esma European Securities and Markets Authority

Final Report

Draft regulatory technical standards under the ELTIF Regulation

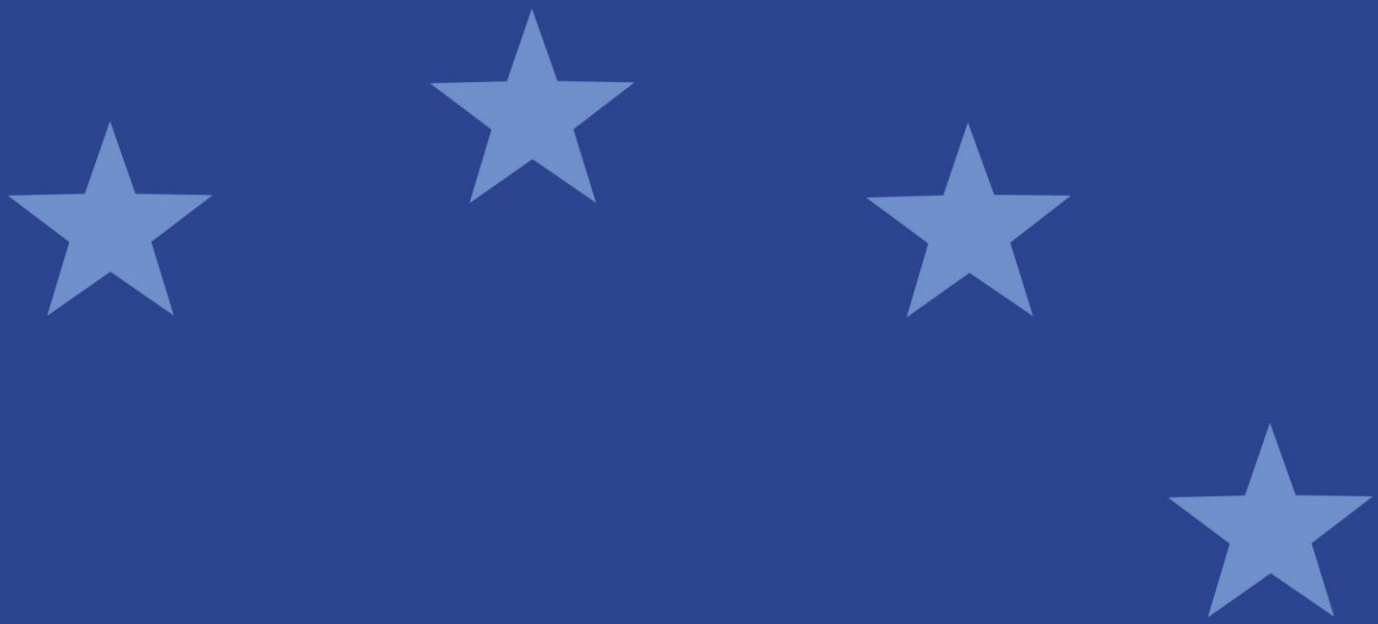

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Table of Contents

1 Executive Summary

Reasons for publication

Articles 9(3), 18(7), 21(3), 25(3) and 26(2) of Regulation (EU) 2015/760 ("ELTIF Regulation") (see Annex II to this paper for the full text of these Articles) provide that ESMA shall develop draft regulatory technical standards (RTS) to determine the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, the circumstances in which the life of a European long-term investment fund ("ELTIF") is considered sufficient in length, the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets, the costs disclosure and the facilities available to retail investors. This final report contains the RTS that ESMA has developed.

Contents

Section 2 summarises the feedback received to the consultation that ESMA carried out and explains how ESMA has taken it into account.

Annex I contains the legislative mandate to develop draft RTS.

Annex II sets out the cost-benefit analysis related to the draft RTS.

Annex III contains the full text of the draft RTS.

Next Steps

The RTS set out in this final report have been submitted to the European Commission for endorsement. From the date of submission the European Commission should take a decision on whether to endorse the RTS within three months.

2 Feedback on the consultation

1. ESMA received 26 responses to the consultation paper (CP) on ESMA's draft regulatory technical standards under the ELTIF Regulation. Responses were received from asset managers (and their associations), investor representatives, a public authority and a professionals' association.

I. General comments

2. In their general comments respondents mentioned the following aspects:

- ELTIFs aimed at institutional investors and wealthy private investors should not be subject to the same restrictions as those aimed at retail clients;
- investments in ELTIFs by UCITS should be incentivised and the 10% limit for UCITS funds to invest into such vehicles should be removed;
- ELTIFs should be allowed to include in their assets loans granted by another lender, while Article 10(c) of the ELTIF Regulation refers to loans granted by the ELTIF to a qualifying portfolio undertaking only;
- the disclosure of costs for retail ELTIFs should be harmonised between its prospectus and the Key Investor Information Document (KIID);
- the restriction on eligible real estate assets (commercial property or housing) to "long-term investment projects that contribute to the objectives of smart, sustainable and inclusive growth" is questionable and should be clarified further;
- guidance should be provided on the criterion according to which investments in immovable property "should be clearly documented so as to demonstrate the long-term commitment in the property";
- the strict leverage ratio does not meet the needs of real estate investments;
- it would be very helpful if ELTIFs obtained a different treatment in Solvency II which takes into account the lower risk profile through the long-term structure and the stable cash flow;
- the RTS should not provide for additional restrictions which could further inhibit the take-up of ELTIFs as a product and, more broadly, the success of the CMU;
- greater clarity is needed with respect to the definition of "qualifying portfolio undertaking".

ESMA response: ESMA acknowledges the general comments made by respondents, while noting that most of them relate to issues which are relevant to the Level 1 text and

are therefore outside of the empowerment for ESMA to develop draft RTS. In particular, ESMA notes the following:

- on the comment relating to the need to differentiate the requirements for those ELTFs that are not distributed to retail clients, ESMA recalls that the ELTIF Regulation foresees some specific requirements that apply only to ELTIFs marketed to retail clients;

- the investment in ELTIF by UCITS could be incentivised only by modifying the relevant diversification rules under the UCITS Directive;

- the complaints relating to the ELITF's investment rules (such as the ones on eligible loans or the leverage ratio) could only be addressed through an amendment of the relevant provisions of the ELTIF Regulation;

- the package adopted on 30 September 2015 by the Commission in the context of the CMU initiative included a number of amendments to the Solvency II Delegated Regulation; one of these amendments aimed at allowing investments in ELTIFs to benefit from lower capital charges under Solvency II (i.e. the same capital charges as equities traded on regulated markets, lower than that for other equities).

ESMA will give appropriate consideration to the requests to clarify some concepts in the ELTIF Regulation (such as the definition of 'real asset' under Article 2, item (6) or the definition of 'qualifying portfolio undertaking' under Article 11) and will assess in due course the need to issue any guidance on these issues in order to ensure supervisory convergence across Europe.

Finally, the principle that guided ESMA in developing these RTS was to avoid putting in place any unnecessary restrictions which could jeopardise the success of the ELTIF product and its contribution to the CMU initiative.

II. Hedging derivatives

Q1: Do you agree that the abovementioned pieces of legislation and associated regulatory framework are relevant for the purpose of the present advice on Article 9(3) of the ELTIFs Regulation? Which other pieces of legislation and associated regulatory framework do you identify for that purpose?

3. The large majority of the respondents who expressed their views on this article of the draft RTS indicated that the reference to IFRS was not appropriate because, in their view, it is not tailored to investment funds and might result in the *de facto* banning of hedging for most managers of ELTIFs. These respondents also indicated they do not have a full understanding of the consequences of the proposal made by ESMA on the ability of ELTIF managers to use hedging.

4. Several respondents indicated that one of the best approaches would be to use the framework put in place in the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (the CESR guidelines) mentioned in the explanatory text of the CP.

5. Other respondents indicated that another acceptable approach would be to use the framework put in place in the Regulation 149/2013 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. However other respondents objected to this.

6. One respondent indicated that a cross-reference to the Eligible Assets Directive (EAD) would be the most appropriate way to proceed. This same respondent asked ESMA to expressly mention that the use of derivatives for commodity risk hedging is permitted.

   ESMA response: Given the feedback received, ESMA decided to remove the reference to IFRS and replace it with a definition of hedging and the circumstances under which it can be used in the ELTIF context based on the corresponding requirements of the CESR guidelines, adapted to the scope of eligible assets under ELTIF.

   Q2: Do you think that the main risks that are necessary to be covered at the level of the ELTIF are currency, inflation and interest rate risks? If no, which types of risk would the manager of an ELTIF potentially have to cover in your view?

   Q3: Do you think that the approach to hedging should not limit ex ante the scope of risks that ought to be covered by the manager of the ELTIF?

   Q4: On the contrary, do you think that the approach to hedging should be tailored to the specific case of ELTIFs, and their possible eligible investments? Do you think that in this case the risks that might have to be covered by the manager of the ELTIF should be limited to the types of risk that were mentioned in question 2?

   Q5: Do you identify any consequences in terms of costs or scope of the eligible investments of the ELTIF if the risks that might be covered at the level of the ELTIF are limited to those that were mentioned in the impact assessment of the Commission?

7. The large majority respondents indicated that the draft RTS should not set out a comprehensive list of risks to be covered for the purpose of hedging because it would be difficult to anticipate such risks at this stage. Some respondents provided several concrete examples supporting this assessment. These respondents also indicated that EOIPA had recently identified a series of risks which investors in infrastructure would need to consider (in its Consultation Paper No. CP15004 on the Call for Advice from the European

Commission on the identification and calibration of infrastructure investment risk categories).

8. These same respondents indicated that there would be corresponding costs for investors and ELTIFs if such a comprehensive list of risks were to be set out because this would lead to missed investment opportunities or restrict the ability of ELTIFs to cover some types of risks.

ESMA response: Given the broad support received from those respondents who replied to this question, ESMA decided to maintain its proposed approach of not setting out a comprehensive list of risks to be covered for the purpose of hedging.

III. Sufficient length of the life of the ELTIF

Q6: Do you agree with the proposed approach? Should you disagree, please provide reasons and propose an alternative approach and justify it.

General comments

9. A number of respondents agreed with the proposals on the sufficient length of the life of the ELTIF. An investor representative mentioned the importance of providing objective criteria to determine the longest life-cycle of an ELTIF which will avoid any divergent interpretations across the EU.

10. Three respondents suggested that the reduction/extension of the term of the ELTIF should be permitted, to allow for flexibility in the event that the life of the asset changes.

11. Two asset management associations suggested specifying that the requirements on the sufficient length of the life of the ELTIF should be limited to “eligible assets” under Article 10 of the ELTIF Regulation.

Article 2(1)(a) of the draft RTS

12. Two asset management associations suggested clarifying that the term “life-cycle” does not refer to the life of the asset as such, but to the life of the envisaged investment in that asset. Following a similar approach, several respondents mentioned that not all assets will have a defined life-cycle and certain assets may have an indefinite life-cycle.

Article 2(2) of the draft RTS

13. An asset management association asked for more flexibility on the determination of the asset which has the longest life-cycle at the time of the submission of the application to the extent that not all the assets will have been identified at the inception of the ELTIF.

ESMA response: ESMA did not consider it possible to take into account the request to limit the requirements on the sufficient length of the life of the ELTIF to “eligible assets”

under Article 10 of the ELTIF Regulation. This was based on the language in Article 18(3) and (7) of the ELTIF Regulation which refers to "*the life-cycle of each of the individual assets of the ELTIF*" (emphasis added). Moreover, given the nature of the assets other than "eligible assets" under Article 10 of the ELTIF Regulation, their inclusion in the assessment of the sufficient length should not be challenging to the extent that their life-cycles should be shorter than those of the "eligible assets".

On the suggestion that the reduction/extension of the term of the ELTIF should be permitted, ESMA recalls that this possibility is already foreseen under Article 18(1) of the ELTIF Regulation.

ESMA saw merit in the argument raised by some respondents that not all the assets into which ELTIF may invest have a defined life-cycle and certain assets may have an indefinite life-cycle. Therefore, ESMA amended the draft RTS in order to refer to the investment horizon that the ELTIF has while investing in a given asset rather than the life-cycle of the asset itself.

On the request to introduce additional flexibility to take into account the possible non-identification of all the assets at the inception of the ELTIF, ESMA considers that this is not necessary to the extent that since the assessment of the length of the life of the ELTIF will have to be made at the time of the submission of the application, such assessment is necessarily based on the assets in which the ELTIF envisages investing at that time.

IV. Criteria for the assessment of the market for potential buyers

Q7: Do you agree with the risks identified and the related proposed criteria? Would you suggest the introduction of any additional/alternative risks/criteria? Please provide details and explain your position.

14. Several respondents agreed with the text of the proposal. An asset manager mentioned that a pipeline of ELTIF assets could be proposed, similarly to the European Fund for Strategic Investment which proposes a pipeline or portal of investment projects.

15. Two asset management associations asked ESMA to recognise that ELTIF managers are best placed to determine the additional/alternative risks associated with ELTIFs' underlying assets and the RTS should give latitude to include these risks.

16. A third asset management association was of the view that the assessment should only require the ELTIF to identify and report on any material concerns on the ability to realise any of the assets before the end of the life-cycle at what it considers to be a fair value.

Article 3 (a) of the draft RTS

17. An asset manager mentioned that the identification of buyers in advance of redemption could have a 'crowding' effect which may have a negative impact on the value of assets.

Article 3 (b) of the draft RTS

18. Several respondents mentioned that whether the potential buyers are dependent on external financing is information which cannot always be obtained by the manager, in particular not up until a sale is agreed in principle.

Article 3 (e) of the draft RTS

19. Some respondents mentioned that legislative changes are not always predictable at the time the schedule for the orderly disposal is adopted. An asset management association suggested that the risks under (e) and (f) are already covered under the 'overall economic conditions' mentioned under former item (g) below.

Article 3 (f) of the draft RTS

20. A number of asset management associations and an asset manager mentioned that political risks cannot be anticipated.

21. On the contrary, one respondent mentioned some additional risks to be taken into consideration: banking custody risks, military or civil war risks, geopolitics and all sort of government defaults, legal or criminal decisions which can have a significant impact on the valuation of the assets of the ELTIF.

Article 3 (g) of the draft RTS

22. An asset management association mentioned that the deterioration of the economic situation is not always predictable at the time the schedule for the orderly disposal is adopted.

ESMA response: ESMA considers that the proposal to develop a pipeline of ELTIF assets falls outside the scope of the mandate given to ESMA by the ELTIF Regulation.

ESMA recognises that it may be difficult for the ELTIF to determine – at the time of completion of the schedule – whether the potential buyers are dependent on external financing. Therefore, the relevant provisions were modified in order to frame them as an obligation of means and require the manager of the ELTIF to assess with due skill, care and diligence whether the buyers are expected to depend on external financing for the relevant type of transaction.

ESMA saw merit in clarifying that an assessment of legislative changes and political risks needs to be made by the manager at the time of completion of the schedule and needs to be conducted with due skill, care and diligence. This requirement as well should be conceived as an obligation of means to perform the assessment with due care and not as an obligation of result i.e. to predict unforeseeable risks.

Similarly, on the difficulties linked to the assessment of the deterioration of the economic situation, ESMA has clarified that the relevant provisions of the draft RTS are not intended to oblige managers to foresee unpredictable deteriorations in the economic situation.

V. Criteria for the valuation of the assets to be divested

Q8: Do you agree with the proposed valuation criteria? Would you suggest the introduction of any additional/alternative criteria? Please provide details and explain your position.

23. A number of respondents agreed with the proposals.

Article 4(a)

24. Two asset management associations agreed with the proposed timeframe for carrying out a valuation of the assets to be divested.

Article 4(b)

25. Two asset management associations and an asset manager felt that the 'fair value measurement" under IFRS 13 was appropriate for liquid markets and assets, but not for all asset types. Therefore, they proposed to also include alternative valuation criteria by referring to the AIFMD L2 measures (i.e. to add the following words at the end of this item: "or on the criteria of the Commission Delegated Regulation (EU) No 231/2013, Section 8, Articles 67-74"). Similarly, several respondents mentioned that it should not be necessary to have regard to IFRS 13 and the valuation criteria under the AIFMD should be sufficient. Two respondents suggested that local accounting rules could also be permitted (as local accounting and valuation rules generally apply to investment funds, not IFRS).

ESMA response: ESMA considered that valuation rules cannot be introduced as an alternative criterion as ELTIFs are in any event subject to the AIFMD rules and the RTS could not make these rules optional for them. Any requirement established under the ELTIF RTS would be additional to the AIFMD requirements. However, considering that, as mentioned by some respondents, the IFRS principle is more appropriate for liquid markets and assets, but not for all asset types – and especially not for the illiquid assets in which ELTIFs will typically invest – ESMA saw merit in deleting the reference to the IFRS principle in the understanding that ELTIFs are managed by AIFMs, which are subject to the valuation requirements of the AIFMD at Level 1 and Level 2 in any case.

VI. Common definitions, calculation methodologies and presentation formats

Q9: Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIFs

Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose?

Q10: Do you agree with the abovementioned assumptions?

Q11: Do you agree that the types of costs mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital?

Q12: Do you think that performance related fees would be relevant costs to be taken into account in the case of ELTIFs?

Q13: How would you include performance related fees in the overall ratio referred to in paragraph 2 of Article 25?

Q14: Do you agree that the types of costs mentioned in paragraph 54 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall ratio mentioned in Article25(2), provided that this overall ratio is a yearly ratio?

Q15: Do you agree that the types of costs mentioned in paragraph 54 may be considered as fixed costs in the case of an ELTIF?

ESMA response: Following exchanges with the Commission, ESMA decided to postpone the delivery of the ELTIF RTS on cost disclosure to be able to take into account more fully the work on cost disclosure under the PRIIPs Regulation. Article 5 and the corresponding annex has therefore been removed from the draft RTS.

VII. Specifications on the facilities available to retail investors

Q16: Do you agree with the proposed requirements? Would you suggest the introduction of any additional/alternative requirements? Please provide details and explain your position.

Q17: What would you consider as appropriate specifications for the technical infrastructure of the facilities?

Article 6(1)

26. Several respondents agreed with the proposed approach. A number of other respondents saw the need to take into account the current technological developments and the fact that physical facilities in each Member State of marketing should not be required.

Article 6(2)

27. An investors' representative suggested that the agreement should specify which tasks are provided by the delegate.

ESMA response: ESMA agreed with the proposal to allow the facilities to be provided through physical, telephone or electronic infrastructure in order to take into account the technological developments.

Moreover, ESMA saw merit in further clarifying that the facilities may be provided by one or more entities, which can be the manager of the ELTIF or another regulated entity. Fianlly, ESMA clarified that, where the facilities are provided by a third regulated entity, the agreement to be concluded with such entity should specify which tasks are not provided by the manager of the ELTIF.

VIII. Entry into force of the RTS

Q18: In the event that the RTS enter into force after the date of application of the ELTIF Regulation and authorisations are granted between the date of application of the ELTIF Regulation and the date of application of the proposed RTS, do respondents see a need for specific transitional/grandfathering provisions for the proposed RTS?

28. Two respondents did not see any need for grandfathering provisions.

29. Several respondents suggested introducing a grandfathering clause to ensure that any ELTIF launched prior to the adoption of the RTS will not be considered non-compliant by NCAs (in particular, some of these respondents said that this is relevant if the delay is longer than 1 month). An asset manager welcomed the idea of introducing flexibility for grandfathering, while considering that the problem is unlikely to arise. An asset management association mentioned that any temporary grandfathering would not be workable as, given the long-term nature of the ELTIF, adjustments will not be possible once the ELTIF is launched; as such, any grandfathering would need to be indefinite.

30. Some of these respondents asked ESMA to clarify the rules applicable to ELTIFs marketed to retail investors in the period between the application of the ELTIF Regulation and the application of PRIIPs.

ESMA response: ESMA saw merit in the request for grandfathering and considered that a distinction should be made depending on the various provisions of the draft RTS. Indeed, ESMA considered it difficult to conceive how the relevant requirements on the sufficient length of the life of the ELTIF could be complied with once the ELTIF is already authorised (see Article 2(2) of the draft RTS). For all the other requirements, ESMA felt it was appropriate to envisage a period of one year after the entry into force of the RTS to become compliant with them.

IX. Cost-benefit analysis

Q19: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the options as regards hedging? Which other costs or benefits would you consider in this context?

Q20: Do you agree with the assessment of costs and benefits above for the proposal on the sufficient length of the life of the ELTIF? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

31. Two respondents provided feedback to this question. One of them agreed with the assessment proposed by ESMA, while another respondent reiterated the feedback provided to the separate question on the sufficient length of the life of the ELTIF.

Q21: Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the assessment of the market for potential buyers? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

32. Respondents to this question either agreed with the ESMA's assessment or reiterated the points they made in their responses to the specific question on the criteria for the assessment of the market for potential buyers.

Q22: Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the valuation of the assets to be divested? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

33. Respondents to this question either agreed with the ESMA's assessment or reiterated the points they had made in their responses to the specific question on the criteria for the valuation of the assets to be divested.

Q23: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards common definitions, calculation methodologies and presentation formats of costs of ELTIFs? Which other types of costs or benefits would you consider in this context?

Q24: Do you agree with the assessment of costs and benefits above for the proposal on the facilities available to retail investors? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs that the proposal would imply.

34. Respondents to this question either agreed with the ESMA's assessment or reiterated the points they had made in their responses to the specific question on the facilities available to retail investors.

3 Annexes

3.1 Annex I

Legislative mandate to develop technical standards

The Regulation (EU) No 1095/2010 establishing ESMA empowered the latter to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory standards by means of delegated acts under Article 290 TFEU.

- Article [9(3)] of the ELTIF regulation provides that:

  In order to ensure the consistent application of this Article, ESMA shall, after conducting a public consultation, develop draft regulatory technical standards specifying criteria for establishing the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments referred to in point (d) of paragraph 2.

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

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

- Article 18(7) of the ELTIF regulation provides that:

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

  ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 2015.

  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 21(3) of the ELTIF regulation provides that:

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

  ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 2015.

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 [25(3)] of the ELTIF regulation provides that:

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

  When developing these draft regulatory technical standards, ESMA shall take into account the regulatory technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014.

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

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

- Article 26(2) of the ELTIF regulation provides that:

  ESMA shall develop draft regulatory technical standards to specify the types and characteristics of the facilities referred to in paragraph 1, their technical infrastructure and the content of their tasks in respect of the retail investors.

  ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 2015.

  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.

3.2 Annex II

Cost-benefit analysis

1. Introduction

1. The ELTIF Regulation sets out a comprehensive framework for the regulation of ELTIFs within Europe. ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.

2. The ELTIF Regulation establishes uniform rules regarding the operation of ELTIFs, in particular on the composition of their portfolio and the investment instruments that they are allowed to use in order to gain exposure to long-term assets. It mandates ESMA to develop RTS on certain aspects of its functioning which do not involve policy choices.

3. This final report sets out the draft RTS required under the ELTIF Regulation which relate to the following topics: (i) the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments, (ii) 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, (iii) the features of the schedule for the orderly disposal of ELTIF assets, and (iv) the characteristics of the facilities to be set up by ELTIFs in each Member State where they intend to market units or shares.

4. For the purposes of this cost-benefit analysis (CBA) ESMA carried out a mapping exercise among national competent authorities (NCAs) to identify the provisions that already exist at national level on the facilities available to retail investors under the UCITS Directive (see section 4 below).

5. This CBA is qualitative in nature. However, ad hoc questions were introduced in the consultation paper in order to elicit market participants' input on the quantitative impact of the proposals. No relevant data was received through the consultation process to be taken into account when finalising the RTS.

2. Technical options

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

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

2.1. Hedging derivatives

Policy Objective	Articles 8(2) and 8(2a) of the ELTIF Regulation notably aim to regulate the use of financial derivative instruments by ELTIF managers. More specifically, under the requirements of Article

	8(2a), ESMA is to develop draft regulatory technical standards (RTS) specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments of the ELTIF.
Baseline scenario	The baseline scenario should be understood for this CBA as the application of the requirements in the Level 1 Regulation (i.e. the provisions of Article 8(2) of the ELTIF Regulation) without any further specification. This would leave discretion to ELTIF managers to determine the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments of the ELTIF. This could clearly lead to a lack of harmonisation in the application of the provisions of the ELTIF Regulation across the ELTIF industry on a potentially sensitive issue. Indeed, uncertainty on the above-mentioned requirement could lead to a situation where some Member States would adopt stricter rules than others on the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments of the ELTIF, leading to greater uncertainty for investors of ELTIFs in the different Member States who would not know the extent to which derivative contracts are used by the managers of ELTIFs. For instance, some Member States could consider that only specific types of risk might be covered by the manager of an ELTIF for that purpose (e.g. those types of risk that are mentioned in the impact assessment conducted by the Commission on the initial proposal of the ELTIF Regulation). This would be particularly problematic in the context of the EU passport of the ELTIF Regulation.
Options	The RTS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across Member States, which will help ensure that the risks taken by the ELTIF manager are done so in a harmonised way. There should also be reduced scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Regulation. In order to address the problem and comply with the objectives identified above, ESMA not only considered the idea of providing clarifications on the criteria which may be extracted from the Level 1 provisions, but also identified some topics for which additional guidance could be beneficial for the purposes of a harmonised application of the ELTIF Regulation. These topics

	were as follows: i) The existing pieces of EU and international legislation and associated regulatory framework in relation to hedging; ii) The extent to which the precise scope of the risks to be covered by the manager of an ELTIF should be specified, having regards to the scope of the eligible assets of an ELTIF.
Preferred Option	1. ESMA decided to consult on the option according to which the scope of hedging is fully in line with the IFRS related framework. ESMA discarded the option according to which the scope of the risks to be covered by the manager of the ELTIF is specified having regard to the scope of the eligible assets of an ELTIF. 2. After having taken into account the feedback received from the consultation paper, ESMA decided to remove the reference to IFRS and replace it with a definition of hedging and the circumstances under which it can be used in the ELTIF context inspired by the corresponding requirements of the CESR guidelines on risk measurement and the calculation of global exposure and counterparty risk for UCITS, adapted to the ELTIF scope of eligible assets.

2.2. Sufficient length of the life of the ELTIF

Policy Objective	The end of the life of the ELTIF plays a key role in the functioning of the ELTIF Regulation. Indeed, the end of the life of the ELTIF shall be clearly indicated in its rules or instruments of incorporation and it is only after such a point in time that investors in an ELTIF are in principle able to request the redemption of their units or shares. A consistent approach should be applied across Europe in determining the circumstances in which the life of an ELTIF is sufficient in length.
Baseline scenario	No further rules would be provided through RTS on the circumstances in which the life of an ELTIF is sufficient in length.

Option 1	The RTS would focus on the portfolio of the ELTIF as a whole rather than on the individual assets. The life of an ELTIF would be determined based on the average duration of all the assets in the portfolio of the ELTIF.
Option 2	The life of an ELTIF would be set in a way that takes into account each and all of the individual assets of the ELTIF portfolio. The life of an ELTIF would be determined with reference to the individual asset within the ELTIF portfolio which has the longest life-cycle.
Preferred Option	ESMA decided to retain an amended version of option 2 and discarded option 1. The baseline scenario was also discarded as it would have left discretion to ELTIF managers and NCAs to determine in which circumstances the life of an ELTIF is sufficient in length, which would have led to a lack of harmonisation and potential inconsistencies across Europe in the application of one of the key provisions of the ELTIF Regulation. ESMA felt that option 1 was sub-optimal as, in situations where an ELTIF invests into assets that have different maturity profiles, it is important to ensure that the life of an ELTIF is set in a manner that appropriately takes into account the assets with the longest maturity. This is essential to avoid a situation where the life of an ELTIF is too short and the ELTIF is not able to satisfy redemption requests from investors after the end of its life because the assets left in its portfolio after such a date have a residual maturity which exceeds the end of its life. Moreover, option 1 does not seem to be compatible with the provisions of Article 18(3) of the ELTIF Regulation which provide that "*The life of an ELTIF* […] *shall be sufficient where an ELTIF in length to cover the life-cycle* *of each of the individual assets of the ELTIF* […]" (emphasis added).

2.3. Criteria for the assessment of the market for potential buyers

Policy Objective	The assessment of the market for potential buyers is an important element of the orderly disposal of the ELTIF assets. It permits the ELTIF manager to judge the likelihood that the assets in the ELTIF portfolio will be sold in a timely manner. Implementing rules on the criteria to be used for such an assessment should create harmonised standards for the implementation of the ELTIF Regulation across Europe.

Baseline scenario	No further rules would be provided through RTS on the criteria to be used for the assessment of the market for potential buyers in the itemised schedule for the orderly disposal of the ELTIF assets.
Option 1	The RTS would provide a list of the types of market risk ELTIF managers should take into account in assessing the market for potential buyers and then the potential prices.
Option 2	The RTS would provide a list of all the types of risks ELTIF managers should take into account in assessing the market for potential buyers and then the potential prices. The types of risk would not be limited to market risks, but would extend to a broad range of other types of specific risk that are peculiar to the sectors into which an ELTIF may invest.[1]
Preferred Option	ESMA decided to retain option 1 and discarded option 2. The baseline scenario was also discarded as it would have left full discretion to ELTIF managers and NCAs to determine the criteria to be used for the assessment of the market for potential buyers in the itemised schedule for the orderly disposal of the ELTIF assets. This could have led to unlevel playing field across Europe. ESMA preferred option 1 because, in the context of the disposal of ELTIF assets, 'market risks' seem to be the most relevant risks to be taken into account by funds, in line with market practice for illiquid assets.[2] Requiring an assessment of a broader range of risks – as envisaged under option 2 – would risk increasing the administrative burden to which ELTIFs would be subject, without materially increasing investor protection. Therefore, such an option would put at risk the attractiveness of the new ELTIF vehicle and potentially jeopardise the efforts being put in place at European level to boost long-term investments.

2.4. Criteria for the valuation of the assets to be divested

[1] For instance, for investments in properties, the specific risks may include risks such as tenant default on renatl payment (covenant risk), risk of failure to re-let (void risk) or costs of ownership and management (see Section 3.1.3 of the document 'Valuation of investment properties' published by the Danish Property Federation, available at http://www.ejendomsforeningen.dk/multimedia/Valuation1.pdf).

[2] See the above mentioned document 'Valuation of investment properties' published by the Danish Property Federation (in particular, Section 3.1.2 'Market risk').

Policy Objective	The valuation of the assets to be divested is another element of the itemised schedule for the orderly disposal of the ELTIF assets. It permits the ELTIF manager to assess the value of the assets of the ELTIF in view of their proper realisation. Implementing rules on the criteria to be used for such an assessment should create harmonised standards for the implementation of the ELTIF Regulation across Europe, bearing in mind that ELTIFs are EU AIFs that are managed by AIFMs authorised in accordance with the AIFMD which are, as such, also subject to the valuation rules under the AIFMD.
Baseline scenario	No further rules would be provided through RTS on the criteria to be used for the valuation of the assets to be divested in the itemised schedule for the orderly disposal of the ELTIF assets. In such a case only the valuation rules under the AIFMD would apply to the ELTIF managers.
Option 1	The RTS would provide an ad hoc set of rules which would apply to the valuation of the ELTIF assets to be divested which would be in addition to the detailed AIFMD valuation rules.
Option 2	The RTS would ensure that an ad hoc valuation of the ELTIF assets is carried out before the beginning of the disposal of the assets. This would not provide for substantive additional requirements compared to the AIFMD valuation rules other than a minimum standard on the elements to be taken into account for the valuation of the assets to be divested. The RTS would take into account any valuation carried out according to the AIFMD for the purpose of the requirement to carry out an ad hoc valuation under the ELTIF Regulation.
Preferred Option	ESMA decided to retain an amended version of option 2 and discard option 1. The baseline scenario was also discarded as it would not have provided any minimum specific harmonisation on the valuation to be carried out in the context of the disposal of the ELTIF assets under the ELTIF Regulation. This could have led to an unlevel playing field across Europe. ESMA preferred option 2 as it provides a minimum level of harmonisation in terms of timing for the valuation to be carried out in the context of the disposal of the ELTIF assets without imposing too burdensome additional requirements on managers that are anyway subject to the specific AIFMD rules on valuation.

2.5. Common definitions, calculation methodologies and presentation formats of costs

Policy Objective	Under Article 22, the ELTIF Regulation indicates that the prospectus of the ELTIF shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investors. The ELTIF Regulation specifies that the different costs shall be grouped according to the following headings: a. costs of setting up the ELTIF; b. the costs related to the acquisition of assets; c. management and performance related fees; d. distribution costs; e. other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs. Under Article 22(4) of the ELTIF Regulation ESMA is requested to develop draft RTS to specify: a. the common definitions; b. calculation methodologies [of the costs referred to in paragraph 1 of Article 22]; c. presentation formats of the costs referred to in paragraph 1 of Article 22; and the overall ratio referred to in paragraph 2 of Article 22.
Baseline scenario	The baseline scenario should be understood for this CBA as the application of the requirements in the Level 1 Regulation (i.e. the provisions of Article 22 of the ELTIF Regulation) without any further specification. This would leave discretion to ELTIF managers to determine the definitions, calculation methodologies, and presentation formats of the different types of cost mentioned above, as well as the calculation methodology of the overall ratio referred to in paragraph 2 of Article 22. This could clearly lead to a lack of harmonisation in the application of a key provision of the ELTIF Regulation. Indeed, the investors of an ELTIF would not be able to compare the costs of different ELTIFs, since the cost disclosure as presented in the prospectus of the ELTIF would be

	likely to differ, at least from one Member State to another. Uncertainty on the above-mentioned item could for instance lead to a situation where some Member States would adopt stricter rules than others on cost disclosure, leading to greater uncertainty for investors of ELTIFs in the different Member States who would not know the extent to which the costs of the ELTIF as presented in the prospectus reflect a specific feature of the ELTIF in which they would invest or to a certain extent a specific feature of the cost disclosure regulatory framework in place in the Member State of this ELTIF. For instance, some Member States could consider that only some types of cost should be disclosed or aggregated in the above-mentioned overall ratio, while other Member States would consider that all types of cost should be disclosed and included in this overall ratio. This would clearly lead to a situation where the different cost figures of the prospectus of different ELTIFs of different Member States would not be comparable, which would be particularly problematic in the context of the EU passport of the ELTIF Regulation.
Options	The RTS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across Member States, which will help ensure that the cost disclosure information as presented in the prospectus of the ELTIF is harmonised. This should reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Level 1 Regulation. In order to address the problem and comply with the objectives identified above, ESMA not only considered the idea of providing clarification on the criteria which may be extracted from the Level 1 provisions, but also identified some topics for which additional guidance could be beneficial for the purposes of a harmonised application of the ELTIF Regulation. These topics were as follows: i) The extent to which the cost disclosure framework could be aligned with the cost disclosure information that is requested by the PRIIPs Regulation; ii) The extent to which the cost disclosure information as requested by the ELTIF Regulation could be similar to the cost disclosure information as presented in the UCITS KIID.

Preferred Option	ESMA decided to consult on the option in which the cost disclosure information as requested by the ELTIF Regulation is similar to the cost disclosure information as presented in the UCITS KIID, notably because the cost disclosure framework as requested by the PRIIPs Regulation will not be ready before 2016. Following exchanges with the Commission, ESMA finally decided to postpone the delivery of the ELTIF RTS on cost disclosure to be able to take into account more fully the work on cost disclosure under the PRIIPs Regulation.

2.6. Specifications on the facilities available to retail investors

Policy Objective	The requirements on the facilities to be made available to retail investors are additional to the marketing requirements already laid down in the AIFMD and are justified by the fact that ELTIFs target not only professional, but also retail investors across the EU. They are intended to ensure an appropriate degree of retail investor protection. Common rules on the requirements for these facilities should ensure that a similar level of investor protection is guaranteed across Europe.
Baseline scenario	No further rules would be provided through RTS on the facilities available to retail investors in each Member State where the ELTIF intends to market its units or shares.
Option 1	The RTS would provide a harmonised set of rules broadly inspired by the existing practices at national level for the similar provisions under Article 92 of the UCITS Directive. In order to reduce the administrative burden to which ELTIFs are subject, no requirements on the type of entities which may provide the facilities would be introduced.
Option 2	The RTS would provide a bespoke set of harmonised rules which are not based on the existing practices at national level for the similar requirements under the UCITS Directive. In particular, under this option the entity providing the facilities should belong to certain specific categories only (i.e. an entity authorised to provide depositary services under the UCITS Directive or the AIFMD).
Preferred Option	ESMA decided to retain an amended version of option 1 and discard option 2. The baseline scenario was also discarded as it

	would not have provided any harmonisation on the characteristics of the facilities to be made available for retail investors. This could have led to an inconsistent level of investor protection across Europe. ESMA preferred option 1 as it ensures minimum standards in terms of investor protection, while at the same time leveraging on existing national practices and not putting an excessive administrative burden on ELTIF managers. In that context, option 1 was clarified by including a specific feature of option 2, i.e. the third party that may provide the facilities should be a regulated entity. However, in order to avoid a disproportionate approach, the requirement to limit the provisions of the facilities to regulated entities was not specified any further (i.e. the RTS allow the facilities to be provided by any regulated entities). Any further specification would have been unnecessary from an investor protection point of view. This is based on the consideration that the provision of services – such as the reception and transmission of orders – which are regulated under Directive 2014/65/EU (MiFID II) would in any event be subject to the national provisions transposing MiFID II in the relevant Member State in which the ELTIF is marketed. In reaching its choice of the preferred option, ESMA also took into account the outcome of the mapping of the existing national practices under the UCITS Directive which is set out below under section 4 of this CBA.

3. Assessment of the impact of the various options

3.1. Hedging derivatives

Option 1	Qualitative description
Benefits	The impact of the final RTS should not be material in most of the Member States, since ESMA's proposal is to consider that the scope of risks to be covered by the manager of an ELTIF should not be narrower than the scope of risks embedded in the definition of hedging within the IFRS framework. The main benefits of the option proposed are to: i) standardise the operational and regulatory processes that the managers of an ELTIF will set up to face the situation where they have to decide if they should invest in some types of asset, given the clarification

	provided on their ability to cover the corresponding risks; and ii) prevent the manager of an ELTIF from deciding not to invest in certain types of asset because he would not be able to cover the corresponding risks. Missed investment opportunities would indeed not only imply opportunity costs for the ELTIF and its investors, but would also lead to potential financing costs of the EU companies in which the ELTIF would have otherwise invested. ESMA considers that this last argument is especially relevant in the context of the Capital Markets Union.
Costs	ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the ELTIF Regulation, except the clarification that the scope of the risks to be covered by the manager of an ELTIF should not be narrower than the scope of risks embedded in the definition of hedging within the IFRS framework. As compared to the baseline scenario, it is indeed unlikely that: i) there would be certain types of risks that would not fall under the scope of the IFRS framework and that the manager of an ELTIF would like to cover; ii) those types of risks could have been covered in the baseline scenario; and iii) that the fact of not being able to cover these type of risks would prove to be significantly costly for the ELTIF manager, the ELTIF or its investors.

Option 2	Qualitative description
Benefits	The main benefits of the option proposed are to standardise the operational and regulatory processes that the managers of an ELTIF will set up to face the situation where they have to decide if they should invest in some types of asset, given the clarification provided on their ability to cover the corresponding risks;
Costs	As opposed to option 1, it is more likely that this second option which would aim to narrow the range of risks that the manager of an ELTIF would be entitled to cover (taking as a possible basis the Impact Assessment of the Commission on its initial proposal) would be costly. Indeed, in that scenario, considering the wide range of eligible assets of an ELTIF, it is possible that managers of ELTIFs would not be able to cover some of the risks they would like to cover in relation to certain specific assets of the ELTIF. In that context, the manager would either prefer not to

	invest in the corresponding assets, the corresponding opportunity costs being borne by the manager, the ELTIF and its investors, or actually invest in these assets, without being able to cover the corresponding risks, which would result in a situation where the risk of loss, and therefore the potential costs for the ELTIF and its investors, would increase.

3.2. Sufficient length of the life of the ELTIF

Option 1	Qualitative description
Benefits	This option provides for a low standard in terms of investor protection because in situations where an ELTIF invests into assets that have different maturity profiles, at the end of its life the ELTIF may not be able to satisfy all the redemption requests it receives as it may have some assets in its portfolio the maturity profile of which is longer than the life of the ELTIF. Compared to option 2, this option does not seem to provide substantial benefits to ELTIF managers either, to the extent that in order to determine the average duration of all the assets in the portfolio of the ELTIF one needs to assess the duration of each of the individual assets of the ELTIF in any event (which is what ELTIF managers need to do under option 2 as well, which in turn provides higher standards in terms of investor protection).
Costs to regulator and compliance costs	The costs linked to the implementation of this option seem to be limited to one-off costs for both regulators and ELTIF managers (i.e. costs to be borne at the time of inception/authorisation of the ELTIF). Indeed, the end of the life of the ELTIF needs to be determined in the fund rules or instruments of incorporation that have to be included in the application for authorisation. In order to determine the average duration of all the assets in the portfolio of the ELTIF, an ELTIF manager needs to know the maturity of each of the individual assets into which the ELTIF envisages investing. This may generate some costs, which seem to be equivalent to the ones that would be generated under option 2.

Option 2	Qualitative description

Benefits	This option provides for a higher standard in terms of investor protection because in situations where an ELTIF invests into assets that have different maturity profiles, the life of the ELTIF would be determined with reference to the individual asset which has the longest life-cycle. This should ensure that at the end of its life the ELTIF is able to have sold or be in the process of selling all of its assets and to satisfy all the redemption requests it receives.
Costs to regulator and compliance costs	The costs linked to the implementation of this option seem to be limited to one-off costs for both regulators and ELTIF managers (i.e. costs to be borne at the time of inception/authorisation of the ELTIF). Indeed, the end of the life of the ELTIF needs to be determined in the fund rules or instruments of incorporation that have themselves to be included in the application for authorisation. In order to determine which is the individual asset within the ELTIF portfolio which has the longest life-cycle, the ELTIF manager needs to know the maturity of each of the individual assets into which the ELTIF envisages investing. This may generate some costs, which seem to be equivalent to the ones that would be generated under option 1.

3.3. Criteria for the assessment of the market for potential buyers

Option 1	Qualitative description
Benefits	The list of types of market risk that ELTIF managers would have to take into account in assessing the market for potential buyers would provide a solid framework for the analysis to be done by ELTIF managers. This would ultimately benefit ELTIF investors.
Costs to regulator and compliance costs	The costs linked to the implementation of this option seem to be limited to one-off costs for both regulators and ELTIF managers (i.e. costs to be borne at the time of adoption of the itemised schedule for the orderly disposal of the assets of the ELTIF). While the RTS in question deal with non-standard assets and their disposal, it is assumed that managers of closed-ended funds will be familiar with such assets (i.e. the RTS do not relate to a completely new and emerging asset class where there is no previous experience). The way the disposal of these assets would be governed under this option seems to be broadly in line

	with the market practice for closed-ended of funds. Therefore, ESMA does not expect this option to trigger substantive costs for ELTIF managers.

Option 2	Qualitative description
Benefits	This option provides for high standards in terms of investor protection as ELTIF managers would have to take into account all types of risk that are specific to the sectors into which an ELTIF may invest.
Costs to regulator and compliance costs	The costs linked to the implementation of this option seem to be limited to one-off costs for both regulators and ELTIF managers (i.e. costs to be borne at the time of adoption of the itemised schedule for the orderly disposal of the assets of the ELTIF). Such costs are expected to be materially higher than costs under option 1 to the extent that the spectrum of assessments to be made under option 2 would be wider.

3.4. Criteria for the valuation of the assets to be divested

Option 1	Qualitative description
Benefits	A specific set of rules for the valuation to be carried out in the context of the disposal of the ELTIF assets would not provide any substantive added value in terms of investor protection given that the detailed rules on valuation under the AIFMD are applicable to ELTIF managers in any case.
Costs to regulator and compliance costs	The costs linked to the implementation of this option seem to be limited to one-off costs for both regulators and ELTIF managers (i.e. costs to be borne before the adoption of the itemised schedule for the orderly disposal of the assets of the ELTIF). Such costs are expected to be substantially higher than costs under option 2 to the extent that requirements which are additional to the ones foreseen under the AIFMD would trigger some specific compliance costs.

Option 2	Qualitative description
Benefits	This option provides for adequate standards in terms of investor protection to the extent that it leverages on the existing rules on valuation under the AIFMD and it requires ELTIF managers to carry out an ad hoc valuation of the ELTIF assets before the beginning of the disposal of the assets.
Costs to regulator and compliance costs	The costs linked to the implementation of this option seem to be limited to one-off costs for both regulators and ELTIF managers (i.e. costs to be borne before the adoption of the itemised schedule for the orderly disposal of the assets of the ELTIF). Such costs are expected to be substantially lower than costs under option 1. ELTIF managers would be required to carry out an ad hoc valuation in the context of the disposal of the ELTIF assets, but such a valuation would be governed by rules that in principle are not materially different from the ones under the AIFMD. Therefore, ESMA does not expect this option to trigger substantive costs for ELTIF managers.

3.5. Common definitions, calculation methodologies and presentation formats of costs

Options	Qualitative description
Benefits	The impact of the final RTS should not be material in most of the Member States, since ESMA's proposal is to consider that the scope of risks to be covered by the manager of an ELTIF should be similar to the cost disclosure information as presented in the UCITS KIID. The main benefits of the option proposed are to: i) standardise the operational and regulatory processes that the managers of an ELTIF will set up to disclose the costs for the ELTIF in the prospectus, as well as to standardise the cost disclosure information in itself for the investors of the ELTIF; and ii) take full advantage of the existing cost disclosure framework under the UCITS KIID.
Costs	ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the ELTIF

	Regulation, except the clarification that the cost disclosure information mentioned in the ELTIF Regulation should be similar to the cost disclosure information as presented in the UCITS KIID. As compared to the baseline scenario, it is indeed unlikely that: i) on their own initiative and without further coordination, all Member States implement in the same way the cost disclosure requirements of Article 22 of the ELTIF Regulation; and ii) this same approach would prove to be less costly for the manager of the ELTIF than the approach taken by ESMA in the present CP. It might also be the case that in the baseline scenario, because the ELTIF Regulation refers to the cost disclosure requirements under the PRIIPs Regulation, some Member States would prefer to wait for the output of the work on cost disclosure under the PRIIPs Regulation before implementing the similar cost disclosure requirements under the ELTIF Regulation. This could result in a situation where investments opportunities would be missed or delayed.

3.6. Specifications on the facilities available to retail investors

Option 1	Qualitative description
Benefits	Specifications on the facilities to be made available to retail investors which are broadly in line with the ones existing at national level under the UCITS Directive would set appropriate standards in terms of protection of retail investors. The absence of specific requirements on the types of entity which may provide the facilities would have the benefit of not imposing an additional burden on ELTIF managers while at the same time not jeopardising the level of investor protection given that the provision of services – such as the reception and transmission of orders – which are regulated under Directive 2014/65/EU (MiFID II) would in any event be subject to the national provisions transposing MiFID II in the relevant Member State in which the ELTIF is marketed.
Costs to regulator and compliance costs	One-off and ongoing compliance costs are expected to arise from the set up and maintenance of the relevant facilities. Given that the option is broadly inspired by existing practices under the UCITS Directive, it is expected that at least in many jurisdictions costs will be limited for regulators for the supervision

	of the relevant requirements given that they should already be familiar with the similar facilities set up under the UCITS Directive. Moreover, given the similarities with the UCITS requirements, economies of scale may be also be obtained by those managers that also manage UCITS funds and already have in place similar facilities that may be used for the marketing of ELTIF as well.

Option 2	Qualitative description
Benefits	No additional substantive benefits in terms of investor protection are expected from this option compared to option 1.
Costs to regulator and compliance costs	One-off and ongoing compliance costs are expected to arise from the set up and maintenance of the relevant facilities. Such costs are expected to be substantially higher than costs under option 1 and would be linked to the requirement to appoint only certain entities for the provision of the facilities. These costs are expected to have an even bigger impact in those jurisdictions where no equivalent requirements exist under the UCITS Directive and where ELTIF managers also managing UCITS funds would have to comply with more stringent requirements under the ELTIF framework than under the UCITS Directive.

4. Mapping of the national practices on requirements for the facilities available to retail investors under Article 92 of the UCITS Directive

8. For the purpose of the mapping, the following question was submitted to NCAs:

What are your national requirements, if any, on the facilities to be made available to investors under Article 92 of the UCITS Directive? Please specify the following:

(i) the types and characteristics of the facilities,

(ii) their technical infrastructure,

(iii) the content of their tasks in respect of the retail investors, and

(iv) *whether the requirements are imposed by any legislative text or supervisory practice.*

9. The following responses were provided by NCAs:

(1) Austria

The national requirements on UCITS facilities are specified in the Austrian Investment Fund Act 2011 (InvFG 2011).

Art. 92 of the UCITS Directive was transposed via Art. 141 InvFG 2011.

Regarding the compulsory facilities for UCITS for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide, the Austrian Federal Act requires the UCITS to designate at least one credit institution that fulfills the requirements of a depositary bank to act as payment agent.

This credit institution bears the responsibility to receive and transfer payments for the UCITS, to redeem units and to provide investors with information by the UCITS.

This national requirement of appointing a credit institution as payment agent ensures that investors receive all necessary information and can exercise their rights under the UCITS Directive and the InvFG 2011.

Please find below an English translation of Art. 141 InvFG 2011:

Arrangements to Protect Unit-Holders of a UCITS Approved in another Member State

Article 141.

(1) The UCITS approved in another Member State shall, in compliance with articles 55 to 57 as well as articles 128, 132, 133, 136 and 138, take such measures as are necessary to ensure that unit-holders in Austria receive the payments from repurchase and redemption of the units and as well as information to be provided by the UCITS. To this purpose, the UCITS shall designate at least one credit institution that meets the conditions set forth under article 41 para 1 first sentence.

(2) A UCITS approved in another Member State shall ensure that the latest version of all information and documents referred to in article 139 para 1 nos 4 and 5 and, if applicable, any translations thereof, are always available on a website accessible to the FMA by electronic means and shall inform the FMA of any change to these documents and their availability by electronic means.

(3) In the case of a change in the information about marketing arrangements in the notification letter referred to in article 139 para 1 no 1 or a change in the share classes or investment compartments marketed in accordance with article 139 para 1 no 2, a UCITS approved in another Member State in accordance with article 140 shall give the FMA written notice before implementing any such change.

(4) A UCITS approved in another Member State that intends to cease marketing units shall inform the FMA thereof and publish this fact, accompanied by a statement of the

legal consequences. The public marketing obligations arising out of this federal act shall expire no sooner than three months after the cessation of marketing. In the interests of the unit-holders, the FMA may prescribe an extension of this period and a public notice thereof. Article 142 shall remain applicable.

(2) Estonia

There are no additional requirements for facilities to be made available to investors under Article 92 of the UCITS Directive. Estonian legislation broadly establishes the requirement for sufficient measures necessary to provide unit subscription and redemption services to Estonian unit-holders on the same principle basis as to the fund's domestic unit-holders (no discrimination between foreign and domestic units-holders). Types and characteristics along with specifications for technical infrastructure are not prescribed.

(3) Sweden

The requirements are as follows:

(i) the types and characteristics of the facilities:

A bank or credit institution performing the duties of a paying agent, a market platform, distributor etc., provided that the entity holds the necessary licenses, Pensionsmyndigheten (the Swedish Pension Agency)

(ii) their technical infrastructure:

The entity should have the possibility to fulfil the obligations set out in article 92 but we do not have any specific technical requirements.

(iii) the content of their tasks in respect of the retail investors, and fulfilling the obligations in Article 92:

Make payments to unit holders, redeem units and provide any and all information required of the undertaking pursuant to regulations applicable in the home state.

(iv) whether the requirements are imposed by any legislative text or supervisory practice:

Chapter 1 section 7 of the Swedish UCITS Act (which implements Article 92 of the UCITS Directive in Sweden) provides that a foreign UCITS marketed in Sweden shall take necessary measures in Sweden to enable it to make payments to unit holders, redeem units and provide any and all information required of the undertaking pursuant to regulations applicable in the home state.

It is Finansinspektionen's opinion that, in order to meet the requirements in the Swedish UCITS Act, a local point of contact in Sweden needs to be appointed to provide these services. It would not be sufficient if a Swedish investor/unit-holder is

forced to contact someone outside of Sweden to redeem units in a foreign fund marketed in Sweden, receive payments or to be handed information about the said fund. So, it is required that there is a local point of contact who is responsible for these measures. However, it is not necessary that a local paying/information agent is assigned. A distributor may well perform the above duties (provided that the distributor holds the necessary licenses to provide these services).

(4) Spain

The Spanish legislation does not prescribe any special requirements regarding the facilities to be made available to investors when marketing UCITS. It applies the general principle that UCTIS should be marketed by entities authorised for providing financial services. These entities are under the legislation transposing MiFID and should comply with its requirements in order to make payments to unit-holders, repurchasing or redeeming units and making available information which UCITS are required to provide.

(5) Croatia

In accordance with article 131 of the Croatian Act on open-ended investment funds with public offering, a management company from a home Member State must, in order to engage, within the territory of the Republic of Croatia, in marketing of units of a UCITS fund established in a Member State, ensure that facilities are available in the Republic of Croatia for:

1. making payments to a UCITS' unit-holders;

2. issuing and redeeming units of a UCITS;

3. making available the documents and information related to a UCITS and communicating all relevant documents and information to the investors who have purchased units in the Republic of Croatia; and

4. handling of investor complaints in accordance with Article 58 of this Act.

Furthermore, in accordance with article 30 points g) and i) of the Commission Directive 2010/44/EU, CFSSA has published on its website the requirements in relation to the facilities to be made available to investors under Article 92 of the UCITS Directive as well as detailed contents of the information to be included in Part B of the notification letter as referred to in Article 1 of the Commission Regulation (EU) No 584/2010.

Additional content of Part B of annex I to the said Regulation provides:

3. Under the description of arrangements made for marketing of units of UCITS in the Republic of Croatia, the information on all intended marketing channels

4. Under the description of arrangements made for the provision of facilities to unit-holders, the following information:

   - details of paying agent (consider that in Republic of Croatia local paying agent is mandatory);

   - details of any other person from whom investors may obtain information and documents: all the legal and natural persons (entrepreneurs) who conduct marketing of units of UCITS in the Republic Croatia on behalf of the management company; also the link to the up-to-date list of all persons from whom investors may obtain information and documents;

   - manner in which the issue, sale, repurchase or redemption prices of units of UCITS will be made public, including the name of the newspaper in the Croatia and the name/address of other media where the price of units of UCITS will be published.

5. Other information which includes:

   - a precise description of the division of functions and responsibilities between the paying agent and the primary depositary of the investment fund, in particular in connection with the administration of the register of unit holders;

   - a precise description of the manner in which the register of unit holders who invested in the Republic of Croatia is administered (how data confidentiality and security will be assured);

   - a precise description of the legal consequences for investor in the event of a rescission of the contract between the paying agent in the Republic of Croatia and the UCITS;

   - in case it differs from one described in UCITS's prospectus, a precise description of the procedure of subscription and redemption of units of UCITS in the Republic Croatia, in particular an indication of the time period and unit price at which subscription payments for units will be charged, and of the time period within which units will be redeemed, counted from the day a request for redemption is received. An indication of the deadline by which and the manner in which unit holders are notified of their unit balance.

(6) <u>Portugal</u>

UCITS management companies sign distributor agreements with a financial intermediary in Portugal. Upon receiving a notification of intent to commercialize foreign UCITS funds in Portugal, CMVM checks that this agreement exists and contains all the necessary arrangements so that the duties present in Article 92 of the UCITS Directive are fully satisfied.

(7) Denmark

The Danish FSA requires that Foreign investment undertakings, the units of which are marketed to retail investors in Denmark, shall have a representative with an office in Denmark in order to secure Danish retail investors access to information and redemption of units.

The representative shall have a licence as a securities dealer, cf. section 9 of the Financial Business Act, or as an investment management company, cf. section 10 of the Financial Business Act. The representative may also be a branch, cf. section 5(1), no. 19 of the Financial Business Act.

At the request of an investor, the representative shall assist the retail investor in redemption, payment of dividends and conversion of units etc. and help the investor in contact with the investment undertaking. The representative may also carry out these tasks. The representative shall also supply the documents which the undertaking makes public in its home country and provide information about the investment undertaking at the request of an investor. Enquiries from an investor to the representative shall have the same legal effect as enquiries to the foreign investment undertaking. Foreign investment undertakings, which only intend to market units to professional investors, may omit to have a representative, provided

(1) the investment undertaking only markets its units indirectly to retail investors through unit-linked schemes established by undertakings which are under supervision by the Danish FSA, cf. section 1 of the Financial Business Act, or through a branch, cf. section 5(1), no. 19 of the Financial Business Act, or

(2) through agreements with Danish professional investors, the foreign investment undertaking ensures that the units cannot be resold to retail investors, and

(3) declares that the foreign investment undertaking will not itself sell units to Danish retail investors.

These requirements are imposed by the executive order no. 786 of 17 June 2014.

(8) Latvia

There are no other special requirements other than those stated in the Article 77.3 of the Law on Investment Management Companies.

[…]

(2) The commercial companies shall ensure marketing, repurchase and redemption and settlement in Latvia in respect of the investment certificates of a fund of a Member State.

[…]

(4) Marketing in Latvia of investment certificates of a fund of a Member State may be started as of the day when the following documents, appropriately formatted, have been submitted to the Financial and Capital Markets Commission:

[…]

3) the fund rules or a document equivalent to fund rules, the fund prospectus, key investor information and the latest audited and approved annual report/accounts of the fund as well as the semi-annual report where it has been approved after the approval of the annual report/accounts.

[…]

(9) When the fund management company markets investment certificates of the fund in Latvia, it shall comply with and fulfil the following requirements:

[…]

7) it shall ensure that the documents referred to in Subparagraph 3 of Paragraph 4 of this Article and any amendments thereto as well as their translations are available electronically on the website of the person marketing investment certificates, the fund's management company or the fund itself;

[…]

8) it shall ensure that the content of the fund's documents that are not translated into Latvian is explained to investors.

(9) Luxembourg

Article 92 of the UCITS Directive has been transposed by article 53 (regarding UCITS established in Luxembourg which market their units in other Member States) and by article 59 (regarding UCITS established in another EU Member State which market their units in Luxembourg) of the Luxembourg law dated 17.12.2010 relating to undertakings for collective investments:

Article 53:

A UCITS which markets its units in another Member State shall, in accordance with the laws, regulations and administrative provisions in force in the Member State where its units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unitholders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Article 59:

A UCITS established in another Member State which markets its units in Luxembourg shall appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unitholders and repurchasing or redeeming units. The UCITS shall take the necessary measures to ensure that the information which it is obliged to provide is made available to unitholders in Luxembourg.

Apart from the requirement to appoint a credit institution in Luxembourg for making payments to unitholders and repurchasing or redeeming units, there are no further specific requirements imposed by any legislative text or supervisory practice in relation to the points (i) to (iii) of the question above under paragraph 8.

(10) Germany

Article 92 of the UCITS Directive is transposed in section 309 para. 1 sentence 2 of the German Capital Investment Code (Kapitalanlagegesetzbuch – "KAGB"), which states that a UCITS management company, which intends to market EU UCITS in Germany, has to specify a German credit institution or the German branch of a foreign domiciled credit institution as paying agent only in those cases where at least some of the units of EU UCITS were issued as printed individual certificates.

If no such certificates were issued, according to BaFin's supervisory practice a paying agent need not be specified. The UCITS management company must only ensure that it is able to remit payments to German investors and redeem the units in Germany. Information on this – in particular details on how investors can request redemption or conversion of units and when they are entitled to receive payments – must be included in the prospectus specific to Germany which is used for marketing within Germany.

(11) Belgium

Article 92 of the UCITS Directive has been transposed in Belgian law by article 154, §2 of the Law of 3 August 2012 concerning undertakings for collective investment fulfilling the conditions of Directive 2009/65/EC and undertakings for collective investment in claims.

Article 154, §2 reads as follows: "*The undertakings for collective investment mentioned in § 1 shall, in accordance with the applicable laws, take the measures necessary to ensure that making payments to unit-holders, repurchasing or redeeming units and making available the information which must be provided are guaranteed.*

The undertakings for collective investment mentioned in § 1 must appoint

- a credit institution that is registered on the list referred to in article 14 of the Law of 25 April 2014,

- *or a branch of a credit institution governed by the law of another Member State of the European Economic Area registered as provided for in article 312 of the Law of 25 April 2014,*

- *or a stockbroking firm governed by Belgian law registered on the list referred to in article 53 of the Law of 6 April 1995,*

- *or a branch of an asset management company of undertakings for collective investment that is governed by the law of another Member State of the European Economic Area and that is registered according to article 258 of that Law, on condition that the branch is authorized to carry out that activity under the applicable law that ensures making payments to unit-holders, repurchasing or redeeming units and making available the information which must be provided."*

Further details and explanations about these facilities (called "financial services") are laid down in the Circular of the FSMA "FSMA_2013_05 of 14/02/2013 Notification procedure for undertakings for collective investment governed by the law of another Member State of the European Economic Area and fulfilling the conditions of Directive 2009/65/EC". It specifies the following:

"*Article 92 of Directive 2009/65/EC specifies that UCITS which market their units in a Member State must, in accordance with the laws, regulations and administrative provisions in force in the Member State where their units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.*

Article 154, § 2 of the Law of 3 August 2012 therefore requires UCITS to designate an intermediary in Belgium to handle their financial services. The types of intermediary authorized to act in this capacity are listed in the same paragraph. The intermediary designated for this purpose is the privileged contact person for the FSMA for all matters relating to the activities in Belgium of a UCITS governed by foreign law.

The Law of 3 August 2012 entrusts to this intermediary the tasks of making payments to unitholders, selling or repurchasing units as well as distributing the information that UCITS are required to provide.

The tasks listed in the aforementioned § 2 of Article 154 are understood to be the following functions and transactions:

- *making available all the facilities necessary for subscribing to and redeeming units, paying coupons, exercising the rights attaching to the securities, etc.;*

- *handling all related administrative formalities: exchange and netting of any settlement differences when switching between sub-funds, deposit of securities in view of participating in General Meetings, etc.;*

- making available and/or publishing all relevant information: prospectus, key investor information, periodic reports, net asset value, official publications, etc.

The UCITS' financial service provider therefore covers the material transactions that allow it to fulfil subscription and redemption orders and other transactions that are a necessary complement to the marketing activities.

In light of the above-mentioned financial services of a UCITS, the intermediary that provides these services must have a legal status that authorizes it to receive cash and securities from its clients. An investment firm that wishes to serve as a UCITS' financial service provider must therefore have the requisite authorization to be able to provide the ancillary services of safekeeping and administration of financial instruments as referred to in Article 46, 2°, 1, of the Law of 6 April 1995 on the legal status and the supervision of investment firms.

It should also be made clear that providing the financial services of a UCITS and marketing its units are two distinct activities. It should therefore not be concluded that the intermediary that provides the UCITS' financial services is necessarily also entrusted with the marketing management referred to in Article 3, 22°, c), of the Law of 3 August 2012. However, it seems that in many configurations currently present on the Belgian market, the intermediary which provides the financial services also markets the units of the UCITS in question."

(12) Ireland

The requirements are as follows:

(i) the types and characteristics of the facilities:

Irish legislation which implements the UCITS Directive requires (in accordance with Article 92) that: A UCITS which markets its units in the State shall satisfy the Central Bank that adequate measures have been taken to ensure that facilities are available in the State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Conditions which are imposed by the Central Bank under powers available under the implementing legislation include that:

- The Central Bank must be provided with written confirmation from the entity providing these facilities (the facilities agent) that it has agreed to act for the UCITS

- The prospectus must provide details of the facilities agent and the facilities maintained for Irish resident investors

- A facilities agent must have all of the documents which a UCITS is required to provide to investors available for Irish resident investors. The agent must also

provide information to investors on how a redemption request can be made and how redemption proceeds will be paid. (A facilities agent is not required to receive and transmit the redemption order to the UCITS or the redemption proceeds to the investor).

- The name of the facilities agent will be placed on the list of UCITS marketing in Ireland which is made available to the public on request.

(ii) their technical infrastructure:

There are no specific requirements in this regard

(iii) the content of their tasks in respect of the retail investors:

No distinction is made between retail and non-retail investors

(iv) whether the requirements are imposed by any legislative text or supervisory practice:

The requirements are partially imposed by legislative text and partly by statutory conditions imposed by the Central Bank.

(13) <u>Hungary</u>

The legal provisions concerning the marketing in Hungary of collective investment instruments issued by UCITS authorized in another Member State are as follows:

(1) Where a UCITS authorized in another EEA Member State markets or distributes its collective investment instruments in Hungary, such UCITS must comply with the provisions of the Member State where registered, on the understanding that it shall provide to investors within the territory of Hungary all information and documents which it is required to provide to investors in the UCITS home Member State. Key investor information shall be made available in Hungarian. Other information and documents shall be provided, at the choice of the UCITS, in Hungarian or translated into the language approved by the Authority, or into a language customary in the sphere of international finance. Key investor information shall be provided at the investors' request at the time of conclusion of the contract free of charge and in writing.

(2) The requirements set out in Subsection (1) shall also be applicable to any changes to the information and documents referred therein.

(3) Following the notification procedure performed by the UCITS home Member State covering the adequacy of arrangements made for marketing, the UCITS shall send to the Authority before the commencement of marketing operations the distribution agreement between the UCITS and the distributor, where marketing is carried out by a contractor other than the investment fund manager. If an intermediary established in

Hungary is also involved, the contract with such intermediary shall also be submitted. In the absence of a distributor established in Hungary, an intermediary established in Hungary must be involved.

(4) In the event of a change in the information regarding the arrangements made for marketing, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the Authority before implementing the change. Furthermore, the UCITS shall notify any amendments to the documents and shall indicate where those documents can be obtained electronically.

(5) The Authority shall give information in Hungarian or in a language customary in the sphere of international finance on the relevant laws and regulations governing the marketing in Hungary of the collective investment instruments of a UCITS authorized in another EEA Member State in the form of a narrative description, or a combination of a narrative description and a series of references or links to source documents.

(6) The Authority shall ensure that the following are inter alia made accessible from among the provisions provided for in Subsection (5):

a) the definition of the term "marketing";

b) requirements for the contents, format and manner of presentation of marketing communications;

c) information required to be disclosed to investors;

d) rules governing arrangements made for marketing;

e) requirements for any reporting or transmission of information to the Authority, and the procedure for lodging updated versions of required documents;

f) requirements for any fees to be paid to the Authority in connection with marketing;

g) requirements concerning the arrangements for making payments to investors, redeeming collective investment instruments and making available information concerning the UCITS;

h) conditions for the termination of marketing of units of the UCITS;

i) detailed contents of the information required to be included in the notification letter as referred to in Article 1 of Commission Regulation 584/2010/EU;

j) the e-mail address designated for the purpose of satisfying the notification requirement specified in Subsection (4).

(14) United Kingdom

The FCA Handbook provides for the following rules under COLL 9.4 (Facilities in the United Kingdom):

General

(1) The *operator* of a *recognised scheme* under section 264 or section 272 of the *Act* must maintain facilities in the *United Kingdom* in order to satisfy the requirements of *COLL 9.4.2 R* to *COLL 9.4.6 R*.

(2) In this section, a facility is a place of business that complies with *COLL 9.4.6 R* (Place of facilities).

Documents

(1) The *operator* of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the *documents* at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:

(a) the *instrument constituting the fund*;

(b) any instrument amending the *instrument constituting the fund*;

(c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities);

(d) for a section 264 *recognised scheme*, the *EEA key investor information document*; and

(e) the latest annual and half-yearly reports.

(1A) For a section 264 *recognised scheme*, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d).

(2) In relation to notices and *documents* sent by *operators* and *depositaries* to and from the *United Kingdom*, *COLL 4.4.12 R* (Notice to unitholders) and *COLL 4.4.13 R* (Other notices) apply.

Price and Redemption

(1) The *operator* must maintain facilities in the *United Kingdom* for any *person* where:

(a) information in English can be obtained about prices of *units* in the *scheme*; and

(b) a *participant* may *redeem* or arrange for *redemption* of *units* in the *scheme* and obtain payment.

(2) An *operator* is treated as complying with paragraph (1) if it ensures *participants* may sell their *units* on an investment exchange at a price not significantly different from net asset value; and if so, must inform *participants* of the investment exchange.

Bearer certificates and characteristics of units in the scheme

(1) The *operator* must maintain facilities in the *United Kingdom* at which the *unitholder* of a *bearer certificate* may obtain free of charge:

(a) payment of dividends; and

(b) details or copies of any notices which have been given or sent to *participants* in the *scheme*.

(2) The *operator* must state:

(a) the nature of the right represented by the *units* in the *scheme*; and

(b) whether *persons* other than *unitholders* can vote at meetings of *unitholders* and, if so, who those *persons* are.

Complaints

The *operator* must maintain facilities in the *United Kingdom*, at which any *person* who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

Place of facilities

(1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.

(2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address,such other address in the *United Kingdom* where the *operator* can be contacted.

(3) [deleted]

(15) Slovakia

There are no special national requirements on the facilities to be made available to investors under Article 92 of the UCITS Directive. Requirements in relation to the facilities to be made available to unit-holders as required by Article 92 of the UCITS are provided in Section 144 para (5) Act no. 203/2011 Coll. on collective investment which states the following:

In course of marketing its units within the territory of the Slovak Republic the UCITS is required, in accordance with this act and other relevant legislation, to make available within the territory of the Slovak republic for its investors:

a) facilities to exercise their right to redeem or to repurchase the units of UCITS,

b) facilities to receive payments arising from redemptions or from repurchase of the units of UCITS or from dividends of the UCITS,

c) access to information, which the UCITS is obliged to provide,

d) access to information on any intention to terminate marketing of units of UCITS within the territory of the Slovak Republic,

e) access to information on measures to ensure rights of remaining unit-holders of the UCITS, in case the UCITS has decided to terminate the marketing of its units within the territory of the Slovak Republic.

(16) Poland

Article 92 of the UCITS Directive was transposed in Poland by article 256 (to the some extent) and article 257 of the act of 27 May 2004 on investment funds. There is no secondary legislation, guidelines or similar rules concerning this issue.

The aforementioned provisions do not provide for any specific technical infrastructure requirements and read as follows:

Art. 256.

1 A foreign fund /'foreign fund' = UCITS/ is obliged to ensure its participants:

1) the proper sale and redemption of the fund's titles in the Republic of Poland in accordance with the principles set out in the notification referred to in Art. 253.3, including accepting and paying proper amounts related to the purchase and redemption of titles /'titles' = units, shares/;

2) access to key investor information in Polish;

3) access to the fund's information and documents;

4) at least the same level of protection as in the home state;

5) providing confirmation of sale and/or redemption of titles in Polish, with a frequency to which the foreign fund is obliged in accordance with the laws of its home state.

1a. A foreign fund shall be obliged to operate in the Republic of Poland in accordance with the principles of fair trade. A foreign fund shall be obliged to ensure that a translation of the information and documents referred to in Art. 254.1 /Fund rules, the prospectus, the key investor information, the additional investor information, amendments made to the prospectus and key investor information and additional investor information, the annual and semi-annual financial statement; other information and documents to the provision [to investors] of which the fund is obliged under the law of its home state / exactly corresponds to the content of the original information.

[…]

1f. A foreign fund shall be obliged to appoint a representative in the Republic of Poland.

[…]

2. A representative of a foreign fund, under an agreement with the foreign fund is obliged in particular to:

1) represent the foreign fund in proceedings before the PFSA;

2) represent the foreign fund before the foreign fund participants;

3) perform duties necessary to support the foreign fund's participants, including receiving participants' complaints;

4) provide foreign fund's participants with access to information about the fund under the terms of this Act;

5) (repealed);

6) inform the PFSA of its intention to cease and of cessation of selling the foreign fund's titles in the Republic of Poland.

2a. Changes in the manner of selling titles by a foreign fund set out in the information referred to in Art. 253.3.1 / a detailed description of procedures for the sale of titles issued by a foreign fund in the Republic of Poland, including the terms and conditions of accepting and paying the amounts connected with the purchase and redemption of titles in the foreign fund and the manner of providing information about the fund /, shall be in accordance with the laws in force in the Republic of Poland.

3. Submission of a declaration of will, an official document and/or pleading to a representative shall be considered submission to the foreign fund.

3a. A foreign fund which intends to cease selling its titles in the Republic of Poland shall be obliged to provide participants with access to information and documents in accordance with Art. 254 /in manner defined under article 94 of UCITS directive/ , to allow redemption of titles and exercise the obligation referred to in Art. 256.1f. and in Art. 257.1, until redemption of all titles sold under the sale of titles in the Republic of Poland.

Art. 257.

1. A foreign fund shall appoint a paying agent in the Republic of Poland.

Only a domestic bank and/or a domestic branch of a credit institution may be a paying agent.

2. A paying agent, acting on the basis of an agreement with a foreign fund, shall be obliged in particular to:

1) accept payments for the purchase of titles in foreign fund;

2) distribute proceeds from redemption of the foreign fund's titles;

3) distribute income and/or other benefits due to the participants of the foreign fund.

(17) Finland

There are no additional national requirements.

(18) Romania

Currently there are no supplementary requirements regarding facilities made available to Romanian investors by those UCITS that are merketing their units/shares in Romania, other than the general provisions provided in accordance with art. 174 (2) and of art. 175 (2) g) of Government Emergency Ordinance no 32/2012 (available at http://asfromania.ro/en/legislation/sectorial-legislation/capital-market/primary-legislation-cnvm/2328-emergency-ordinance-no-32-2012), which transpose the provisions of art. 92 of the UCITS Directive and of art. 30 (1) g) of Directive 2010/44/UE.

(19) France

The transposition of Article 92 of the UCITS Directive in French law contains some general requirements: a facility needs to be put in place in order to process requests for purchases and redemptions, to make payments of coupons and dividends and to provide information documents to investors. These provisions are outlined in the AMF's General Regulation.

(20) Liechtenstein

According to Art. 96(1)(a) of the Act on Certain Undertakings for Collective Investment in Transferable Securities (UCITSG) management companies or self-manged investment companies shall – in compliance with the law oft he respective host or marketing Member State – ensure that investors are able to receive payments in all countries of marketing, effect the repurchase and redemption of units, and receive the information provided by the UCITS; complaints by investors shall be received and duly handled in at least one official language oft he marketing Member State.

Art. 107(3) of the Ordinance on Certain Undertakings for Collecitve Investment in Transferable Securities (UCITSV) states that if no branch is formed in Liechtenstein, the duties pursuant to Art. 96(1) UCITSG shall be complied with by appointing a paying agent.

(i) A paying agent in Liechtenstein is mandatory.

(ii) The paying agent must be a Liechtenstein bank according the Banking Act.

(iii) The paying agent is responsible that investors are able to receive payments, effect the repurchase and redemption of units, and receive the information provided by the UCITS. Furthermore the paying agent is responsible for receiving complaints.

(iv) Art. 96(1)(a) UCITSG, Art. 107(3) UCITSV, FAQ regarding paying agents is available on the FMA's homepage.

3.3 Annex III

Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No …/..

of […]

supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council on European long-term investment funds with regard to regulatory technical standards on eligible investments, length of the life of the ELTIF, disposal of assets, cost disclosure and facilities available to retail investors

(text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/760 of the European Parliament and of the Council on European long-term investment funds[3], and in particular Article 9(3), Article 18(7), Article 21(3) and Article 26(2) thereof,

Whereas:

(1) In order to ensure a common approach to the application of Regulation (EU) 2015/760, it is necessary to lay down provisions to specify the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, the circumstances in which the life of a European long-term investment fund ('ELTIF') is considered sufficient in length, the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets and the facilities available to retail investors.

[3] *OJ L123, 19.5.2015, p. 98.*

(2) To ensure coherence among those provisions which need to enter into force at the same time, and, to facilitate a comprehensive view and easy access to those provisions, it is appropriate to adopt the regulatory technical standards concerned in a single Regulation.

(3) With respect to the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments of an ELTIF, it is necessary to take into account not only the trades in financial derivative instruments themselves, but also trades in assets, which may be in some cases different from the hedged underlying assets, although they should relate to the same asset class. This is notably because some hedged items might not be available as a dedicated type of derivative, but as an item among other items included in an index which is the underlying of a derivative. In addition, the use of financial derivative instruments might in some cases constitute a hedging strategy only if it is pursued in combination with trades in some assets, and this type of strategy should not be prohibited. In order to ensure that the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments of an ELTIF, the manager of the ELTIF should take all reasonable steps to ensure that the financial derivative instruments used lead to a verifiable reduction of risks at the ELTIF level and are efficient in stressed market conditions. This reduction of risk could be verified, for example, through the use of adequate risk management systems identifying the risk intended to be mitigated and the way in which the derivative would mitigate such risk.

(4) Assets in which an ELTIF invests may have different maturity profiles. In situations where an ELTIF invests in assets that have different maturity profiles, the life of an ELTIF should be set with reference to the individual asset within the ELTIF portfolio which has the longest investment horizon having regard to the liquidity of that asset. There should be ex ante reasons to believe that each asset can be disposed of within the life-time of the ELTIF.

(5) The assessment of the market for potential buyers to be included in the schedule for the orderly disposal of the ELTIF assets should take into account market risks including whether the potential buyers are typically dependent on obtaining loans from third parties, whether there is a the risk of illiquidity of the assets before sale, whether there are risks associated with legislative changes, such as fiscal reforms, or political changes and whether there is a risk of deterioration of the economic situation in the market which is relevant to the ELTIF assets. No specific assessment of those risks should be requested under this Regulation for assets other than eligible investment assets since assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council[4] are supposed to be liquid by their nature.

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

(6) The valuation of the assets to be included in the schedule for the orderly disposal of the ELTIF assets should be carried out at a moment in time that is sufficiently close to the beginning of the disposal of the assets. However, if the ELTIF carried out a valuation in accordance with Directive 2011/61/EU of the European Parliament and of the Council[5] at a moment in time that is sufficiently close to the beginning of the disposal of the assets, an additional valuation should not be required. Nevertheless, the preparation of the schedule for the orderly disposal of the ELTIF assets should start as soon as it is appropriate in advance of the time-line for its disclosure to the competent authority of the ELTIF.

(7) The facilities to be made available to retail investors in each Member State where marketing activities are carried out by the manager of the ELTIF may be provided by one or more entities, which can be the manager of the ELTIF or another regulated entity.

(8) In order to avoid any potential market disruption it is necessary to provide, ELTIFs which were authorised before the entry into force of this Regulation, their managers and their competent authorities with sufficient time to adapt to the requirements contained in this Regulation.

(9) The provisions on the sufficient length of the life of ELTIF should only be applied by ELTIFs submitting an application for authorisation after the entry into force of this Regulation as, pursuant to Regulation (EU) 2015/760, the length of the life of the ELTIF has to be set by the time the application for authorisation as an ELTIF is made to the competent authority of the ELTIF.

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

(11) ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[6].

HAS ADOPTED THIS REGULATION:

Article 1

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5 *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).*

6 *Regulation (EU) No 1095/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).*

Hedging derivatives

1. The circumstances in which the use of financial derivative instruments shall be considered as solely serving the purpose of hedging the risks inherent to other investments of the ELTIF as referred to in Article 9(2)(d) of Regulation (EU) 2015/760 are fulfilled when they meet all of the criteria set out in this Article.

2. A financial derivative instrument shall only be used for hedging risks arising from exposures to assets referred to in Article 9(1) of Regulation (EU) 2015/760. The purpose of using financial derivative instruments shall be a verifiable and objectively measurable reduction of risks at the ELTIF level.

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

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

4. The manager of the ELTIF shall take all reasonable steps to ensure that the financial derivative instruments used lead to a verifiable reduction of risks at the ELTIF level and are efficient in stressed market conditions.

Article 2

Sufficient length of the life of the ELTIF

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

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

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

Article 3

Criteria for the assessment of the market for potential buyers

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

(a) whether one or more potential buyers are present in the market;

(b) whether the manager of the ELTIF, based on an assessment conducted with due skill, care and diligence at the time of the completion of the schedule, expects the potential buyers to be dependent on external financing for buying the relevant asset;

(c) if there are no potential buyers for an asset, the length of time likely to be necessary to find one or more buyers for that asset;

(d) the specific maturity profile of the asset;

(e) whether the manager of the ELTIF, based on an assessment conducted with due skill, care and diligence at the time of the completion of the schedule, expects the following risks to crystallise:

  (i) a risk associated with legislative changes that could affect the market for potential buyers;

  (ii) a political risk that could affect the market for potential buyers;

(f) the manager's assessment of whether the elements listed under points (a) and (b) may be impacted adversely during the disposal period by overall economic conditions in the market or markets relevant to the asset.

Article 4

Criteria for the valuation of the assets to be divested

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

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

   (b) it shall take place no more than six months before the schedule referred to in Article 21(1) of Regulation (EU) 2015/760 is disclosed to the competent authority of the ELTIF.

2. Valuations made in accordance with Article 19 of Directive 2011/61/EU may be taken into account to determine whether a valuation has taken place no more than six

months before the schedule referred to in Article 21(1) of Regulation (EU) 2015/760 is disclosed to the competent authority of the ELTIF.

Article 5

Specifications on the facilities available to retail investors

1. The manager of an ELTIF shall put in place facilities referred to in Article 26(1) of Regulation (EU) 2015/760 that perform the following tasks:

   (a) they process retail investors' subscription, payment, repurchase and redemption orders relating to the units or shares of the ELTIF, in accordance with the conditions set out in the ELTIF marketing documents;

   (b) they inform retail investors how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;

   (c) they facilitate the handling of information relating to issues that retail investors have in exercising their rights relating to their investment in the ELTIF in the Member State where the ELTIF is marketed;

   (d) they make available to retail investors, for inspection and for the obtaining of copies of:

      i) the fund rules or instruments of incorporation of the ELTIF;

      ii) the prospectus and key information document of the ELTIF published in accordance with Regulation (EU) No 1286/2014;

      iii) the latest annual report of the ELTIF;

   (e) they provide investors with information relevant to the tasks they provide in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC

2. The manager of the ELTIF shall ensure that the facilities referred to in Article 26(1) of Regulation (EU) 2015/760 have the following technical infrastructure:

   (a) they provide their services in the official language or official languages of the Member State where the ELTIF is marketed;

   (b) they provide their services physically, by telephone or electronically.

3. The manager of an ELTIF shall ensure that the facilities referred to in Article 26(1) of Regulation (EU) 2015/760 are of the following types and have the following characteristics:

(a) they are provided by one or more entities which are either the manager of the ELTIF or a third regulated entity;

(b) where the facilities are provided by a third regulated entity, the latter receives all the relevant information and documents to perform the tasks referred to in paragraph 1 of this Article.

(c) where the facilities are provided by a third regulated entity, the appointment of the entity is evidenced by a written contract. The written contract shall specify which of the tasks referred to in paragraph 1 are not provided by the manager of the ELTIF.

Article 6

Applicability of prior authorisations

An ELTIF authorised under Regulation (EU) 2015/760 before the entry into force of this Regulation shall be deemed to fulfil the requirements set out in Article 2 of this Regulation.

An ELTIF authorised under Regulation (EU) 2015/760 before the entry into force of this Regulation shall apply Articles 1, 3, 4 and 5 of this Regulation from [OP please set concrete date : first day of the month *1 year after the entry into force of this Regulation*].

Article 7

Entry into force

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

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

Done at Brussels, [date]

For the Commission

The President

[For the Commission

On behalf of the President

[Position]