) Due to concerns that fund-of-funds strategies can give rise to investments that would not fall within the scope of eligible investment assets, Regulation (EU) 2015/760 currently contains restrictions on investments in other funds throughout the ELTIF's life. Fund-of-fund strategies are, however, a common and very effective way of obtaining rapid exposure to illiquid assets, in particular in respect of real estate and in the context of fully paid-in capital structures. It is therefore necessary to give ELTIFs the possibility to invest in other funds, because that would enable ELTIFs to ensure a faster deployment of capital. Facilitating fund-of-fund investments by ELTIFs would also allow reinvestment of excess cash into funds as different investments with distinct maturities may lower the cash drag of the ELTIF. It is therefore necessary to expand the eligibility of funds-of-funds strategies for ELTIF managers beyond investments in

European venture capital funds (EuVECAs) or European social entrepreneurship funds (EuSEFs). The scope of collective investment undertakings in which ELTIFs can invest should thus be broadened to undertakings for collective investment in transferable securities (UCITS) and to alternative investment funds (AIFs) managed by EU AIF managers. However, in order to ensure effective investor protection, it is also necessary to set out that where an ELTIF invests in other ELTIFs, in European venture capital funds (EuVECAs), in European social entrepreneurship funds (EuSEFs), in UCITS and AIFs managed by EU AIFMs, those collective investment undertakings should also invest in eligible investments and have not themselves invested more than **20%** of their *net asset value* in any other collective investment undertaking, *thereby offering a risk profile similar to that of ELTIFs. However, as master-feeder structures are more complex, retail investors might not have sufficient knowledge and expertise to assess the risks associated with their investment. Those kinds of structures might also increase the fees for retail investors. In that regard, while facilitating fund-of-fund investments by ELTIFs could provide potential investors with higher levels of diversification and lower volatility, it is important to ensure that such strategies do not lead to an excessive layering of fees for retail investors investing in fund-of-fund strategies.*

- (14) In order to better use the expertise of the ELTIF managers and because of diversification benefits, in certain cases it can be beneficial for ELTIFs to invest all or almost all of their assets into the diversified portfolio of *a master fund*. ELTIFs should therefore be allowed to pool their assets and make use of master-feeder structures by investing in master *funds*.
- (15) The *portfolio composition and* diversification requirements laid down in the current version of Regulation (EU) 2015/760 were introduced to ensure that ELTIFs can withstand adverse market circumstances. Those *requirements* imply, however, that ELTIFs are, on average, required to make ten distinct investments. *Those provisions have proven to be too burdensome.* In relation to investment in projects or infrastructures of large scale, the requirement to make ten investments per ELTIF may be difficult to achieve, and costly in terms of transactional costs and capital allocation. To reduce transaction and administrative costs for ELTIFs and ultimately their investors, ELTIFs should therefore be able to pursue more concentrated investment

strategies and thus to be exposed to fewer eligible assets. It is therefore necessary to adjust the diversification requirements for ELTIFs' exposures to single qualifying portfolio undertakings, single real assets, collective investment undertakings and certain other eligible investment assets, contracts and financial instruments. That additional flexibility in the portfolio composition of ELTIFs and the reduction in the diversification requirements should not materially affect the capacity of ELTIFs to withstand market volatility, since ELTIFs typically invest in assets that often do not have a readily available market quotation, may be highly illiquid, and frequently have long-term maturity or time horizon. ***In any event, those diversification thresholds should not be applicable to ELTIFs that are marketed as fund-of-fund structures.***

- (16) Unlike retail investors, professional investors may, in certain circumstances, have a longer time horizon, distinct financial returns objectives, more expertise, possess higher risk tolerance to adverse market conditions and higher capacity to absorb losses. ***Therefore, the categorisation of those investors as professional allows for a different and more tailor-made set of investor protection measures as compared to*** retail investors. It is therefore appropriate to remove the diversification requirements for ELTIFs that are solely marketed to professional investors.
- (17) Article 28 and 30 of Regulation (EU) 2015/760 currently require ELTIF managers or distributors to carry out a suitability assessment. That requirement is already laid down in Article 25 of Directive 2014/65/EU of the European Parliament and of the Council.⁸ That duplicative requirement constitutes an additional layer of administrative burdens leading to higher costs for retail investors and is a strong disincentive for ELTIF managers to offer new ELTIFs to retail investors. It is therefore necessary to remove that duplicate requirement from Regulation (EU) 2015/760.
- (18) Article 30 of Regulation (EU) 2015/760 also requires ELTIF managers or distributors to provide appropriate investment advice when marketing ELTIFs to retail investors. The lack of precision in what constitutes appropriate investment advice in Regulation (EU) 2015/760 and the lack of a cross-reference to Directive 2014/65/EU, which contains a definition of investment advice, have led to a lack of legal certainty and

⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

confusion among ELTIF managers and distributors. In addition, the obligation to provide investment advice would require external distributors to be authorised under Directive 2014/65/EU when marketing ELTIFs to retail investors. That would create unnecessary impediments to the marketing of ELTIFs to those investors. The distribution and marketing of ELTIFs should not be subject to stricter requirements than the distribution of other complex financial products, including the requirements for securitisations laid down in Regulation (EU) 2017/2402 of the European Parliament and of the Council⁹ and for subordinated eligible liabilities laid down in Directive 2014/59 of the European Parliament and of the Council¹⁰. The obligation to perform a suitability test *and communicate the result thereof in accordance with requirements set out in Directive 2014/65/EU* is sufficient to provide retail investors with the necessary protection and is in line with the existing obligations laid down Regulation (EU) 2017/2402 and Directive 2014/59. It is therefore not necessary to require distributors and managers of ELTIFs to provide retail investors with that investment advice.

(18a) Given the importance of having a level playing field among financial products when such products are marketed to end investors, and of having effective investor protection safeguards, among others, provided for in this amending Regulation, ELTIFs should not be subject to unnecessary administrative and regulatory burdens.

(18b) It is necessary to avoid an excessive concentration of a retail client's financial instrument portfolio in ELTIFs. Accordingly, in cases where, following the outcome of the suitability assessment, an ELTIF is not considered suitable for a retail investor, or in cases where it is not possible to carry out the suitability assessment, the manager of the ELTIF or the distributor should issue a clear written alert informing the retail client that investing an amount exceeding 10 % of the client's financial instrument portfolio in ELTIFs could constitute excessive risk taking.

(19) Article 30(3) of Regulation (EU) 2015/760 currently requires, for potential retail investors whose financial instrument portfolio does not exceed EUR 500 000, an initial

⁹ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

¹⁰ 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).

minimum investment in one or more ELTIFs of EUR 10 000, and requires that such investors do not invest an aggregate amount exceeding 10 % of that their financial instrument portfolio in ELTIFs. When applied together, the EUR 10 000 minimum initial investment participation and the 10 % limitation on aggregate investment create a significant obstacle for the retail investor to invest in ELTIFs, which conflicts with the goal of an ELTIF to establish a retail alternative investment fund product. It is therefore necessary to remove that EUR 10 000 initial minimum investment requirement and the 10 % limitation on aggregate investment.

- (20) Article 10, point (e), of Regulation (EU) 2015/760 currently requires that eligible investment assets, where those assets are individual real assets, have a value of at least EUR 10 000 000. Real assets portfolios, however, are often composed of a number of individual real assets which have a value of *significantly* less than EUR 10 000 000. *The removal of that unnecessary limitation on the minimum value of individual real assets might therefore contribute to the diversification of investment portfolios and more effective investments in real assets by ELTIFs, and to the consideration of the different conditions in Member States.*
- (21) Article 11(1), point (b)(ii) of Regulation (EU) 2015/760 currently requires that qualifying portfolio undertakings, where those qualifying undertakings are admitted to trading on a regulated market or on a multilateral trading facility, have a market capitalisation of no more than EUR 500 000 000. Many listed companies with a low market capitalisation, however, have a limited liquidity which prevents ELTIF managers from building, within a reasonable time, a sufficient position in such listed companies, which narrows down the range of available investment targets. In order to provide ELTIFs with a better liquidity profile, the market capitalisation of the listed qualifying undertakings in which ELTIFs can invest should therefore be increased from maximum EUR 500 000 000 to maximum EUR **2 000 000 000**. To avoid potential changes to the eligibility of such investments due to currency fluctuations or other factors, the determination of the market capitalisation threshold should only be made at the time of the initial investment.
- (22) Managers of ELTIFs that hold a stake in a portfolio undertaking may place their own interests ahead of the interests of investors in the ELTIF. To avoid such a conflict of interests, and to ensure sound corporate governance, the current version of Regulation

(EU) 2015/760, *in addition to the requirements concerning conflicts of interest laid down in Directive 2011/61/EU*, requires that an ELTIF only invests in assets that are unrelated to the manager of the ELTIF, unless the ELTIF invests in units or shares of other collective investment undertakings that are managed by the manager of the ELTIF. It is, however, an established market practice that one or several investment vehicles of the asset manager co-invest alongside another fund that has a similar objective and strategy as that ELTIF. Such co-investments by the AIF manager and other affiliate entities that belong to the same group allow for the attraction of larger pools of capital for investments in large-scale projects. For that purpose, asset managers typically invest in parallel with the ELTIF in a target entity and structure their investments through co-investment vehicles. As part of the asset management mandate, portfolio managers and senior personnel of the asset managers are typically required or expected to co-invest in the same fund that they manage. It is therefore appropriate to specify that the provisions on conflict of interest should not prevent an ELTIF manager or an undertaking that belongs to that group from co-investing in that ELTIF and co-investing with that ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments take place, ELTIF managers should put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

- (23) To prevent conflicts of interests, avoid transactions that do not take place on commercial terms and to ensure sound corporate governance, the current version of Regulation (EU) 2015/760 does not allow the staff of the ELTIF manager and of undertakings that belong to the same group with the ELTIF manager to invest in that ELTIF or to co-invest with the ELTIF in the same asset. It is, however, an established market practice that the staff of the ELTIF manager and of other affiliate entities that belong to the same group, which co-invest alongside the ELTIF manager, including the portfolio managers and senior personnel responsible for the key financial and operational decisions of the ELTIF manager, are often required or expected due to the nature of the asset management mandate to co-invest in the same fund or the same asset in order to promote the alignment of financial incentives of that staff and the investors. It is therefore appropriate to specify that the provisions on conflict of interest should not prevent the

staff of the ELTIF manager or of undertakings that belong to that group from co-investing in their personal capacity in that ELTIF and from co-investing with that ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments by the staff take place, ELTIF managers should put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

- (24) Article 13(1) of Regulation (EU) 2015/760 currently requires that ELTIFs invest at least 70 % of their capital in eligible investment assets. This high threshold for the composition of eligible investment assets in ELTIFs' portfolios was initially established in view of the focus of ELTIFs on long-term investments and the contribution such investments would make to the financing of a sustainable growth of the Union's economy. Given the illiquid and idiosyncratic nature of certain eligible investment assets within ELTIFs' portfolios, however, it may prove difficult and costly for ELTIF managers to manage the liquidity of ELTIFs, honour redemption requests, enter into borrowing arrangements, and execute other elements of ELTIFs' investment strategies pertaining to the transfer, valuation and pledging of such eligible investment assets. Lowering the eligible investment assets threshold **down to 50 %** would enable ELTIF managers to better manage the liquidity of ELTIFs.
- (25) Leverage is frequently used to enable the day-to-day operation of an ELTIF and to carry out a specific investment strategy. Moderate amounts of leverage can amplify returns, and, where controlled adequately, without incurring or exacerbating excessive risks. In addition, leverage can frequently be used by a variety of collective investment undertakings to gain additional efficiencies or operational results. Since the borrowing of cash threshold is currently limited to 30% of the capital of the ELTIF, ELTIF managers **are limited in pursuing** certain investment strategies, including in the case of investments in real assets, where using higher levels of leverage is an industry norm or is otherwise required to achieve attractive risk-adjusted returns. **However, higher leverage entails higher risks, especially when leverage is obtained through derivatives or when it is performed by non-regulated entities. Since ELTIFs are not allowed to invest in derivatives other than for the purpose of hedging and are subject to strict limitations on securities lending and borrowing, repo and other similar transactions,**

and since both ELTIFs and managers of ELTIFs are subject to extensive supervision by national supervisors, and the use, methods, calculation and reporting of leverage in accordance with Directive 2011/61/EU is regulated, the possibility for ELTIFs to borrow cash should not, as such, equate ELTIFs to "risky" funds. It is therefore appropriate to increase the flexibility of managers of ELTIFs to raise further capital during the life of the ELTIF. *In order to allow managers of ELTIFs to raise capital more efficiently while keeping an eye on the potential risks that leverage could entail, ELTIFs marketed to retail investors should be permitted to borrow cash amounting to up to 70% of the net asset value of the ELTIF. The 70% threshold is appropriate given the overall borrowing of cash limits common for funds investing in real assets with a similar liquidity and redemption profile. As for ELTIFs marketed to professional investors, however, a higher leverage threshold should be permitted, because professional investors have a higher risk-tolerance than retail investors. As a result, the borrowing of cash threshold for ELTIFs that are marketed to professional investors should equally be extended to 100 % of the ELTIF net asset value. At the same time, since cash borrowing is not the only way to obtain exposure to leverage, the increased thresholds for borrowing cash by ELTIFs should be accompanied by a requirement in line with Directive 2011/61/EU to take into account other sources of leverage, such as operating leverage.*

- (26) To provide ELTIFs with wider investment opportunities, ELTIFs should be able to borrow in the currency in which the manager of the ELTIF expects to acquire the asset. It is, however, necessary to mitigate the risk of currency mismatches and thus to limit the currency risk for the investment portfolio. ELTIFs should therefore *appropriately hedge their* currency exposure. ■
- (27) ELTIFs should be able to encumber their assets to implement their borrowing strategy. ■
- (28) Given the increase of the maximum thresholds for borrowing cash by ELTIFs *marketed solely to professional investors and by retail ELTIFs* and the removal of certain limitations on the borrowing of cash in foreign currencies, investors should have more comprehensive information on the borrowing strategy and limits employed by the ELTIF. It is therefore appropriate to require ELTIF managers to explicitly disclose ■ the borrowing *limits in the prospectus of the ELTIF concerned.*

- (29) Article 18(4) of Regulation (EU) 2015/760 currently requires that investors in an ELTIF may request the winding down of that ELTIF where their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which those requests were made. Given the long-term orientation of ELTIFs and the often idiosyncratic and illiquid asset profile of ELTIFs' portfolios, the entitlement of any investor or a group of investors to request the winding down of an ELTIF can be disproportionate and detrimental to both the successful execution of the ELTIF investment strategy and the interests of other investors or groups of investors. It is therefore appropriate to ***entitle competent authorities to remain competent to decide whether the winding down of the ELTIF is justified. Managers of ELTIFs should, in any case, be entitled to determine the redemption frequencies.***
- (30) The current version of Regulation (EU) 2015/760 is unclear about the criteria to assess the redemption percentage in a period of time, and about the ***conditions for and the*** minimum information to be provided to competent authorities about the possibility of redemptions. Given ESMA's central role in the application of Regulation (EU) 2015/760 and its expertise about securities and securities markets, it is appropriate to entrust ESMA with the drawing up of draft regulatory technical standards specifying those criteria and that information.
- (31) Article 19(1) of the current version of 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, ELTIF managers, investors and market participants have hardly used the secondary trading mechanism by for the trading of shares or units of ELTIFs. To promote the secondary trading of ELTIF units or shares, it is appropriate to allow ELTIF managers to put in place a possibility for an early exit of ELTIF investors, before the end of the ELTIF's life. In order to ensure an effective functioning of such a secondary trading mechanism, such 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, among others, specify the transfer process, the role of the ELTIF manager and the ELTIF administrator, the duration of the liquidity window during which the units or shares of the ELTIF could be exchanged, the ***rules determining the*** execution price, pro-ratio conditions, disclosure requirements, fees,

costs and charges and other conditions pertaining to such a liquidity window mechanism. ***In order to avoid any misunderstanding by retail investors regarding the legal nature of, and the liquidity potentially created by, the policy for matching under the optional liquidity window mechanism, the manager of the ELTIF or the distributor should issue a clear written alert to the retail investor that the availability of such a matching policy does not guarantee a match or entitle retail investors to exit or redeem their units or shares of the ELTIF and that the liquidity window mechanism might not be swiftly actionable at all times.***

- (32) Article 26 of the current version of Regulation (EU) 2015/760 requires that ELTIF managers set up local facilities in each Member State where they intend to market ELTIFs. ***While the requirements to perform certain tasks for investors across all Member States remain in place,*** the requirement to set up local facilities has, however, been removed by Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019¹¹ as regards UCITS and alternative investment funds marketed to retail investors, since such local facilities create additional costs and friction to the cross-border marketing of ELTIFs. In addition, ***while the requirements to perform certain tasks for investors across all Member States remain in place,*** the preferred method of contact with investors has shifted from physical meetings at local facilities to direct interaction between fund managers or distributors and investors by virtue of electronic means. Removing this obligation from the ELTIF Regulation for all ELTIF investors would hence be consistent with Directive (EU) 2019/1160 and the contemporary methods of marketing of financial products, and could promote the attractiveness of ELTIFs for asset managers who would no longer be required to incur costs stemming from operating local facilities. Article 26 should therefore be deleted.
- (33) The current version of Article 21(1) of Regulation (EU) 2015/760 requires ELTIFs to adopt an itemised schedule for the orderly disposal of their assets to redeem investors' units or shares after the end of the life of the ELTIF. That provision also requires ELTIFs to disclose that itemised schedule to the competent authorities. Those requirements subject ELTIF managers to substantial administrative and compliance burdens, without

¹¹ Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (OJ L 188, 12.7.2019, p. 106).

bringing a corresponding increase in investor protection. In order to alleviate those burdens without diminishing investors protection, ELTIFs should be required inform the competent authority of the ELTIF about the orderly disposal of their assets to redeem investors' units or shares after the end of the ELTIF's life, and only provide the competent authority of the ELTIF with an itemised schedule where they are explicitly asked by the competent authority of the ELTIF to do so.

- (34) Adequate disclosure of fees and charges is critically important for the evaluation of the ELTIFs as a potential investment target by investors. Such disclosure is also important where the ELTIF is marketed to retail investors in the case of master-feeder structures. It is therefore appropriate to require the ELTIF manager to include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master *fund*. ***In order to protect retail investors from being charged unjustified additional costs, where retail ELTIFs pursue fund-of-funds investment strategies there should be a prohibition on master funds charging feeder ELTIFs subscription and redemption fees.***
- (35) Regulation (EU) 2015/760 requires ELTIF managers to disclose in the ELTIF prospectus information about fees related to investing in that ELTIF. Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹², however, also contains requirements concerning the disclosure of fees. In order to increase transparency on the fee structure, the requirement laid down in Regulation (EU) 2015/760 should be aligned with the requirement laid down in Regulation (EU) No 1286/2014.
- (36) It is an established market practice that the portfolio manager or senior personnel of the ELTIF manager are required or expected to invest in ELTIFs managed by that ELTIF manager. Such persons are presumed to be financially sophisticated and well-informed about the ELTIF concerned. In those circumstances, it is superfluous to require those individuals to undergo a suitability assessment test for investments in the ELTIF. It is therefore appropriate not to require ELTIF managers or the distributors to carry out a suitability assessment for such individuals.

¹² Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

- (37) The prospectus of the feeder ELTIF may contain highly relevant information for investors, which enables investors to better assess potential risks and benefits of an investment. It is therefore appropriate to require that in case of a master-feeder structure the prospectus of the feeder ELTIF contains disclosures on the master-feeder structure, the feeder ELTIF and the master *fund*, a description of all remuneration or reimbursement of costs payable by the feeder ELTIF and, ***where the ELTIF is marketed to retail investors***, a description of the tax implications of the investment into the master *fund* for the feeder ELTIF.
- (38) Article 30(7) of Regulation (EU) 2015/760 currently requires that investors are treated equally and prohibits preferential treatment of individual investors or groups of investor, or the granting of specific economic benefits to those investors. ELTIFs may, however, have several classes of shares or units with slightly or substantially distinct conditions as regards the fees, legal structure, marketing rules and other requirements. In order to take those differences into account. It should be specified that those requirements should only apply to individual investors or groups of investors that invest into the same class or classes of ELTIFs.
- (38a) ***Decisions on taxation are predominantly a competence of the Member States. Member States could thus decide to further improve the attractiveness of ELTIFs by, for example, granting reduced tax rates on distributions or other types of tax incentives.***
- (39) Regulation (EU) 2015/760 should therefore be amended accordingly.
- (40) In order to give ELTIF managers sufficient time to adapt to the new requirements, including the requirements pertaining to the marketing of ELTIFs to investors, this Regulation should start to apply *nine* months after its entry into force. ***However, keeping in mind their long-term nature and in order to not materially change their portfolio composition and investment strategy, existing ELTIFs should be allowed to benefit from a grandfathering clause in order to safeguard predictability and trust. Moreover, transitional rules should be provided for the benefit of ELTIFs authorised under Regulation (EU) 2015/760 prior to the entry into force of this Regulation. Therefore, the requirements laid down in this Regulation should not apply to ELTIFs authorised***

prior to the entry into force of this Regulation, except in cases where an ELTIF makes a request to be subject to this amending Regulation.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2015/760 is amended as follows:

(1) in Article 1, paragraph 2 is replaced by the following:

‘2. The objective of this Regulation is to facilitate the raising and channelling of capital towards long-term investments in the real economy, ***including towards the digital agenda for Europe, the European Green Deal and other priority areas***, in line with the Union objective of smart, sustainable and inclusive growth.’

(2) Article 2 is amended as follows:

(-a) point (1) is replaced by the following:

"(1) ‘net asset value’ means the net value of the assets of an ELTIF calculated as the total value of its assets minus the total value of its liabilities;"

(a) point (6) is replaced by the following:

‘(6) ‘real asset’ means an asset that has an intrinsic value due to its substance and properties;’

(aa) in point (7), the following point is inserted:

"(ca) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;"

(b) the following point (14a) is inserted:

"(14a) ‘simple, transparent and standardised securitisation’ means a securitisation that complies with the conditions set out in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council*¹;

*¹Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).’; "

(c) the following point (14b) is inserted:

"(14b) ‘group’ means a group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and the Council*²’;

*² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (OJ L 182, 29.6.2013, p.19).’; "

(d) the following points are added:

‘(20) ‘feeder ELTIF’ means an ELTIF, or an investment compartment thereof, which has been approved to invest at least 85 % of its assets in units *or shares of a master fund*;

(21) master *fund*’ means an ELTIF, or an investment compartment thereof, *or an AIF managed by an EU AIFM, provided that the AIF invests in eligible assets as referred to in Article 9 and complies with the diversification and borrowing of cash requirements of this Regulation, and whose shares or units are purchased by a feeder ELTIF*;

(22) ‘*ELTIF marketed as environmentally sustainable*’ means an optional sub-category of ELTIF where the manager of the ELTIF provides investors with a commitment or makes a pre-contractual claim that the ELTIF invests in economic activities that contribute to any of the environmental objectives listed in Article 9 of Regulation (EU) 2020/852’.’;

(3) in Article 3, paragraph 3 is replaced by the following:

‘3. The competent authorities of the ELTIFs shall, on a *quarterly* basis, inform ESMA of authorisations granted, *denied* or withdrawn pursuant to this Regulation and of any changes to the information about an ELTIF that is set out in the central public register referred to in the second subparagraph.

ESMA shall keep *a* central public register, *updated quarterly, identifying* ■ each ELTIF authorised under this Regulation:

- (a) the Legal Entity Identifier (LEI) and national code identifier of that ELTIF, where available;
- (b) the name of the manager of the ELTIF, and the address and the LEI of that manager;
- (c) the ISIN codes of the ELTIF and each separate share or unit class, where available;
- (d) the LEI of the master fund, where available;
- (e) the LEI of the feeder *ELTIF*, where available;
- (f) the competent authority of the ELTIF and the home Member State of that ELTIF;
- (g) the Member States where the ELTIF is marketed;
- (h) whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors;
- (i) the date of the authorisation of the ELTIF;
- (j) the date on which the marketing of the ELTIF has commenced;
- (k) up-to-date links to the *ELTIF's* annual reports ■ and, where available, the Key Information Document;
- (l) the date of the last update by ESMA of the information about the ELTIF.

The central public register shall be made *publicly* available in electronic format.’;

(4) Article 5 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:

‘The application for authorisation as an ELTIF shall **include** all of the following:

- (a) the fund rules or instruments of incorporation;
- (b) the name of the proposed manager of the ELTIF;
- (c) the name of the depositary and, where requested by the competent authority for ELTIF’s marketed to retail investors, the written agreement with the depositary;
- (d) where the ELTIF is intended to be marketed to retail investors, a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;
- (e) where applicable, the following information on the master-feeder structure of the ELTIF:

■

- (ii) the *prospectus of the master fund*;
- (iii) where the master *fund* and the feeder ELTIF have different depositaries, the information-sharing agreement referred to in Article 29(7); ‘;

■

- (b) paragraph 3 is replaced by the following:

‘3. Applicants shall be informed within two months from the date of submission of a complete application whether authorisation as an ELTIF has been granted. ■ ‘;

- (c) in paragraph 5, point (b) is replaced by the following:

‘(b) where the ELTIF is intended to be marketed to retail investors, a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors.’;

(4a) in Article 6, paragraph 5 is replaced by the following:

"5. The competent authority of the ELTIF shall communicate to the EU AIF the reason for its refusal to grant authorisation as an ELTIF. The competent authority of the ELTIF shall also communicate its decision to ESMA, which shall keep a record of all rejected applications for authorisation as an ELTIF. ESMA shall provide information regarding managers of ELTIFs whose authorisation has been denied to competent authorities upon request.";

(4b) in Article 7, the following paragraph is added:

"4. An ELTIF marketed as environmentally sustainable shall comply with the requirements of Article 9 of Regulation (EU) 2019/2088.";

(4c) in Article 9, the following paragraph is inserted:

"1a. An ELTIF marketed as environmentally sustainable shall only invest in eligible investment assets that meet the taxonomy requirements laid down in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852.";

(5) Article 10 is replaced by the following:

Article 10

Eligible investment assets

1. An asset referred to in Article 9(1), point (a), **and in Article 9(1a)**, shall only be eligible for **direct or indirect** investment by an ELTIF where it falls into one of the following categories:
 - (a) equity or quasi-equity instruments which have been:
 - (i) issued by a qualifying portfolio undertaking as referred to in Article **11** and acquired by the ELTIF from that qualifying portfolio undertaking or from a third party via the secondary market;
 - (ii) issued by a qualifying portfolio undertaking as referred to in Article **11** in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from that qualifying portfolio undertaking or from a third party via the secondary market;

- (iii) issued by an undertaking in which a qualifying portfolio undertaking as referred to in Article **11** holds a capital participation in exchange for an equity or quasi-equity instrument acquired by the ELTIF in accordance with points (i) or (ii) of this paragraph;
- (b) debt instruments issued by a qualifying portfolio undertaking as referred to in Article **11**;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking as referred to in Article **11** with a maturity that does not exceed the life of the ELTIF;
- (d) units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and **■** AIFs managed by EU AIFM provided that those ELTIFs, EuVECAs, EuSEFs, UCITS and AIFs invest in eligible investments as referred to in Article 9(1) and (2) and have not themselves invested more than **20%** of their *net asset value* in any other collective investment undertaking;
- (e) real assets **■** ;
- (f) simple, transparent and standardised securitisations where the underlying exposures correspond to one of the following categories:
 - (i) assets listed in Article 1, points (a)(i), (ii) or (iv), of Commission Delegated Regulation 2019/1851^{*3};
 - (ii) assets listed in Article 1, points (a),(vii) and (viii), of Delegated Regulation 2019/1851, provided that the proceeds from the securitisation bonds are used for financing or refinancing long-term investments.

^{*3} Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1).’;

(fa) green bonds issued in accordance with Regulation (EU) .../... [insert reference to the Regulation on European green bonds - COM(2021)0391 after its adoption by the European Parliament and the Council] of the European Parliament and of the Council;

(fb) financial products that have sustainable investment as their objective in accordance with Article 9 of Regulation (EU) 2019/2088.

2. Where an ELTIF has invested in shares or units of other ELTIFs, EuVECAs, EuSEFs, UCITS and ■ AIFs managed by EU AIFMs in accordance with paragraph 1, point (d), the assets of the respective ELTIF and other collective investment undertakings are to be combined for the purposes of determining the compliance with limits laid down in Article 13 and Article 16(1).’ ”;

(6) Article 11(1) is amended as follows:

(a) the introductory sentence is replaced by the following:

‘A qualifying portfolio undertaking referred to in Article 10 shall be an undertaking that fulfils the following requirements:’

(aa) point (a) is replaced by the following:

"(a) it is not a financial undertaking, unless it is a financial undertaking that has been granted a licence more recently than 5 years before the date of the investment; "

(b) in point (b), point (ii) is replaced by the following:

‘(ii) is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than 2 000 000 000 at the time of the initial investment; ‘

(ba) point (c) is replaced by the following:

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

(i) is not a high-risk and non-cooperative jurisdiction and is not included in the list of third-countries with strategic deficiencies or

compliance weaknesses in their AML/CFT regime pursuant to Article 9(2) of Directive (EU) 2015/849;

(ii) does not appear in Annex I or Annex II of the EU list of non-cooperative jurisdictions for tax purposes;

(iii) is not a third country subject to restrictive measures imposed by the Union.";

(6a) Article 11(2) is deleted;

(7) Article 12 is replaced by the following:

‘Article 12

Conflict of interest

1. An ELTIF shall not invest in an eligible investment asset in which the manager of the ELTIF has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs, EuVECAs, UCITS or **■** AIFs that it manages.
2. The **EU** AIFM managing an ELTIF and undertakings that belong to the same group **as** an **EU** AIFM managing an ELTIF, and their staff may co-invest in that ELTIF and co-invest with the ELTIF in the same asset, provided that the ELTIF manager has put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and provided that such conflicts of interest are adequately disclosed.’;

(8) Article 13 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. An ELTIF shall invest at least **50%** of its **net asset value** in eligible investment assets.

1a. An ELTIF marketed as environmentally sustainable shall invest 100% of its net asset value in eligible investment assets as referred to in Article 9(1a).

2. An ELTIF shall invest no more than:

(a) **25%** of its **net asset value** in instruments issued by, or loans granted to, any single qualifying portfolio undertaking;

- (b) **25%** of its *net asset value* directly or indirectly in a single real asset;
- (c) **25%** of its *net asset value* in units or shares of any single ELTIF, EuVECA *or* EuSEF, UCITS *and of AIFs* managed by EU AIFM;
- (d) **25%** of its *net asset value* in assets referred to in Article 9(1), point (b), where those assets have been issued by any single body.‘;

■

- (b) the following paragraph 3a is inserted:

‘3a. The aggregate value of simple, transparent and standardised securitisations in an ELTIF portfolio shall not exceed **25%** of the *net asset value* of the ■ ELTIF.‘;

(c) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed **10%** of the *net asset value* of the ELTIF.‘;

- (ca) *the following paragraph is inserted:*

"4a. Where an ELTIF invests less than 70% of its net asset value in qualifying undertakings established in the Union, it shall disclose that fact in its prospectus and in its fund documentation. ";

- (d) paragraph 5 is deleted;

■

- (f) the following *paragraphs are* added:

‘8. The investment thresholds set out in paragraphs 2 to 4 shall not apply where ELTIFs are marketed solely to professional investors.

9. The requirements laid down in paragraph 2 shall not apply to feeder ELTIFs and master funds.‘;

- (9) Article 15 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. An ELTIF may acquire no more than 30 % of the units or shares of a single ELTIF, EuVECA, EuSEF, UCITS or ■ AIF managed by an EU AIFM. That limit shall not apply where ELTIFs are marketed solely to professional investors.’;

(b) paragraph 2 *is replaced by the following*:

‘2. ***The concentration limits laid down in Article 56(2) of Directive 2009/65/EC shall apply to investments in the assets referred to in Article 9(1), point (b), of this Regulation.*** Those concentration limits shall not apply where ELTIFs are marketed solely to professional investors.’;

(10) Article 16 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (a), (b) and (c) are replaced by the following:

‘(a) it represents no more than **70%** of the ***net asset*** value of the ***ELTIF marketed to retail investors***, and no more than **100%** of the ***net asset value*** of the ELTIF for ELTIFs marketed solely to professional investors;

(b) it serves the purpose of making investments or providing liquidity, including to pay costs and expenses ■ provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned;

(c) it is contracted in the same currency as the assets to be acquired with the borrowed cash, or in another currency where currency exposure has been ***appropriately hedged***;’;

(ii) point (e) is replaced by the following:

‘(e) it encumbers assets to implement the borrowing strategy of the ELTIF ■.’;

(b) the following paragraph is inserted:

‘1a. Borrowing arrangements **that** are fully covered by investors’ capital commitments shall not be considered to **be** borrowing for the purposes of paragraph 1.’;

(c) paragraph 2 is replaced by the following:

‘2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether or not the ELTIF intends to borrow cash as part of the ELTIF’s investment strategy and shall **indicate the** borrowing **limits.**’;

(ca) **the following paragraph is added:**

"3. The borrowing limits referred to in paragraph 2 shall only apply as from the date specified in the rules or instruments of incorporation of the ELTIF.";

(10a) **in Article 17, paragraph 1 is replaced by the following:**

"1. The investment limits laid down in Article 13(1) and (2) shall: ";

(11) **in Article 18, paragraph 4 is replaced by the following:**

"4. Where an investor makes a redemption request in accordance with an ELTIF’s redemption policy and that request is not satisfied within one year of the date of the request, the investor may inform the competent authority. The competent authority may, where justified, request the winding down of the ELTIF, after taking into account the possible detrimental impact of such winding down on the other investors in the ELTIF.";

(12) **in Article 18, paragraph 7 is replaced by the following:**

‘7. ESMA shall develop draft regulatory technical standards specifying the **conditions to ensure that** the life of an ELTIF is **compatible with the life-cycles** of each of the individual assets of the ELTIF, as referred to in paragraph 3. ESMA shall develop draft regulatory technical standards specifying the minimum information to be provided to competent authorities under Article 18(2), point (b), and 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. **The draft regulatory technical standards shall ensure that managers of ELTIFs are entitled to define the redemption frequency.**’;

(12a) *the following article is inserted:*

"Article 18a

Issuance and redemption of shares and units in open-ended ELTIFs

- 1. By way of derogation from Article 18, an ELTIF may be open-ended.*
- 2. The fund rules of an open-ended ELTIF shall provide for the subscription and redemption of units or shares on specific dates and at least every 12 months.*
- 3. Where the fund rules of an open-ended ELTIF provide for the subscription and redemption of units or shares, a manager of that ELTIF shall not be exempted from its obligations to respect the diversification requirements, eligible assets, investment limits and borrowing of cash requirements in accordance with this Regulation.*
- 4. Units or shares of an open-ended ELTIF may only be redeemed after a minimum holding period of 24 months.*
- 5. The manager of an ELTIF shall be notified of the investor's request for redemption by means of an irrevocable redemption declaration.";*

(13) Article 19 is amended as follows:

(-i) paragraph 2 is replaced by the following:

"2. The rules or instruments of incorporation of an ELTIF shall not prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF, subject to the applicable regulatory requirements and the condition set out in the prospectus of the ELTIF.";

(i) the following paragraph 2a is inserted:

‘2a. 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 all of the following conditions are fulfilled:

- (a) the manager of the ELTIF has set out 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 the matching of respective requests;
 - (iii) the periods of time during which *exiting* and potential investors *are permitted to* request transfer of shares or units of the ELTIF;
 - (iv) *the rules determining* the execution price;
 - (v) 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 requests of the *ELTIF's* exiting *and* potential investors ensures that investors are treated fairly and that matching is carried out on a pro rata basis where there is a mismatch between *exiting* and potential investors;
 - (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;
 - (ca) *the manager of the ELTIF or the ELTIF discloses that an exiting request might not match with a potential investor's interest at all times.*’;
- (ii) the following paragraph 5 is added:
- ‘5. ESMA shall develop draft regulatory technical standards specifying the circumstances in which Article 18(2) and Article 19(2a) are to be applied,

including the information that ELTIFs *are required* to disclose to investors.

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

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

(14) in Article 21, paragraph 1 is replaced by the following:

‘1. An ELTIF shall inform its competent authority *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 *that* competent authority an itemised schedule for the orderly disposal of *its* assets.‘

(15) Article 23 is amended as follows:

(-a) in paragraph 3, point (b) is deleted;

(-aa) in paragraph 3, the following points are added:

"(g) the share of eligible investment assets of the total assets of the ELTIF and the share of eligible investment assets that meet the requirements as laid down in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852;

(h) a prominent statement indicating that the ELTIF intends to invest in assets whose underlying economic activities significantly harm the environmental objectives set out in Article 9 of Regulation (EU) 2020/852 according to Article 17 and the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of that Regulation. "

(a) the following paragraph 3a is inserted:

‘3a. The prospectus of the feeder ELTIF shall contain the following information:

- (a) a declaration that the feeder ELTIF is a feeder of a particular master *fund* and as such permanently invests 85% or more of its assets in units of that master *fund*;
- (b) the investment objective and policy, including the risk profile and whether the performance of the feeder *ELTIF* and the master *fund* are identical, or to what extent and for which reasons they differ;
- (c) a brief description of the master *fund*, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master *fund are able to* be obtained;
- (d) a summary of the agreement entered into between the feeder ELTIF and the master *fund* or of the internal rules on the conduct of business referred to in Article 29(6));
- (e) how the unit-holders *are able to* obtain further information on the master *fund* and the agreement entered into between the feeder ELTIF and the master *fund* referred to in Article 29(6);
- (f) a description of all remuneration or reimbursement of costs payable by the feeder ELTIF by virtue of its investment in units of the master*fund*, as well as of the aggregate charges of the feeder ELTIF and the master *fund*;
- (g) *where the ELTIF is marketed to retail investors*, a description of the tax implications for the feeder ELTIF of the investment into the master *fund*;

(aa) the following paragraphs are inserted:

"3a. The prospectus shall not contain information to be disclosed by collective investment undertakings of the closed-end type pursuant to Regulation (EU) 2017/1129.

3b. The prospectus shall contain a prominent statement indicating the application of the requirements of either Article 8 or of Article 9 of Regulation (EU) 2019/2088.";

(ab) in paragraph 4, the following point is added:

"(j) contain the disclosures insofar as required under Regulation (EU) 2019/2088 and, for ELTIFs marketed as environmentally sustainable, set out the procedures by which the fund assesses the long-term economic, social and environmental impact of eligible portfolio undertakings, as well as its corporate governance. ";

(ac) in paragraph 5, the following point is added:

"(e) information on the contribution of the ELTIF to the European Green Deal objectives.";

(b) in paragraph 5, the following subparagraph is added:

‘Where the ELTIF is marketed to retail investors, the manager of the ELTIF shall include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and, ***unless impossible in practice***, the master ***fund***. The annual report of the feeder ELTIF shall indicate how the annual report or reports of the master ***fund*** can be obtained.’

(15a) in Article 24, paragraph 5 is replaced by the following:

"5. The essential elements of the prospectus shall be kept up to date. An update shall be due only if the ELTIF's offer is open.";

(16) in Article 25, paragraph 2 is replaced by the following:

‘2. The prospectus shall disclose an overall cost ratio of the ELTIF.’;

(17) Article 26 is deleted;

(17a) in Article 27, paragraph 1 is replaced by the following:

"1. The manager of an ELTIF, the units or shares of which are intended to be marketed to retail investors, shall be subject to the product governance requirements laid down in Articles 16(3) and 24(2) of Directive 2014/65/EU.";

(18) Article 28 is deleted;

(19) in Article 29, the following paragraphs 6 and 7 are added:

‘6. In *the* case of a master-feeder structure, the master *fund* shall provide the feeder ELTIF with all documents and information necessary for the latter to meet the requirements laid down in this Regulation. For that purpose, the feeder ELTIF shall enter into an agreement with the master *fund*.

The agreement referred to in the first subparagraph shall be made available, on request and free of charge, to all unit-holders. In the event that both master and feeder *fund* are managed by the same management company, the agreement may be replaced by internal rules on the conduct of business ensuring compliance with the requirements set out in this paragraph.

7. Where the master *fund* and the feeder ELTIF have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries. The feeder ELTIF shall not invest in units of the master *fund* until such agreement has become effective.

Where they comply with the requirements laid down in this paragraph, neither the depositary of the master *fund* nor that of the feeder ELTIF shall be found to *infringe* any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such depositary or any person acting on its behalf.

The feeder ELTIF or, where applicable, the management company of the feeder ELTIF, shall be in charge of communicating to the depositary of the feeder ELTIF any information about the master *fund* which is required for the completion of the duties of the depositary of the feeder ELTIF. The depositary of the master *fund* shall immediately inform the competent authorities of the master *fund* home Member State, the feeder ELTIF or, where applicable, the management company and the depositary of the feeder ELTIF, *of* any irregularities it detects with regard to the master *fund* which are deemed to have a negative impact on the feeder ELTIF.’;

(20) Article 30 is replaced by the following:

‘Article 30

Specific requirements concerning the distribution and marketing of ELTIFs to retail investors

1. The units or shares of an ELTIF may only be marketed to retail *investors* where an assessment of suitability in accordance with Article 25(1), (2) and (5), Article 25(6), second and third *subparagraphs*, and Article 25(7) of Directive 2014/65/EU has been carried out ***and the result has been communicated in accordance with Directive 2014/65/EU*** with respect to that investor. ***Where, on the basis of the suitability assessment, it is ascertained that an ELTIF is not suitable for a retail investor, the manager of the ELTIF or the distributor shall issue a clear written alert that investing more than 10 % of that investor’s portfolio of financial instruments might constitute excessive risk-taking.***
2. Where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, the manager of the ELTIF or the distributor shall issue a clear written alert that the ELTIF product ***might*** not be suitable for retail investors that are unable to sustain such a long-term and illiquid commitment.
 - 2a. ***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), the manager of the ELTIF or the distributor shall issue a clear written alert to 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.***
3. Paragraphs 1 and 2 shall not apply where the retail investor is a member of senior staff, ***or a*** portfolio manager, director, officer, ***or an*** agent or employee of the manager, or of an affiliate of the manager ***of the ELTIF***, and has sufficient knowledge about the ELTIF **■** .
■
5. A feeder ELTIF shall disclose, in any marketing communications ***constituting an invitation to purchase units or shares of the ELTIF***, that it permanently invests 85 % or more of its assets in units of the master ***fund***.

6. The rules or instruments of incorporation of an ELTIF marketed to retail investors in the relevant class of units or shares shall provide that all investors benefit from equal treatment and that no preferential treatment or specific economic benefits *is* granted to individual investors or groups of investors within the relevant class or classes.
7. The legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment.
8. Retail investors shall be able, during the subscription period and *during a period of* two weeks after the *signature* of the *initial commitment* agreement of the units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.
9. The manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which shall allow retail investors to file complaints in the official language or one of the official languages of their Member State.‘;

(21) in Article 37, paragraph 1 is replaced by the following:

- ‘1. No later than [date of the entry into force + 6 years], the Commission shall *present* a review of the application of this Regulation. The review shall analyse *at least the following elements*:
 - (a) the application of Article 18 and the impact of that application on the redemption policy and life of ELTIFs;
 - (b) the application of provisions on the authorisation of ELTIFs, as set out in Articles 3 to 6;
 - (c) whether the provisions on the central public register of ELTIFs as laid down in Article 4 should be updated;
 - (d) the *extent to which ELTIFs are marketed in the Union, including whether AIFMs referred to in Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs*;

- (e) *whether the list of eligible assets and investments, the rules on diversification, portfolio composition and concentration, and the limits regarding the borrowing of cash, should be updated.*

■

- (g) whether the provisions concerning conflicts of interest as laid down in Article 12 should be updated;
- (h) whether the transparency requirements laid down in Chapter IV are appropriate;
- (i) whether the provisions concerning the marketing of units or shares of ELTIFs laid down in Chapter V are appropriate and ensure an effective protection of investors, including retail investors..
- (j) *whether ELTIFs have made a significant contribution to the financing and achievement of Union objectives, such as the digital agenda for Europe, and the European Green Deal.*

Article 2

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

It shall apply from [entry into force + 9 months].

ELTIFs established before ... [the date of entry into force of this Regulation] shall not be required to comply with its provisions, except in cases where an ELTIF makes a request to be subject to the provisions set out in this Regulation.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

43	+
ECR	Raffaele Fitto, Michiel Hoogeveen, Eugen Jurzyca, Bogdan Rzońca
PPE	Pablo Arias Echeverría, Anna-Michelle Asimakopoulou, Christophe Hansen, Danuta Maria Hübner, Radan Kanev, Aušra Maldeikienė, Colm Markey, Siegfried Mureşan, Lídia Pereira, Sven Simon, Ivan Štefanec, Lucia Vuolo, Javier Zarzalejos
RENEW	Gilles Boyer, Luis Garicano, Jan Huitema, Billy Kelleher, Fabienne Keller, Ondřej Kovařík, Georgios Kyrtos, Dragoş Pîslaru
S&D	Marc Angel, Jonás Fernández, Aurore Lalucq, Maria-Manuel Leitão-Marques, Margarida Marques, Pedro Marques, Csaba Molnár, Evelyn Regner, René Repasi, Paul Tang, Irene Tinagli
VERTS/ALE	Rasmus Andresen, Saskia Bricmont, Damien Carême, Rosa D'Amato, Stasys Jakeliūnas, Philippe Lamberts, Ernest Urtasun

3	-
ECR	Dorien Rookmaker
ID	Gunnar Beck
THE LEFT	Chris MacManus

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention