**Annex – Question 20. Table on eligible assets UCITS EAD.**

For the purposes of Question 20, please complete the table below with the requested information, taking into account the instructions provided in the footnotes. After having completed the form, please save the document (according to the following convention: “ESMA\_Q20\_nameofrespondent”) and upload it online at <https://www.esma.europa.eu/press-news/consultations/call-evidence-review-ucits-eligible-assets-directive>under the heading *‘Your input - Consultations’*, as an Annex to the Reply Form. In case you upload a pdf file, please choose an editable form.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Asset class[[1]](#footnote-2)** | **Merits of allowing direct UCITS exposures** | **Merits of allowing *indirect* UCITS exposures[[2]](#footnote-3)** | **Extent/amount of existing UCITS exposures[[3]](#footnote-4)** | **Additional comments[[4]](#footnote-5)** |
| 1. Loans[[5]](#footnote-6) |  |  |  | The granting of loans or the acquisition of loans should not be allowed for UCITS - These investments are possible via AIFs according to local regulations or via ELTIFs which benefits from a marketing passport to retail investors with specific liquidity conditions.  Collateralised loan obligations (CLOs), ABS, MBS, etc. are eligible for UCITS if they meet the eligibility criteria and are transferable securities negociated on a trading platform (otherwise, the 10% ‘other eligible assets’ ratio is applicable) |
| 2. Catastrophe bonds (‘Cat bonds’) |  |  |  | Authorised in France in accordance with AMF 2012-09 doctrine, subject to the completion of additional due diligence by the asset manager and disclosure in the UCITS’ prospectus. Unlisted bonds are eligible for the "other eligible assets" ratio (max 10%) if they meet the eligibility conditions. |
| 3. Contingent Convertible bonds (‘CoCo bonds’) |  |  |  | Authorised in France in accordance with AMF 2012-09 doctrine, subject to the completion of additional due diligence by the asset manager and disclosure in the UCITS’ prospectus. Unlisted bonds are eligible for the "other eligible assets" ratio (max 10%) if they meet the eligibility conditions. |
| 4. Unrated bonds |  |  |  | Unrated bonds are already eligible if they are explicitly provided for in the UCITS’ prospectus. The current texts do not require that the bond be rated by at least one rating agency (Moody's, SP and/or Fitch) and independently of the asset manager's own rating. This should be systematically the case.  Unlisted bonds are eligible under the ratio of ‘other eligible assets’ (max 10%) subject to compliance with the eligibility conditions. |
| 5. Distressed securities |  |  |  | This type of investment should not be allowed as an investment by the management company but only held passively (e.g., after deterioration).  It is an eligible financial instrument if eligibility conditions including liquidity are met.  In the event of delisting, distressed securities fall into the ‘other eligible assets’ ratio limited to 10% if they are still negotiable; they become prohibited in the absence of liquidity. |
| 6. Unlisted equities[[6]](#footnote-7) |  |  |  | Unlisted equities are eligible under the ‘other eligible assets’ ratio (max 10%) subject to compliance with the eligibility conditions, including liquidity. |
| 7. Crypto assets[[7]](#footnote-8) |  |  |  | Crypto assets that are not transferable securities are not eligible for a UCITS.  Indirect investments in crypto assets that are not transferable securities should also not be eligible (e.g., ETC Bitcoin or Bitcoin ETFs, etc.) otherwise it would be a circumvention. |
| 8. Commodities and precious metals[[8]](#footnote-9) |  |  |  | Precious metals and commodities are not allowed directly to the assets of a UCITS.  In France, they are also not eligible indirectly through a UCI held that does not comply with the risk division rules of a UCITS.  They could be eligible through index derivatives that comply with the rules on diversification and eligibility of indices.  We note that in some jurisdictions ETCs or ETFs (e.g., I Shares or certificates issued in the form of bonds or notes) with a single underlying are permitted.  A clarification on a prohibition or authorization concerning direct and indirect detention is expected. |
| 9. Exchange-traded commodities (‘ETCs’) |  |  |  | The ETC is directly linked to the physical underlying (e.g. gold) and therefore does not comply with the diversification rules or concentration rules of the UCITS directive. This is a possible circumvention of the ban on investment in precious metal certificates or in commodities that have a strong correlation. According to our understanding, the possession of ETC seems to be tolerated/accepted in other jurisdictions (at least in Luxembourg).  A sufficiently diversified commodity ETC could be eligible for a UCITS according to specific diversification criteria.  ETCs with single commodity underlying or commodities underlying with a strong correlation should be banned. |
| 10. Real estate |  |  |  | Ineligible for a UCITS. The ELTIF-vehicle allows this type of asset and should be the suitable vehicle since it also benefits from a marketing passport for retail investors. |
| 11. Real Estate Investment Trusts (‘REITs’) |  |  |  | Allowed if listed and assimilated to listed real estate companies.  Not allowed if they are unlisted funds, as they do not comply with the same rules for diversifying a UCITS (in France, for example, real estate collective investment undertakings - OPCIs - are not eligible for a UCITS) |
| 12. Special Purpose Acquisition Companies (‘SPACs’) |  |  |  | Assimilated to listed shares and therefore eligible for a UCITS.  Some jurisdictions (e.g., Luxembourg) have introduced an investment limit of up to 10% of UCITS-assets, so harmonisation would be desirable. |
| 13. EU AIFs[[9]](#footnote-10) |  |  |  | Eligibility for UCITS if compliance with the criteria of Article 50 - 1e) |
| 14. Non-EU AIFs |  |  |  | Eligibility for UCITS if compliance with the criteria of Article 50 - 1e). |
| 15. Emission allowances |  |  |  | Carbon credits are not eligible for UCITS (not subject of custody but record keeping regime)  In addition, it is an immature market, with potential lack of liquidity |
| 16. Delta-one instruments |  |  |  | No definition of "Delta One" instrument in regulation  Eligible assets, subject to compliance with the eligibility conditions of the transferable securities. See answer to Q13 of the call for evidence. |
| 17. Exchange-traded notes (‘ETNs’) |  |  |  | An ETN that meets the transferable securities eligibility requirements is eligible for a UCITS.  The regulation does not require that its performance is based on diversification criteria. Via this ETN, a UCITS could therefore be exposed to the performance of assets that would not be directly eligible (e.g., ETN, Bitcoin, ETN gold, etc.), thus leading to a circumvention. |
| 18. Asset-backed securities (‘ABS’) including mortgage-backed securities (‘MBS’) |  |  |  | Eligible if listed and liquid securities. |
| 19. Other relevant asset classes (please specify) |  |  |  | No additional comments. |

1. ESMA acknowledges that most of the asset classes listed below have not been clearly defined in EU legislation and this might be a source of divergent interpretations and misunderstandings. Where possible, ESMA invites stakeholders to specify their understanding or definition of the relevant asset classes under the “additional comments” box. [↑](#footnote-ref-2)
2. Where relevant, please distinguish between indirect exposures via instruments such as delta-one instruments, exchange-traded products, derivatives, or AIFs (EU or non-EU). [↑](#footnote-ref-3)
3. Please share any available data or estimates that help to assess the amount or extent to which there are existing UCITS exposures (distinguishing between direct and indirect, where possible) to these asset classes. Where no reliable data is available, ESMA would appreciate receiving estimates in terms of numbers and/or percentages of UCITS exposed to these asset classes and what is the average proportion in the relevant portfolios. Any additional data and insights on strategies, techniques and instruments used to gain exposure to these asset classes would be also highly appreciated. [↑](#footnote-ref-4)
4. Please include under this column any other evidence or views that you would like to share. [↑](#footnote-ref-5)
5. Where relevant, please distinguish between leveraged/structured loans, collateralised loan obligations (CLOs) and other types of loans or loan participations (please specify). [↑](#footnote-ref-6)
6. Where relevant, please distinguish between equity instruments issued by (1) private companies and (2) shares in public companies that that are not listed. [↑](#footnote-ref-7)
7. Where relevant, please specify what type of crypto assets and whether the implementation of MICA will change anything in terms of your assessment. With respect to indirect exposures, ESMA is particularly interested in stakeholder input on exchange-traded products including ETFs with crypto assets as an underlying. [↑](#footnote-ref-8)
8. With respect to indirect exposures, ESMA is particularly interested in stakeholder input on ETFs with commodities/precious metals as underlying. Please note that under the current UCITS rules, precious metals and certificates representing them are not eligible (Article 50(2)(b) of the UCITS Directive). [↑](#footnote-ref-9)
9. Where relevant, please distinguish between different types of AIFs (e.g. open-ended, closed-ended) and investment strategies (e.g. real estate, private equity, hedge funds). [↑](#footnote-ref-10)