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"I" ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Proposal for a Regulation of the European Parliament and of the Council
on European Long-term Investment Funds (ELTIFs)
- Approval of the final compromise text

1. On 26 June 2013, the Commission transmitted to the Council its proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds (ELTIFs). The proposal intends to help increase the pool of capital available for long term investment in tomorrow's economy in line with the European Union's objectives of smart, sustainable and inclusive growth. This will be done by creating a new form of fund vehicle, the EU Long Term Investment Fund or ELTIF.

2. The European Economic and Social Committee and the Committee of Regions adopted their opinions respectively on 16 October 2013 and on 30 January 2014. The report of the European Parliament was adopted on 20 March 2014 by the ECON Committee, and the amendments proposed by the Committee were adopted by the EP Plenary on 17 April 2014. .
3. The Council agreed on a general approach on the above mentioned proposal at the level of Coreper on 25 June 2014¹. On that basis, the Italian Presidency has conducted negotiations with the European Parliament and the Commission with a view to a first reading agreement.
4. On 26 November 2014 - and following the technical work thereafter - a provisional agreement was reached which resulted in the final compromise text as set out in the Annex.
5. Against this background the Permanent Representatives Committee (Part 2) is invited to:
 - a) approve the final compromise text regarding the Regulation of the European Parliament and of the Council on European Long-term Investment Funds (ELTIFs), and
 - b) confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt its position at first reading as regards the Regulation of the European Parliament and of the Council on European Long-term Investment Funds (ELTIFs), as set out in the Annex, subject, if necessary, to revision of that text by the legal linguists of both institutions, the Council would approve the European Parliament's position and the Act shall be adopted in the wording which corresponds to the European Parliament's position.

¹ Doc. 11105/14

2013/0214(COD)

**REGULATION (EU) NO .../2015
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

on European Long-term Investment Funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

² OJ C , , p. .

Whereas:

- (1) Long-term finance is a crucial enabling tool for putting the European economy on a path of sustainable, smart and inclusive growth, ***in accordance with the Europe 2020 strategy, high employment and competitiveness*** for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance to various infrastructure projects, unlisted companies ***or listed small and medium-sized enterprises (SMEs)*** of lasting duration that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the ***Union's real economy and the implementation of its policies***.
- (2) On the demand side, ELTIFs can provide a steady income stream for pension administrators, insurance companies, ***foundations, municipalities*** and other entities that face regular and recurrent liabilities ***and are seeking long-term returns within well-regulated structures***. While providing less liquidity than investments in transferable securities, ELTIFs can provide a steady income stream for individual investors that rely on the regular cash flow that an ELTIF can produce. ELTIFs can also offer good opportunities for capital appreciation over time for those investors not receiving a steady income stream.
- (3) Financing for projects, regarding transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), ***the*** roll-out of new technologies and systems that reduce use of resources and energy or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect, ***and also can mobilize capital by attracting third country investors***.
- (3a) ***The focus of this Regulation is to boost European long-term investments in the real economy. Long-term investments in projects, undertakings and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy. Therefore such investments should not be prevented.***

- (3b) *While individual investors may be interested in investing in an ELTIF, the illiquid nature of most investments in long-term projects precludes an ELTIF from offering regular redemptions to its investors. The commitment of the individual investor to an investment in such assets is by its nature made to the full term of the investment. ELTIFs should, consequently, be structured in principle so as not to offer regular redemptions before the end of life of the ELTIF.*
- (4) *In order to incentivize investors, in particular retail investors, who might not be willing to lock-up their capital for a long period of time, an ELTIF should be able to offer under certain conditions early redemption rights to its investors. Therefore, the ELTIF manager should be given discretion to decide whether to establish ELTIFs with or without redemption rights according to the ELTIF's investment strategy. When a redemption rights regime is in place, those rights and their main features should be clearly predefined and disclosed in the rules or instruments of incorporation of the ELTIF.*
- (4a) *ELTIF's rules or instrument of incorporation should not prevent units or shares of this ELTIF being admitted to trading on a regulated market as defined in Article xx of Directive 2014/65/EU or on a multilateral trading facility as defined in Article xx of Directive 2014/65/EU. This intends to promote secondary markets as an important venue for buying and selling shares or units of ELTIFs for retail investors.*
- (4b) *In order to broaden retail investors' access to ELTIFs, a UCITS is able to invest into shares or units issued by an ELTIF to the extent that the ELTIF shares or units are eligible under Directive 2009/65/EC (UCITS).*
- (5) Long-term asset classes within the meaning of this Regulation should comprise non-listed undertakings that issue equity or debt instruments for which there *might not be an easily identifiable buyer and listed undertakings with a maximum capitalisation of EUR 500 million.*

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

- (8) It is essential to ensure that the definition of the operation of ELTIFs, in particular on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use be directly applicable to the managers of ELTIFs and therefore these new rules need to be adopted as a Regulation. This also ensures uniform conditions for the use of the designation ELTIF by preventing diverging national requirements. Managers of ELTIFs should follow the same rules across the Union, in order to also enhance the confidence of investors in ELTIFs and ensure sustainable trustworthiness of the designation. At the same time, by adopting uniform rules, the complexity of the regulatory requirements applicable to ELTIFs is reduced. By means of uniform rules, the managers' cost of compliance with divergent national rules governing funds that invest in *listed and* non-listed undertakings and comparable real asset classes is also reduced. This is especially true for managers that wish to raise capital on a cross-border basis. It also contributes to eliminate competitive distortions.
- (9) The new rules on ELTIFs are closely linked to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010³ since that Directive forms the legal framework governing the management and marketing of alternative investment funds (AIFs) in the Union. By definition ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.
- (10) Whereas Directive 2011/61/EU also *provides for* a staged third country regime governing non-EU AIFMs and non-EU AIFs, the new rules on ELTIFs have a more limited scope emphasising the European dimension of the new long term investment product. Hence, only an EU AIF as defined in Directive 2011/61/EU is eligible to become an authorised ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU.

³ OJ L 174, 1.7.2011, p. 1.

- (11) The new rules applicable to ELTIFs should build on the existing regulatory framework established through Directive 2011/61/EU and the acts adopted for its implementation. Therefore, the product rules concerning ELTIFs should apply in addition to the rules laid down in the existing Union legislation. Particularly, the management and marketing rules laid down in Directive 2011/61/EU should apply to ELTIFs. Equally, the rules on the cross-border provision of services and freedom of establishment laid down in Directive 2011/61/EU should apply accordingly to the cross-border activities of ELTIFs. These should be supplemented by the specific marketing rules designed for the cross-border marketing of ELTIFs to both retail and professional investors across the Union.
- (12) Uniform rules should apply to all those EU AIFs that wish to market themselves as ELTIFs. EU AIFs that do not wish to market themselves as ELTIFs should not be bound by these rules, thereby also consenting not to benefit from the advantages that ensue. On the other hand, undertakings for collective investment in transferable securities (UCITS) and non-EU AIFs would not be eligible for marketing as ELTIFs.
- (13) In order to ensure the compliance of ELTIFs with the harmonised rules governing the activity of these funds, it is necessary to require that competent authorities authorise ELTIFs. The harmonised authorisation and supervision procedures for AIFMs under Directive 2011/61/EU should therefore be supplemented with a special authorisation procedure for ELTIFs. Procedures should be established to ensure that only EU AIFMs authorised in accordance with Directive 2011/61/EU and capable of managing an ELTIF may manage ELTIFs. All appropriate steps are taken to ensure that the ELTIF shall be able to comply with the harmonised rules governing the activity of these funds. ***A specific authorisation procedure should apply where the ELTIF is internally managed and no external AIFM is appointed.***
- (14) Given that EU AIFs may take different legal forms that do not necessarily endow them with legal personality, the provisions requiring ELTIFs to take action should be understood to refer to the manager of the ELTIF in cases where the ELTIF is constituted as an EU AIF that is not in a position to act by itself because it has no legal personality of its own.

- (15) In order to ensure that ELTIFs target long-term investments ***and contribute to finance a sustainable growth of the EU's economy***, rules on the portfolio of ELTIFs should require a clear identification of the categories of assets that should be eligible for investment by ELTIFs and of the conditions under which they should be eligible. An ELTIF should invest at least 70 % of its capital in eligible investment assets. To ensure the integrity of ELTIFs it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by raising additional risks different to those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the ***risks inherent to its own investments***. Given the liquid nature of commodities and financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded. This rationale does not apply to investments in infrastructure or companies related to commodities or whose performance is linked indirectly to the performance of commodities, such as farms in the case of agricultural commodities or power plants in the case of energy commodities.
- (16) The definition of what constitutes a long-term investment is broad. Without necessarily requiring long-term holding periods for the ELTIF manager, eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. ***However, as listed SMEs may face problems of liquidity and access to the secondary market, they should be considered qualifying portfolio undertakings.*** The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns. ■
- (17) An ELTIF should be allowed to invest in assets other than eligible investment assets, as may be necessary to efficiently manage its cash flow, but only so long as this is consistent with the ELTIF's long term investment strategy.

- (18) Eligible investment assets must be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings and loans provided to them. They should also include participation in other funds that are focused on assets such as investments in non-listed undertakings that issue equity or debt instruments for which there is not always a readily identifiable buyer. Direct holdings of real assets, unless they are securitised, should also form a class of eligible assets, ***provided that they yield a predictable stream of cash flows (regular or irregular), in the sense that they can be modelled and valued based on a discounted cash-flow valuation method. Those assets could indicatively include social infrastructure that yields a predictable return, such as energy, transport and communication infrastructure, and education, health, welfare support or industrial facilities. Conversely, assets like works of art, manuscripts, wine stocks or jewels should not be eligible as they do not normally yield a predictable stream of cash-flows.***
- (18a) ***ELTIF eligible investment should include “Real assets” with a value of more than €10 million that enable economic and social benefit. Such assets include infrastructure, intellectual property, vessels, equipment, machinery, aircraft or rolling stock, immovable property. Investments in commercial property or housing should be permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth or the Union’s energy, regional and cohesion policies. In particular, investment in such immovable property should be clearly documented so as to demonstrate the long term commitment. This Regulation is not seeking to promote speculative investments.***
- (19) Quasi-equity instruments must be understood to comprise a type of financing instrument, which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking, and where the repayment of the instrument in the event of default is not fully secured. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants.

- (20) To reflect existing business practices, an ELTIF should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. Also, for the purposes of ensuring the widest possible opportunities for fundraising, investments into other ELTIFs, *EuVECA*s and *EuSEF*s should be permitted. To prevent dilution of the investments into qualifying portfolio undertakings, ELTIFs should only be permitted to invest in other ELTIFs, *EuVECA*s and *EuSEF*s, provided that they have not themselves invested more than 10 % of their capital in other ELTIFs.
- (21) The use of financial undertakings can be necessary in order to pool and organise the contributions of different investors, including investments of a public nature, into infrastructure projects. ELTIFs should therefore be permitted to invest in eligible investment assets by means of financial undertakings, so long as these undertakings are dedicated to financing long-term projects *and the growth of SMEs*.
- (22) █
- (23) Due to the scale of infrastructure projects, these require large amounts of capital that have to remain invested for long periods of time. Such infrastructure projects include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks and waste management infrastructure such as recycling or collection systems.
- (24) Unlisted undertakings can face difficulties accessing capital markets and financing further growth and expansion. Private financing through equity stakes or loans are typical ways of raising financing. Because such instruments are by their nature long-term investments they require patient capital that ELTIFs can provide. *Moreover, listed SMEs, often face significant obstacles in acquiring long-term financing and ELTIFs may provide valuable alternative sources of funding.*
- (25) █

- (26) Where the manager holds a stake in a portfolio undertaking, there is a risk that the manager puts its interests ahead of the interests of investors in the fund. To avoid such conflict of interests, the ELTIF should only invest in assets that are unrelated to the manager ***to ensure sound corporate governance, unless they invest in units or shares or assets managed by the ELTIF manager that are eligible under this Regulation.***
- (27) In order to allow managers of ELTIFs a certain degree of flexibility in the investment of their funds, trading in assets other than long-term investments should be permitted up to a maximum threshold of 30 % of their capital.
- (28) In order to limit risk-taking by ELTIFs it is essential to reduce counterparty risk by subjecting the portfolio of ELTIFs to clear diversification requirements. All over-the-counter (OTC) derivatives should be subject to Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁴.
- (29) In order to prevent the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body, it is necessary to avoid excessive concentration by an ELTIF in the same investment.
- (30) In order to allow ELTIF managers to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to 30% of the capital of the fund. This should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should only borrow in the currency the manager expects to acquire the asset in. ***However, in order to address concerns related to shadow banking activities, the cash borrowed from the ELTIF should not be used for granting loans to qualifying portfolio undertakings.***
- (31) Due to the long-term and illiquid nature of the investments of an ELTIF, the managers should have sufficient time to apply the investment limits. The time required to implement these limits should take account of the peculiarities and characteristics of the investments but should not exceed five years.

⁴ ***Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201. 27.7.2012. p. 1).***

- (31a) Under exceptional circumstances specified within the rules of incorporation, the lifecycle of ELTIF could be extended or reduced to allow for more flexibility, where, for instance, a project is completed later or earlier than expected, to put it in line with its long term investment strategy.*
- (31b) On account of their portfolio profile and their focus on long-term asset classes, ELTIFs are designed to channel private savings toward the European economy. ELTIFs are also conceived as an investment vehicle through which the EIB Group can channel its European infrastructure or SME financing. By virtue of this Regulation, ELTIFs are structured as pooled investment vehicle that responds to the EIB Group's focus on contributing to a balanced and steady development of an internal market for long term investments that is in the interest of the Union. Given its focus on long-term asset classes, ELTIFs can fulfil their designated role as a priority tool to accomplish the European Investment Plan launched in November 2014.*
- (31c) The European Commission should prioritise and streamline its processes for all applications by ELTIFs for EIB financing. The European Commission should streamline the delivery of any opinions or contributions necessary for the grant of applications that request financing from the EIB which is channelled through ELTIFs.*
- (32) Notwithstanding the fact that ELTIFs do not offer redemption rights before the end of life of the ELTIF, nothing should prevent an ELTIF from seeking admission of these shares or units to a regulated market as defined in Article 4(1)(21) of Directive 2014/**/EU [MiFID III] of the European Parliament and of the Council of *** 2014 on markets in financial instruments,⁵ to a multilateral trading facility as defined in Article (1)(22) of Directive 2014/**/EU, thus providing investors with an opportunity to sell their units or shares before the end of life of the ELTIF. The rules or instruments of incorporation of an ELTIF should therefore not prevent units or shares from being admitted to or from being dealt in regulated markets, nor should they prevent investors from freely transferring their shares or units to third parties who wish to purchase those shares or units.

⁵ OJ L 145, 30.4.2004, p.1.

- (33) In order for investors to effectively redeem their units or shares at the end of the fund's life, the manager should start to sell the portfolio of assets of the ELTIF in good time to ensure the value is properly realised. In determining an orderly disinvestment schedule, the ELTIF manager should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested. Due to the impracticality of maintaining the investment limits during this liquidation period, they should cease to apply when the liquidation period starts.
- (33a) It should be possible for an ELTIF to reduce its capital on a pro rata basis in the event that it has divested itself of one of its assets, in particular in the case of an infrastructure investment.***
- (34) The assets in which an ELTIF is invested may obtain a listing on a regulated market during the life of the fund. Where this happens, the asset would no longer comply with the non-listing requirement of this Regulation. In order to allow managers to disinvest from such an asset in an orderly manner, this asset could continue to count towards the 70% limit of eligible investment assets for up to three years.
- (35) Given the specific characteristics of ELTIFs, as well as the targeted retail and professional investors it is important that solid transparency requirements be put in place that are capable of allowing prospective investors to make an informed judgement and be fully aware of the risks implied. In addition to the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should necessarily include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council⁶ and Commission Regulation (EC) No 809/2004.⁷ For the marketing of an ELTIF to retail investors it should be mandatory to publish a key information document (KID) in accordance with Regulation No [...] of [...] of the European Parliament and the Council. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF.

⁶ OJ L 345, 31.12.2003, p.64.

⁷ OJ L 149, 30.4.2004, p.1.

- (36) As ELTIFs target both professional and retail investors across the Union, it is necessary that certain requirements be added to the marketing requirements laid down in Directive 2011/61/EU in order to ensure an appropriate degree of retail investor protection. Thus, facilities should be made available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide. Moreover, in order to ensure that retail investors are not disadvantaged with respect to experienced professional investors certain safeguards have to be put in place when ELTIFs are marketed to retail investors. ***In case the marketing or placing of ELTIFs to retail investors is made through a distributor, such distributor should comply with the relevant requirements set forth in Directive 2014/**/EU [MiFID II] and Regulation 2014/**/EU[MIFIR].***
- (36a) ***The manager of the ELTIF or the distributor should obtain all necessary information regarding the retail investor’s knowledge and experience, financial situation, risk appetite, investment objectives and time horizon in order to assess whether the ELTIF is suitable for marketing to retail investors, taking into account, inter alia, the lifecycle and the intended investment strategy of the ELTIF. In addition, where the lifecycle of an ELTIF that is offered or placed to retail investors exceeds ten years, the ELTIF manager or distributor should indicate clearly and in written form that this product may not be suitable for those retail investors unable to sustain such a long term and illiquid commitment.***
- (36b) ***When marketed to retail investors, the depositary of the ELTIF should comply with the provisions of Directive 2014/**/EU [UCITS V], as regards the eligible entities that are permitted to act as depositaries, the no discharge of liability rule and the reuse of assets.***

- (36c) *In the attempt to strengthen protection of retail investors, the Regulation provides additionally that for retail investors whose portfolio, composed of cash deposits and financial instruments excluding any financial instruments that have been given as collateral, does not exceed € 500 000, the ELTIF manager or any distributor, after having performed a suitability test and having provided appropriate investment advice, should ensure that the retail investor does not invest an aggregate amount exceeding 10% of his portfolio in ELTIFs provided that the initial amount invested in one or more ELTIFs is not less than € 10,000.*
- (37) The competent authority of the ELTIF should verify whether an ELTIF is able to comply with this Regulation on an on-going basis. As the competent authorities are already provided with extensive powers under Directive 2011/61/EU, it is necessary that such powers be extended in order to be exercised by reference to the new common rules on ELTIFs.
- (38) ESMA should be able to exercise all the powers conferred under Directive 2011/61/EU with respect to this Regulation *and should be provided with all resources necessary for this purpose, in particular human resources.*
- (39) The European *Supervisory* Authority (*European Securities and Markets Authority*) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council **■**, should play a central role in the application of the rules concerning ELTIFs by ensuring consistent application of Union rules by national competent authorities. As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission, in respect of the circumstances in which the life of an ELTIF will be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, the features of the schedule for the orderly disposal of ELTIF assets, the definitions, calculation methodologies and presentation of cost disclosures, and the characteristics of the facilities to be set up by ELTIFs in each Member State where they intend to market units or shares.
- (39a) *Member States, as well as regional and local authorities may have an interest in raising awareness of ELTIFs to potential investors and public.*

- (39b) *ELTIFs may be attractive to investors such as mid-tier pension schemes, insurance companies, municipalities, churches, charities and foundations, that may have sufficient capital and certain expertise, to invest in ELTIFs.*
- (40) The new uniform rules on ELTIFs should comply with the provisions of Directive 95/46/EC of the European Parliament and of the Council ⁸ and with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁹.
- (41) Since the objectives of this Regulation, namely to ensure uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, while taking full account of the need to balance safety and reliability of ELTIFs with the efficient operation of the market for long-term financing and the cost for its various stakeholders, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (42) The new uniform rules on ELTIFs respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data *as well as access to services of general economic interest*. The new uniform rules on ELTIFs should be applied in accordance with those rights and principles,

⁸ *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).*

⁹ *Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data (OJ L 8, 12.1.2001, p. 1).*

HAVE ADOPTED THIS REGULATION:

Chapter I
General provisions

Article 1
Subject matter

1. This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (AIFs) *or compartments of EU AIFs* that are marketed in the Union as European long-term investment funds (ELTIFs).
 - 1a. *The objective of this Regulation is to raise and channel capital towards European long-term investments in the real economy, in line with the European Union objectives of smart, sustainable and inclusive growth.***
2. Member States shall not add any additional requirements in the field covered by this Regulation.

Article 2
Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses which are directly or indirectly borne by investors;
 - (1a) *'retail investor' means an investor who is not a professional client, in accordance with Section I of Annex II to Directive... /.../EU [new Mifid];***
 - (1b) *'professional investor' means an investor who is a professional client, in accordance with Section I of Annex II to Directive .../.../EU [new Mifid], or who may, on request, be treated as a professional client in accordance with that Directive;***
- (2) 'equity' means ownership interest in an undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;

- (3) 'quasi-equity' means any type of financing instrument where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;
- (3a) *'real asset' means asset that has value, due to its substance and properties, and may provide returns. Such definition of real asset includes indicatively infrastructure and other assets that enable economic or social benefit, such as education, counselling, research and development. Commercial property or housing are part of real assets only where they are integral to or an ancillary element of a long-term investment project that contributes to smart, sustainable and inclusive growth in Europe;*
- (4) 'financial undertaking' means any of the following:
- (a) a credit institution as defined in point (1) of Article 4(1) of **Regulation (EU) No 575/2013** of the European Parliament and of the Council¹⁰;
 - (b) an investment firm as defined in Article 4(1) (1) of Directive **EC ... [new MiFID]**;
 - (c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council¹¹;
 - (d) a financial holding company as defined in point (20) of Article 4(1) of **Regulation (EU) No 575/2013**;
 - (e) a mixed-activity holding company as defined in point (22) of Article 4(1) of **Regulation (EU) No 575/2013**;
 - (f) *a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC;*
 - (g) *an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU.*
- (4a) *'EU AIF' means EU AIF as defined in Article 4(1)(k) of Directive 2011/61/EU;*
- (4b) *'EU AIFM' means EU AIFM as defined in Article 4(1)(l) of Directive 2011/61/EU;*

¹⁰ **Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 177, 30.6.2013, p.1).**

¹¹ OJ L 335, 17.12.2009, p.1.

- (5) ‘competent authority of the ELTIF’ means the competent authority of the home Member State of the EU AIF as defined in Article 4(1)(p) of Directive 2011/61/EU;
- (6) ‘ELTIF home Member State’ means the Member State where the ELTIF is authorised;
- (6a) *‘competent authorities of the ELTIF manager’ means the competent authorities of the home Member State of the EU AIFM as defined in in Article 4(1)(q) of Directive 2011/61/EU;*
- (6b) *‘securities lending’ and ‘securities borrowing’ mean any transaction in which a counterparty transfers securities subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, that transaction being considered as securities lending for the counterparty transferring the securities and being considered as securities borrowing for the counterparty to which they are transferred;*
- (6c) *‘repurchase transaction’ means a transaction as defined in point (83) of Article 4 of Regulation (EU) No 575/2013;*
- (6d) *‘ELTIF manager’ means the authorised EU AIFM approved to manage an ELTIF or the internally managed ELTIF where the legal form of the ELTIF permits an internal management and where no external AIFM has been appointed;*
- (6e) *‘financial instrument’ means an instrument as specified in Section C of Annex I to Directive 2014/**/EU [MiFID II];*
- (6f) *‘short selling’ means an activity as defined in Article 2 point 1 letter b of Regulation 236/2012;*

Article 3

Authorisation and use of designation

1. Only EU AIFs shall be eligible *to apply* for *and to be granted* authorisation as an ELTIF.
2. An ELTIF *may* only be marketed in the Union where it has been authorised in accordance with this Regulation. The authorisation as an ELTIF shall be valid for all Member States.

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

3a. The ELTIFs which are subject to this Regulation shall be prohibited from transforming themselves into collective investment undertakings which are not covered by this Regulation.

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

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

Article 4

Application for authorisation as ELTIF

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

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

- (a) the fund rules or instruments of incorporation;
- (b) information on the identity of the **proposed ELTIF** manager, **its current and previous fund management history and experience**;
- (c) information on the identity of the depositary;
- (d) a description of the information to be made available to investors, **including a description of the arrangements for dealing with complaints submitted by retail investors**;

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

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

The application for managing the ELTIF shall include the following:

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

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

3. The ELTIF and the EU AIFM shall be informed within two months from the date of submission of a complete application whether authorisation of the ELTIF ***and the approval to manage the ELTIF*** has been granted.
4. Any subsequent modifications of the documentation referred to in paragraphs 1 and 2 shall be immediately notified to the competent authority of the ELTIF.
5. ***By way of derogation from paragraphs 1 and 2, an EU AIF whose legal form permits an internal management and where the AIF's governing body chooses not to appoint an external AIFM, shall simultaneously apply for authorisation as ELTIF under this Regulation and as AIFM under Directive 2011/61/EU.***

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

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

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

Article 5

Conditions for granting the authorisation

1. An applicant ELTIF shall be authorised only where its competent authority:
 - (a) is satisfied that the applicant ELTIF is able to meet all the requirements of this Regulation;
 - (b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules ***or instruments of incorporation*** and the choice of the depositary.
- 1a. Where the legal form of the applicant ELTIF permits internal management and no external AIFM is appointed, the competent authority shall authorise the applicant ELTIF only where it is satisfied that the applicant ELTIF complies with both the requirements of this Regulation and of the Directive 2011/61/EU regarding the authorisation of an EU AIFM.***
2. The competent authority of the ELTIF may refuse ***to approve*** the application of the EU AIFM to manage the ELTIF only where:
 - (a) the EU AIFM does not comply with this Regulation;
 - (b) the EU AIFM does not comply with Directive 2011/61/EU;

- (c) the EU AIFM is not authorised by its competent authority to manage AIFs that *follow similar investment strategies* of the type covered in this Regulation;
- (d) the EU AIFM has not provided the documentation referred to in Article 4(2), *or any clarification or information requested thereunder*.

Before refusing an application, the competent authority of the ELTIF shall consult the competent authority of the EU AIFM.

- 3. The competent authority shall not grant authorisation as an ELTIF if the applicant ELTIF is legally prevented from marketing its units or shares in its home Member State. *The competent authority shall communicate to the applicant ELTIF the reason for its refusal to grant authorisation. The same application which has been rejected shall not be resubmitted to the competent authorities of other member states.*
- 4. Authorisation as an ELTIF shall not be subject to a requirement that the ELTIF be managed by an EU AIFM authorised in the ELTIF home Member State or that the EU AIFM pursue or delegate any activities in the ELTIF home Member State.

Article 6

Applicable rules and liability

- 1. An ELTIF shall comply at all times with the provisions of this Regulation.
- 2. An ELTIF and *an ELTIF* manager shall comply at all times with the requirements of Directive 2011/61/EU.
- 3. The manager of the ELTIF shall be responsible for ensuring compliance with this Regulation *and shall also be liable in accordance with the Directive 2011/61/EU for breaches of this Regulation*. The manager shall be *also* liable for *losses* or *damages* resulting from non-compliance with this Regulation.

Chapter II
Obligations concerning the investment policies of ELTIFs

SECTION 1
GENERAL RULES AND ELIGIBLE ASSETS

Article 7
Investment compartments

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

Article 8
Eligible investments

1. ***In accordance with the objective indicated in Article 1(1a)***, an ELTIF shall only invest in the following categories of assets and only under the conditions specified in this Regulation:
 - (a) eligible investment assets;
 - (b) assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council.¹²

2. An ELTIF shall not undertake any of the following activities:
 - (a) short-selling of assets;
 - (b) taking direct or indirect exposure to commodities, including via derivatives, certificates representing them, indices based on them or any other means or instrument that would give an exposure to them;
 - (c) entering into securities lending **■**, securities borrowing **■**, and repurchase **transactions** or any other agreement ***which has an equivalent economic effect and poses similar risks, if thereby more than 10% of the assets of the ELTIF are affected;***

¹² OJ L 302, 17.11.2009, p. 32.

- (d) using financial derivative instruments, except where ■ it solely serves the purpose of hedging ■ risks inherent to other investments of the ELTIF.

2a. In order to ensure consistent application of this Article, ESMA shall, after conducting an open public consultation, develop draft regulatory technical standards specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments referred to in paragraph 2(d).

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ please insert date: 3 months after entry into force of this Regulation].

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

Article 9

Eligible investment assets

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

- (a) equity or quasi-equity instruments which have been:
- (i) issued by a qualifying portfolio undertaking and acquired ■ by the ELTIF from the qualifying portfolio undertaking **or from a third party via the secondary market;**
 - (ii) issued by a qualifying portfolio undertaking in exchange for an equity instrument previously acquired ■ by the ELTIF from the qualifying portfolio undertaking **or from a third party via the secondary market;**
 - (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority owned subsidiary, in exchange for an equity instrument acquired in accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking **or from a third party via the secondary market;**
- (b) debt instruments issued by a qualifying portfolio undertaking;

- (c) loans granted by the ELTIF to a qualifying portfolio undertaking ***with a maturity no longer than the life of the ELTIF***;
- (d) units or shares of one or several other ELTIFs, European Venture Capital Funds (EuVECAs) and European Social Entrepreneurship Funds (EuSEFs) provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10% of their capital in ELTIFs;
- (e) direct holdings ***or indirect holdings via qualifying portfolio undertakings*** of individual real assets ***with a value*** of at least EUR 10 million or its equivalent in the currency, and at the time, in which the expenditure is incurred.

The European Commission shall prioritise and streamline processes for all applications by ELTIFs for EIB financing. The European Commission shall streamline the delivery of any opinions or contributions necessary for the grant of applications that request financing from the EIB which is channelled through ELTIFs.

Article 10

Qualifying portfolio undertaking

1. A qualifying portfolio undertaking referred to in Article 9(1) shall be a portfolio undertaking other than a collective investment undertaking, that fulfils all of the following requirements:
 - (a) it is not a financial undertaking;
 - (b) ***either*** it is not admitted to trading:
 - (i) on a regulated market as defined in ***point 21 of Article 4(1) of Directive 2014/.../EU [new MIFID]***;
 - (ii) on a multilateral trading facility as defined in ***point 22 of Article 4(1) of Directive 2014/.../EU [new MIFID]***.

or it is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 500 million;

(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 jurisdictions identified by the Financial Action Task Force (FATF);

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

2. By way of derogation from paragraph 1(a) of this Article, a qualifying portfolio undertaking may be a financial undertaking that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in Article 9.

Article 11

Conflict of interest

An ELTIF shall not invest in an eligible investment asset in which the manager has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, *EUSEFs* or *EuVECA*s it manages.

SECTION 2

PROVISIONS ON INVESTMENT POLICIES

Article 12

Portfolio composition and diversification

1. An ELTIF shall invest at least 70% of its capital in eligible investment assets.

2. An ELTIF shall invest no more than:

(a) 10% of its capital in *instruments* issued by *or loans granted to* any single qualifying portfolio undertaking;

(b) 10% of its capital *directly or indirectly* in *a single* real asset;

- (c) 10% of its capital in units or shares of any single ELTIF, EuVECA or EuSEF;
- (d) 5% of its capital in assets referred to in Article 8(1)(b) where those assets have been issued by any single body.
3. The aggregate value of units or shares of ELTIFs, EuVECAs and EuSEFs in an ELTIF portfolio shall not exceed 20% of the value of its capital.
4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over the counter (OTC) derivative transactions *or repurchase agreements* or reverse repurchase agreements shall not exceed 5% of its capital.
5. By way of derogation from paragraph 2(a) and 2(b), the ELTIF may raise the 10% limit referred to therein to 20%, provided that the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets in which it invests more than 10% of its capital does not exceed 40% of the value of its capital.
- 5a. *By way of derogation from paragraph 2(d), the ELTIF may raise the 5% limit referred to therein to 25% where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.***
6. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Seventh Council Directive 83/349/EEC¹³ or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 5.

¹³ OJ L 193, 18.7.1983, p. 1.

Article 12a

Rectification of investment positions

In circumstance where the ELTIF breaches the diversification requirements as stipulated in Article 12 and the contravention is beyond the control of the ELTIF manager, the ELTIF manager shall, in an appropriate time period, take such measures as are necessary to rectify the position, taking due account of the interests of investors of the ELTIF.

Article 13

Concentration

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

Article 14

Borrowing of cash

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

- (a) it represents no more than 30% of the capital of the ELTIF;
 - (b) it serves the purpose of *investing in eligible investment assets, except for loans referred to in Article 9(c), provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to acquire the* participation in eligible investment assets;
 - (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash;
-
- (ea) *it has a maturity no longer than the life of the ELTIF;*
 - (eb) *it encumbers the assets that represent no more than 30 % of the capital of the ELTIF.*

The ELTIF manager shall specify in the prospectus of the ELTIF whether it intends to borrow cash or not as part of its investment strategy.

Article 15

Application of portfolio composition and diversification rules

1. The investment limits laid down in Article 12(1) shall:
 - (a) apply by the date specified in the ELTIF rules or instruments of incorporation, where this date shall take account of the peculiarities and characteristics of the assets to be invested by the ELTIF and shall not be later than five years ***or half the life of the ELTIF as determined in accordance with Article 16(2), whichever is the earlier,*** after the authorisation of the ELTIF. In exceptional circumstances, the competent authority of the ELTIF, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year;
 - (b) cease to apply once the ELTIF starts to sell assets in ***order to redeem investors after the end of life of the ELTIF;***
 - (c) be temporarily suspended where the ELTIF raises additional capital ***or reduces its existing capital,*** so long as such a suspension lasts no longer than 12 months.
2. Where a long-term asset in which the ELTIF has invested is issued by a qualifying portfolio undertaking that no longer complies with Article 10(1)(b), the long-term asset may continue to be counted for the purpose of calculating the 70% referred to in Article 12(1) for a maximum of three years as of the date when the portfolio undertaking no longer fulfils the requirements in Article 10.

Chapter III

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

Article 16

Redemption policy

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

The ELTIF rules or instruments of incorporation shall clearly indicate a specific date as the end of life of the ELTIF and may also indicate the right to temporarily extend the life of the ELTIF and the conditions to exercise such right.

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

- 1a. *By way of derogation from paragraph 1, the ELTIF rules or instruments for incorporation may foresee the possibility for redemptions before the end of life of the ELTIF provided that all of the following conditions are fulfilled:*
 - a. *redemptions are not granted before the date specified in Article 15(1)(a) of this Regulation;*
 - 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 authorities that an appropriate liquidity management system and effective procedures for monitoring the liquidity risk of the ELTIF are in place, which are compatible with the long term investment strategy of the ELTIF and the proposed redemption policy;*
 - c. *the manager of the ELTIF sets out a defined redemption policy, which clearly indicates the periods of time in which investors may ask for redemption;*

- d. the redemption policy of the ELTIF ensures that the overall amount of redemptions within any given period is limited to a percentage of the ELTIF's assets referred to in Article 8(1)(b). This percentage shall be aligned to the liquidity management and investment strategy disclosed by the manage;*
- e. the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the total requests for redemption within any given period of time exceed the percentage in point d.*
2. The life of the ELTIF shall be ***consistent with the long-term nature of the ELTIF and shall be*** sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset, and the stated investment objective of the ELTIF.
3. Investors may request the winding down of the ELTIF if their redemption requests ***made in accordance with the ELTIF's redemption policy*** have not been satisfied within one year after the ***date when they have been made***.
4. Investors shall always have the option to be repaid in cash.
5. Repayment in kind out of the ELTIF's assets shall be possible only where all of the following conditions are met:
- (a) the ELTIF rules or instrument of incorporation foresees this possibility, under the condition that all investors receive fair treatment;
 - (b) the investor asks in writing to be repaid through a share of the assets of the fund;
 - (c) no specific rules restrict the transfer of those assets.
6. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF.
- ESMA shall submit those draft regulatory technical standards to the Commission by [**3 months after entry into force**].

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

Article 17

Secondary market

1. The ELTIF rules or instrument of incorporation shall not prevent units or shares of an ELTIF from being admitted to trading on a regulated market as defined in Article 4(1)(21) of Directive 2014/**/EU [MiFID II] or on a *multilateral* trading facility as defined in 4(1)(22) of Directive 2014/**/EU [MiFID II].
2. The ELTIF rules or instrument of incorporation shall not prevent investors from freely transferring their shares or units to third parties *other than the manager of the ELTIF*.
3. *The ELTIF shall publish in its periodical reports the market value of its listed shares or units along with the net asset value per share or unit.*
4. *In the event that there is a material change in the value of an asset, the manager of the ELTIF shall disclose this to investors in its periodical reports.*

Article 18

Issuance of new shares or units

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

Article 19

Disposal of ELTIF assets

1. Each ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors after the end of life of the ELTIF *and shall disclose this to the competent authority of the ELTIF at the latest one year before that date.*
2. The schedule referred to in paragraph 1 shall include:

- (a) an assessment of the market for potential buyers;
 - (b) an assessment and comparison of potential sales prices;
 - (c) a valuation for the assets to be divested;
 - (d) a ■ timeframe for the disposal schedule.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and valuation in point (c) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [**3 months after entry into force**].

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

Article 20

Distribution of *proceeds and capital*

1. An ELTIF may regularly distribute to investors the *proceeds* generated by the assets contained in the portfolio. *Those proceeds* shall be composed of:
- (a) any *proceeds* that the assets are regularly producing;
 - (b) the capital appreciation realized after the disposal of an asset ■ .
2. *The proceeds* shall not be distributed to the extent that it is required for future commitments of the ELTIF.
- 2a. *An ELTIF may reduce its capital on a pro rata basis in the event of a disposal of an asset, provided that the early disposal is duly considered as being in the investors' interest by the ELTIF manager.*
3. The ELTIF shall state in its fund rules or instruments of incorporation the distribution policy that it will adopt during the life of the fund.

Chapter IV
Transparency requirements

Article 21
Transparency

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

The units or shares of an authorised ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document (KID) in accordance with Regulation *(EU) No .../... [PRIPS]*.¹⁴

2. The prospectus shall include the information necessary for investors to be able to make an informed judgement regarding the investment proposed to them, and, in particular, the risks attached thereto.
3. The prospectus shall contain at least the following:
- (a) a statement setting out how the ELTIF's investment objectives and strategy for achieving these objectives qualify the fund as long term in nature;
 - (b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council¹⁵ and Commission Regulation (EC) No 809/2004¹⁶;
 - (c) information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU, if it is not already covered under point(b) of this paragraph;
 - (d) prominent indication of the categories of assets the ELTIF is authorised to invest in;
 - (da) prominent indication of the jurisdictions where the ELTIF is allowed to invest;**
 - (e) any other information considered by the competent authorities to be relevant for the purpose of paragraph 2.

¹⁴ OJ Reference.

¹⁵ OJ L 345, 31.12.2003, p.64.

¹⁶ OJ L 149, 30.4.2004, p. 1.

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

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

- (a) inform investors about the long-term nature of the ELTIF's investments;
- (b) inform investors about the end of life of the ELTIF *as well as the option to extend the life of the ELTIF, if this is provided, and the conditions thereof*;
- (c) state whether the ELTIF is intended to be marketed to retail investors;
- (d) *explain the rights of* investors ■ *to redeem their investment in accordance with Article 16(1) and with the rules or instruments of incorporation of the ELTIF*;
- (e) state the frequency and the timing of any income payments, if any, to the investors during the life of the fund;
- (f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF;
- (fa) describe the hedging policy of the ELTIF, including prominent indication that financial derivative instruments may be used only for the purpose of hedging risks inherent to other investments of the ELTIF, and indication of the possible impact of the use of financial derivative instruments on the risk profile of the ELTIF;*
- (fb) inform investors about the risks related to investing in real assets/infrastructure;*
- (fe) inform investors regularly, at least once a year, of the jurisdictions in which the ELTIF has invested.*

5. *In addition to the information required under Article 22 of Directive 2011/61/EU the annual report of the ELTIF shall contain the following:*

- (a) a cash flow statement;*
- (b) information on any participation in instruments involving Union budgetary funds;*

- (c) *information on the value of the individual qualifying portfolio undertakings and the value of other assets in which the ELTIF is invested, including the value of derivatives used;*
- (d) *information on the geographical location of the assets of the ELTIF.*
6. *Upon request of a retail investor, the ELTIF manager shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the ELTIF, to the methods chosen to this end and to the recent evolution of the main risks and yields of the instrument categories.*

Article 21bis
Prospectus

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

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

2. *The essential elements of the prospectus shall be kept up to date.*
3. *An ELTIF shall send its prospectus and any amendments thereto, as well as its annual report, to the competent authorities of the ELTIF. An ELTIF shall provide that documentation to the competent authorities of the ELTIF manager on request. An ELTIF shall provide that documentation within the time period specified by these competent authorities.*
4. *The prospectus and the latest published annual report shall be provided to investors on request and free of charge.*

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

5. *The prospectus shall specify the manner in which the annual report shall be available to investors. It shall provide that a paper copy of the annual report shall be delivered to retail investors on request and free of charge.*

Article 22

Cost disclosure

1. The prospectus shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investor. The different costs shall be grouped according to the following headings:
- (a) costs of setting-up the ELTIF;
 - (b) the costs related to the acquisition of assets;
 - (c) management *and performance related fees*;
 - (d) distribution costs;
 - (e) other costs, including administrative, regulatory, *depository*, custodial, *professional service* and audit costs.

2. The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF.

4. ESMA shall develop draft regulatory technical standards to specify:

- (a) the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2;

When developing these draft regulatory technical standards, ESMA shall take into account the regulatory standards referred to in point (...) of Regulation (EU) No .../... [PRIPS].

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

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

Chapter V

Marketing of units or shares of ELTIFs

Article 23

Facilities available to investors

1. The manager of an ELTIF ***whose units or shares are intended to be marketed to retail investors*** shall, in each Member State where it intends to market units or shares of that ELTIF, put in place facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide.
2. ESMA shall develop draft regulatory technical standards to specify the types and characteristics of the facilities, their technical infrastructure and of the content of their tasks in respect of ELTIF investors referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [***3 months after entry into force***].

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

Article 23a

Internal assessment process for ELTIFs marketed to retail investors

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

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

Article 23b

Specific requirements concerning the distribution of ELTIFs to retail investors

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

Where the lifecycle of an ELTIF that is offered or placed to retail investors exceeds ten years, the ELTIF manager or distributor shall issue a clear written alert that this product may not be suitable for those retail investors unable to sustain such a long term and illiquid commitment.

Article 23c

Specific provisions concerning the depositary of an ELTIF marketed to retail investors

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

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

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

Article 24

Additional requirements for marketing to retail investors

- 1a. The manager of an ELTIF shall be able to market the units or shares of that ELTIF to retail investors provided that all of the following additional requirements are fulfilled:
 - (-aa) *When the ELTIF manager directly offers or places an ELTIF to retail investors, the ELTIF manager shall be authorised to provide the services referred to in Article 6(4)(a) and (b)(i) of Directive 2011/61/EU and perform the suitability test referred to in Article 23b;*

(-ab) Retail investors shall be provided with appropriate investment advice from the ELTIF manager or the distributor;

(-ac) Where the financial instrument portfolio of a potential retail investor does not exceed €500,000, the manager of the ELTIF or any distributor, after having performed the suitability test and having provided appropriate investment advice, shall, on the basis of the information submitted by the potential retail investor, ensure that the potential retail investor does not invest an aggregate amount exceeding 10% of his financial instrument portfolio in ELTIFs provided that the the initial minimum amount invested in one or more ELTIFs is EUR 10,000.

The potential retail investor shall be responsible for providing the manager of the ELTIF or the distributor with accurate information on his financial instrument portfolio and his investments in ELTIFs. For the purpose of this paragraph a financial instrument portfolio shall be understood as including cash deposits and financial instruments, but excluding any financial instruments that have been given as collateral.

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

Article 25

Marketing of units or shares of ELTIFs

1. **The ELTIF manager** shall be able to market the units or shares of that authorised ELTIF to professional and retail investors in its home Member State upon notification in accordance with Article 31 of Directive 2011/61/EU.
2. The manager of an ELTIF shall be able to market the units or shares of that authorised ELTIF to professional and retail investors in Member States other than in the home Member State of the ELTIF manager upon notification in accordance with Article 32 of Directive 2011/61/EU.
3. **The ELTIF manager** shall in respect of each ELTIF specify to its competent authority whether or not it intends to market it to retail investors.
4. In addition to the documentation and information required pursuant to Articles 31 and 32 of Directive 2011/61/EU the manager of the ELTIF shall provide to its competent authority all of the following:
 - (a) the prospectus of the ELTIF;
 - (b) the key information document of the ELTIF in case of marketing to retail investors;
 - (c) information on the facilities referred to in Article 22.
5. The competences and powers of the the competent authorities pursuant to Articles 31 and 32 of Directive 2011/61/EU shall be understood to also refer to the marketing of ELTIFs to retail investors and to cover the additional requirements laid down in this Regulation.
6. In addition to its powers in accordance with Article 31(3) first paragraph of Directive 2011/61/EU, the competent authority of the home Member State of the ELTIF manager shall also prevent the marketing of an authorised ELTIF if the ELTIF manager does not or will not comply with this Regulation.

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

Chapter VI Supervision

Article 26

Supervision by the competent authorities

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

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

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

Article 27

Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.
2. The powers conferred on competent authorities in accordance with Directive 2011/61/EU, ***including those related to penalties***, shall be exercised also with respect to this Regulation.
3. ***The competent authority of the ELTIF shall prohibit the use of the designation “ELTIF” or “European long-term investment fund” if the manager of the ELTIF no longer complies with this Regulation.***

Article 28

Powers and competences of ESMA

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

Article 29

Cooperation between authorities

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

3. Competent authorities and ESMA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to identify and remedy breaches of this Regulation.

Chapter VII
Final provisions

Article 30
Review

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

- (a) the impact of ■ Article 16(1) ■;
- (b) the impact on asset diversification of the application of the minimum threshold of 70% of eligible investment assets laid down in Article 12(1) ■ ;
- (c) the extent to which ELTIFs are marketed in the Union, including whether AIFMs falling under Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;
- (ca) *the extent to which the list of eligible assets and investments should be updated, as well as the diversification rules, portfolio composition and limits regarding the borrowing of cash.*

Following the review referred to in paragraph 1, and after consultation of ESMA, the Commission shall submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of the ELTIFs to the completion of the capital market union and to the achievements of the objectives indicated in Article 1(1a). The report shall be accompanied, where appropriate, by a legislative proposal.

Article 31

Entry into force

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

It shall apply from six months after entry into force.

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

Done at ...,

For the European Parliament

For the Council

The President

The President
