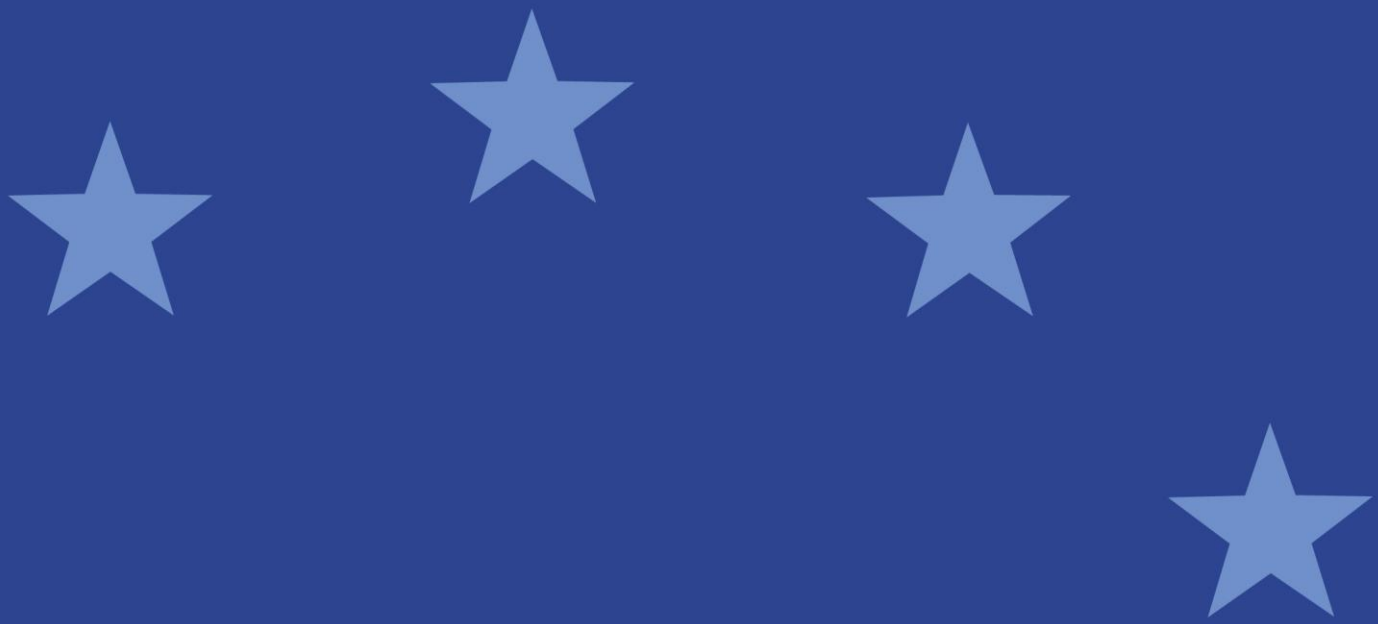
esma European Securities and Markets Authority

Consultation Paper

Draft regulatory technical standards under the ELTIF Regulation



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Responding to this paper

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

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

ESMA will consider all comments received by **14 October 2015.**

Responses to this consultation paper can be sent using the response form, via the ESMA website, under the heading 'Your input/Consultations'.

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice.

Who should read this paper

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

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1 Executive Summary

Reasons for publication

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

Contents

Section 2 explains the background to our proposals. Sections 3 to 9 give detailed explanations on the content of the proposals and seek stakeholders' input through specific questions.

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

Annex II contains the legislative mandate to develop draft RTS.

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

Annex IV contains the full text of the draft RTS.

Next Steps

Responses to this consultation paper will help ESMA in finalising the draft RTS to be submitted to the European Commission for endorsement.

2 Background

1. On 26 June 2013, the European Commission adopted a legislative proposal for a new investment fund framework designed for investors who want to put money into companies and projects for the long term ("ELTIF Proposal").[1]

2. On 10 March 2015, the European Parliament adopted a legislative resolution on the ELTIF Proposal.[2] This position was adopted at first reading following the ordinary legislative procedure. Under the same procedure, the Council adopted the ELTIF Regulation on 20 April 2015.[3] The ELTIF Regulation was published in the *Official Journal* on 19 May 2015 and entered into force on 9 June.

3. Articles 9(3), 18(7), 21(3), 25(3) and 26(2) of the ELTIF Regulation provide that ESMA shall develop draft RTS on various subjects that are critical for the functioning of the Regulation. The RTS should determine (i) the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, (ii) the circumstances in which the life of an ELTIF is considered sufficient in length, (iii) the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets, (iv) the costs disclosure and (v) the facilities available to retail investors.

4. ELTIFs are designed to increase the amount of non-bank finance available for companies investing in the real economy of the European Union. They are also intended to allow investors to put money into companies and infrastructure projects for the long term. As such, ELTIFs are an important element of the efforts being put in place at European level to boost long-term investments.[4]

5. Mindful of the importance of the ELTIF Regulation in this context, ESMA is consulting stakeholders on the proposals set out below shortly after the publication of the ELTIF Regulation in the *Official Journal* and its entry into force. Given that the ELTIF Regulation mandates ESMA to develop the above mentioned draft RTS within three months following its entry into force, ESMA is obliged to shorten its standard consultation period for these draft RTS.

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[1] COM(2013) 462 final.

[2] P8_TA(2015)0047, available at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0047.

[3] PE-CONS 97/14, available at http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%2097%202014%20INIT.

[4] See, inter alia, The European Commission Green Paper ‚Building a Capital Markets Union (COM(2015)63 final).

3 Hedging derivatives

3.1 Level 1 provisions

6. Articles 9(2) and 9(3) of the ELTIFs Regulation reads as follows:

2. An ELTIF shall not undertake any of the following activities:

(a) short-selling of assets;

(b) taking direct or indirect exposure to commodities, including via derivatives, certificates representing them, indices based on them or any other means or instrument that would give an exposure to them;

(c) entering into securities lending, securities borrowing, and repurchase transactions or any other agreement which has an equivalent economic effect and poses similar risks, if thereby more than 10% of the assets of the ELTIF are affected;

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

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

7. Recital (14) of the ELTIFs Regulation further specifies:

In order to ensure that ELTIFs target long-term investments and contribute to the financing of a sustainable growth of the Union's economy, rules on the portfolio of ELTIFs should require a clear identification of the categories of assets that should be eligible for investment by ELTIFs and of the conditions under which they should be eligible. An ELTIF should invest at least 70 % of its capital in eligible investment assets. To ensure the integrity of ELTIFs, it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by giving rise to risks that are different from those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long-term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the risks inherent to its own investments. Given the liquid nature of commodities and the financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded from eligible investment assets. This rationale does not apply to investments in infrastructure or companies related to commodities or whose performance is linked indirectly to the performance of commodities, such as farms in the case of agricultural commodities or power plants in the case of energy commodities

3.2 Proposed regulatory technical standards

8. In order to develop the regulatory technical standard mentioned in Article 9(3) of the ELTIFs Regulation, it seems first appropriate to investigate whether there are any existing definitions of the term “hedging” in international and EU legislation, as well as the circumstances in which the criteria set out in these definitions are regarded as being met under these pieces of legislation.

9. Secondly, it also seems appropriate to assess to what extent the specific features of ELTIFs as established under the ELTIFs Regulation might imply that a specific analysis of the definition, and more particularly the risks that ought to be covered by hedging arrangements, should be considered.

10. In relation to the definitions of the term “hedging”, the following existing pieces of international and EU legislation and associated regulatory framework are relevant:

    a. International Financial Reporting Standard (IFRS) 9 Financial instruments (July 2014, as well as IFRS adopted in accordance with Article 3 of Regulation (EC) No 1606/2002);

    b. 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; and

    c. CESR’s guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (10-788).

    Q1 Do you agree that the abovementioned pieces of legislation and associated regulatory frameworks 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?

11. Box 5.3 of the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS read as follows:

    Hedging arrangements are defined as:

    Combinations of trades on financial derivative instruments and/or security positions which do not necessarily refer to the same underlying asset and where the trades on financial derivative instruments and/or security positions are concluded with the sole aim of offsetting risks linked to positions taken through the other financial derivative instruments and/or security positions.

12. Box 8 of the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS read as follows:

Hedging

1. Hedging arrangements may only be taken into account when calculating global exposure if they offset the risks linked to some assets and, in particular, if they comply with all the criteria below:

(a) investment strategies that aim to generate a return should not be considered as hedging arrangements;

(b) there should be a verifiable reduction of risk at the UCITS level.

(c) the risks linked to financial derivative instruments, i.e., general and specific if any, should be offset;

(d) they should relate to the same asset class; and

(e) they should be efficient in stressed market conditions.

2. Notwithstanding the above criteria, financial derivative instruments used for currency hedging purposes (i.e. that do not add any incremental exposure, leverage and/or other market risks) may be netted when calculating the UCITS global exposure.

3. For the avoidance of doubt, no market neutral or long/short investment strategies will comply with all the criteria laid down above.

13. The scope of hedging arrangements as defined in the CESR Guidelines is narrower than that of strategies often referred to as hedging strategies, and the accompanying explanatory text illustrates situations where the hedging strategy may comply with the above criteria.

14. Article 10 of Regulation 149/2013 reads as follows:

1. An OTC derivative contract shall be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, by itself or in combination with other derivative contracts, directly or through closely correlated instruments, it meets one of the following criteria:

(a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(c) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

15. These criteria were established to address the request included in Article 10(4)(a) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), which reads as follows:

    In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards, after consulting the ESRB and other relevant authorities, specifying:

    (a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3

16. As regards International Financial Reporting Standard (IFRS) 9 Financial instruments, the definition of hedging instruments and hedged items can be found in paragraphs 6.1.1 to 6.3.7 of the Standard published in July 2014.

17. In relation to the specific features of ELTIFs that would imply that a specific analysis of the definition, and more particularly the risks that ought to be covered by hedging arrangements, should be considered, ESMA notes that Article 8(2)(d) of the initial proposal of the Commission for a Regulation on ELTIFs reads as follows:

    An ELTIF shall not undertake any of the following activities: (…)

    (d) using financial derivative instruments, except where the underlying instrument consists of interest rates or currencies and it solely serves the purpose of hedging the duration and exchange risks inherent to other investments of the ELTIF.

18. ESMA also notes that the Impact Assessment conducted by the Commission explicitly mentioned (p. 99) that:

    Question 7 - Should the use of leverage or financial derivative instruments be banned?

    The majority of the respondents (68%) to this consultation question were of the opinion that derivative instruments were an important risk mitigation technique and that the mitigation of such risks via derivatives may be even more important for funds structured as having a long term time horizon as opposed to other types of funds. Currency, inflation and interest rate risks were mentioned as requiring hedging in the best interest of investors. Some replies pointed out that the use of derivatives is

already permitted by the current UCITS rules and a new regime for long-term investments should not attempt to be stricter than the UCITS framework. 22% of the respondents suggested that derivative instruments should be allowed as part of efficient portfolio management and could possibly follow the principles applicable to the risk spreading of UCITS.

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?

19. ESMA is of the view that the general definitions of hedging mentioned in the IFRS Standard 9 and in the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS might be considered as a basis for defining the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments of the ELTIFs.

20. The extent to which these definitions should be complemented by some specific considerations in relation to the types of risk that ought to be covered by an ELTIF manager notably depends on the range of eligible assets of an ELTIF as established under the ELTIFs Regulation. This range of assets is broad and includes in particular physical assets. In that context, recitals (15) to (19) of the ELTIFs Regulation, as well as Article 2(6), read as follows:

(15) The definition of what constitutes a long-term investment is broad. Eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. Nevertheless, as listed SMEs may face problems of liquidity and access to the secondary market, they should also be considered to be qualifying portfolio undertakings. The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns.

(16) An ELTIF should be allowed to invest in assets other than eligible investment assets as may be necessary to manage efficiently its cash flow, but only so long as this is consistent with the ELTIF's long-term investment strategy.

(17) Eligible investment assets should be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings, and loans provided to them. They should also include participations in other funds that are focused on assets, such as investments in non-listed undertakings that issue equity or debt instruments for which there is not always an easily identifiable buyer. Direct holdings of real assets, unless they are securitised, should also form a category of eligible assets, provided that they yield a predictable cash flow, whether regular or irregular, in the sense that they can be modelled and

valued based on a discounted cash flow valuation method. Those assets could indicatively include social infrastructure that yields a predictable return, such as energy, transport and communication infrastructure, as well as education, health, welfare support or industrial facilities. Conversely, assets such as works of art, manuscripts, wine stocks or jewels should not be eligible as they do not normally yield a predictable cash flow.

(18) Eligible investment assets should include real assets with a value of more than EUR 10 000 000 that generate economic and social benefit. Such assets include infrastructure, intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property. Investments in commercial property or housing should be permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth or the Union's energy, regional and cohesion policies. Investments in such immovable property should be clearly documented so as to demonstrate the long-term commitment in the property. This Regulation is not seeking to promote speculative investments.

(19) The scale of infrastructure projects means that these require large amounts of capital to remain invested for long periods of time. Such infrastructure projects include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks, and waste management infrastructure such as recycling or collection systems.

Article 2(6)

'real asset' means an asset that has value due to its substance and properties and may provide returns, including infrastructure and other assets that give rise to economic or social benefit, such as education, counselling, research and development, and including commercial property or housing only where they are integral to, or an ancillary element of, a long-term investment project that contributes to the Union objective of smart, sustainable and inclusive growth.

21. In that respect, ESMA is of the view that the best option for the draft regulatory technical standards specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments of the ELTIF is to take into account the broad range of assets that might fall in the scope of the eligible assets of an ELTIF, including physical assets as referred to in Recital 18 and Article 2(6) of the ELTIF Regulation.

22. As such, the scope of the risks that might have to be covered at the level of the ELTIF by the manager of the ELTIF is indeed difficult to assess and limit ex ante, and should therefore not be narrower than it is under the approach of IFRS.

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?

4 Sufficient length of the life of the ELTIF

4.1 Level 1 provisions

23. Article 18 of the ELTIF Regulation states that:

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

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

Rules or instruments of incorporation of the ELTIF and disclosures to investors shall lay down the procedures for the redemption of units or shares and the disposal of assets, and state clearly that redemptions to investors shall commence on the day following the date of the end of life of the ELTIF.

2.By way of derogation from paragraph 1, rules or instruments of incorporation of the ELTIF may provide for the possibility of redemptions before the end of the life of the ELTIF, provided that all of the following conditions are fulfilled:

(a) redemptions are not granted before the date specified in point (a) of Article 17(1);

(b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authorities that an appropriate liquidity management system and effective procedures for monitoring the liquidity risk of the ELTIF are in place, which are compatible with the long-term investment strategy of the ELTIF and the proposed redemption policy;

(c) the manager of the ELTIF sets out a defined redemption policy, which clearly indicates the periods of time during which investors may request redemptions;

(d) the redemption policy of the ELTIF ensures that the overall amount of redemptions within any given period is limited to a percentage of those assets of the ELTIF which are referred to in point (b) of Article 9(1). This percentage shall be aligned to the liquidity management and investment strategy disclosed by the manager of the ELTIF;

(e) the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the total amount of requests for redemptions within any given period of time exceed the percentage referred to in point (d) of this paragraph.

3.The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF.

4.Investors may request the winding down of an ELTIF if their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which they were made.

5.Investors shall always have the option to be repaid in cash.

6.Repayment in kind out of an ELTIF's assets shall be possible only where all of the following conditions are met:

(a) the rules or instruments of incorporation of the ELTIF provide for this possibility, provided that all investors are treated fairly;

(b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;

(c) no specific rules restrict the transfer of those assets.

7.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.

4.2 Proposed regulatory technical standards

24. Assets into which an ELTIF invests may have a different maturity profile. Whenever an ELTIF invests into assets that all have the same maturity profile, the life-cycle of the ELTIF may be easily set with reference to the life-cycle of these assets. However, 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 ensures that the assets with the longer maturity are appropriately taken into account. This is essential to avoid a situation where the life of an ELTIF is too short. Indeed, there may be situations where an ELTIF portfolio ends up being very concentrated with only the assets with the longer maturity left.

25. Therefore, the life of an ELTIF should be set in a way that takes into account each and all of the individual assets of the ELTIF portfolio. For this reason, ESMA considers it appropriate to determine the life of an ELTIF with reference to the individual asset within the ELTIF portfolio which has the longest life-cycle.

26. In order to identify the point in time which should be taken as a reference to make such an assessment, the following considerations are relevant.

27. Fund rules or instruments of incorporation have to be included in the application for authorisation (Article 5(1) of the ELTIF Regulation). Article 18(1) of the ELTIF Regulation provides that the ELTIF rules or instruments of incorporation shall clearly indicate a specific date as the end of the life of the ELTIF. These provisions mean that, by the time an application for authorisation as an ELTIF is made, the life of the ELTIF has to be determined.

28. While at the time of authorisation an ELTIF may not have defined the full range of assets into which it envisages investing, and the investment positions into which the ELTIF is invested in the course of its life may change, given the aforementioned requirements, ESMA considers that the assets which the ELTIF needs to look at when determining its life are the ones in which it envisages to invest at the time of the submission of the application for authorisation.

29. Notwithstanding the above and in order to ensure that all the ELTIF assets are in line with the length of the life of the ELTIF, for any investments made at a later stage (i.e. after the length of the life of the ELTIF is set), the manager of the ELTIF should ensure that such investments do not have a residual life-cycle that exceeds the residual time period before the end 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.

5 Criteria for the assessment of the market for potential buyers

5.1 Level 1 provisions

30. According to Article 21 of the ELTIF Regulation,

1.An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to the competent authority of the ELTIF at the latest one year before the date of the end of the life of the ELTIF.

2.The schedule referred to in paragraph 1 shall include:

(a) an assessment of the market for potential buyers;

(b) an assessment and comparison of potential sales prices;

(c) a valuation of the assets to be divested;

(d) a time-frame for the disposal schedule.

3.ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and 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.

5.2 Proposed regulatory technical standards

31. Recital 37 of the ELTIF Regulation provides that "*In order for investors to redeem effectively their units or shares at the end of the ELTIF's life, the manager of the ELTIF should start to sell the portfolio of assets of the ELTIF in good time to ensure that its value is properly realised. In determining an orderly disinvestment schedule, the manager of the ELTIF should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested* […]".

32. In this context, the assessment of the market for potential buyers is an important element of the itemised schedule for the orderly disposal of the ELTIF assets foreseen under Article 21(1) of the ELTIF Regulation.

33. ESMA considers that in making such an assessment, there are a number of market risks that should be taken into account. Therefore, the criteria to be used for the assessment of the market for potential buyers to be included in the schedule were developed by envisaging an analysis of those risks. The relevant risks are:

- risk of illiquidity of the assets upon sale (i.e. lack of buyers for some or all the assets or dependency of those buyers on external financing which may take time to get credit approval)

- risks associated with legislative changes (e.g. changes in fiscal policy) or political changes (e.g. risk of nationalisation); and

- risk of deterioration of the economic situation.

34. Finally, ESMA considers that the assessment of the market for potential buyers should only relate to the "eligible investment assets" as defined in Article 10 of the ELTIF Regulation, as the other assets in which an ELTIF may invest (i.e. assets referred to in Article 50(1) of the UCITS Directive) should – by their nature – not be subject to the same liquidity issues as the "eligible investment assets".

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.

6 Criteria for the valuation of the assets to be divested

6.1 Level 1 provisions

35. Article 21 of the ELTIF Regulation states the following:

1.An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to the competent authority of the ELTIF at the latest one year before the date of the end of the life of the ELTIF.

2.The schedule referred to in paragraph 1 shall include:

[…]

(c) a valuation of the assets to be divested; […]

6.2 Proposed regulatory technical standards

36. According to Article 7(2) of the ELTIF Regulation, "*An ELTIF and the manager of the ELTIF shall comply at all times with the requirements of Directive 2011/61/EU*". This means that ELTIFs are subject to the AIFMD rules, including those on valuation.

37. The AIFMD rules on valuation already provide for an extensive set of requirements relating, in particular, to the frequency of calculations of the net asset value of AIFs and valuations of assets held by AIFs. These rules are as follows:

    - Article 19(3), second to fourth sub-paragraph, of the AIFMD provide that "The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year. If the AIF is of the open-ended type, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency. If the AIF is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF".

    - Article 72(1) of Regulation (EU) No 231/2013 (AIFMD Level 2) states that "An AIFM shall ensure that for each AIF it manages the net asset value per unit or share is calculated on the occasion of each issue or subscription or redemption or cancellation of units or shares, but at least once a year".

    - Article 74 of the AIFMD Level 2 provides that "The valuation of financial instruments held by open-ended AIFs shall take place every time the net asset value per unit or share is calculated pursuant to Article 72(1). The valuation of other assets held by open-ended AIFs shall take place at least once a year, and every time there is evidence that the last determined value is no longer fair or proper".

38. Given that all the above requirements apply to ELTIF, ESMA considers it unnecessary to develop an extensive list of additional rules applying to ELTIFs in relation to the valuation of the assets to be divested. However, ESMA considers it appropriate to set out an explicit provision ensuring that, in the context of the disposal of the assets of an ELTIF, an ad hoc valuation is carried out before the beginning of the disposal of the assets. For this reason, ESMA proposes to require ELTIFs to carry out a valuation no more than 6 months before the schedule for the orderly disposal is disclosed to the competent authority of the ELTIF. However, in order not to impose too burdensome requirements on ELTIFs, ESMA considers it appropriate to take into account any valuation that may have been carried out within the aforementioned time period according to Article 19 of the AIFMD and not to require an additional ad hoc valuation under the ELTIF Regulation.

39. Notwithstanding the requirement to carry out a valuation no more than 6 months before the schedule for the orderly disposal is disclosed to the competent authority of the ELTIF, ESMA considers that – depending on the nature of the assets into which the ELTIF

invests – the preparation of the schedule for the orderly disposal of the ELTIF assets may have to start well ahead of this 6-month period and should start as soon as it is appropriate ahead of this deadline. This may require carrying out one or several valuations of the assets into which the ELTIF invests.

40. Moreover, according to the AIFMD provisions "The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF shall be laid down in the law of the country where the AIF is established and/or in the AIF rules or instruments of incorporation" (Article 19(2) AIFMD). Therefore, to the extent that the AIFMD does not set out prescriptive requirements on the rules applicable to the valuation of assets of AIFs, in the context of the ELTIF Regulation it seems appropriate to set out a minimum standard on the elements to be taken into account for the valuation of the assets to be divested. In order not to create an unnecessary burden for ELTIFs, ESMA considers appropriate to set out these requirements in relation to the "eligible investment assets" (as defined in Article 10 of the ELTIF Regulation) only.

41. In this context, the International Financial Reporting Standards (IFRS) provide useful elements which help in framing the relevant requirements to ensure consistent valuations across Europe. Indeed, IFRS 13 (*Fair Value Measurement*), as endorsed by Regulation (EU) No 1255/2012[5], provides for a definition of 'fair value' which reads as follows:

> *This IFRS defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.*

42. ESMA believes appropriate to use such a definition as a reference for imposing a requirement for ELTIFs to perform valuations of the assets to be divested which include the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date.

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.

7 Common definitions, calculation methodologies and presentation formats of costs

7.1 Level 1 provisions

43. Article 25 of the ELTIFs Regulation reads as follows:

[5] *OJ L 360, 29.12.2012, p. 78.*

Cost disclosure

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

(a) costs of setting up the ELTIF;

(b) costs related to the acquisition of assets;

(c) management and performance related fees;

(d) distribution costs;

(e) other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs.

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

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

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

44. The 'capital' of the ELTIF as referred to in the aforementioned Article 25(2) is defined in Article 2(1) of the ELTIF Regulation:

'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors.

7.2 **Proposed regulatory technical standards**

45. ESMA first notes that the regulatory technical standards (RTS) referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014 6 (the PRIIPs Regulation) mentioned in Article 22(4) of the ELTIFs Regulation are to be delivered to the Commission by 31 March 2016, which makes it impossible for ESMA to take them into account while drafting the present RTS under Article 25(3) of the ELTIFs Regulation.

[6] *REGULATION (EU) No 1286/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)*

ESMA is currently liaising with the European Commission with a view to clarifying this apparent conflict in the empowerments.

46. Secondly, ESMA notes that the current work on the RTS referred to in points (a) and (c) of Article 8(5) of the PRIIPs Regulation in relation to cost disclosure, which is being carried out under the auspices of the Joint Committee[7], is inspired by the existing rules on cost disclosure under the UCITS Directive, and more especially the CESR guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document. In order to best meet the requirements of Article 25(3) of the ELTIFs Regulation in the current timeline of the PRIIPs and ELTIFs Regulations, and in order to ensure consistency between the different EU regulatory frameworks, ESMA is therefore of the view that it is appropriate to use the existing work on cost disclosure under the UCITS Directive as a basis[8]. ESMA recognises that it may be necessary to reassess the cost disclosure set out in these technical standards once the future technical standards on the PRIIPs Regulation have been finalised.

47. More generally, ESMA is of the view that existing relevant pieces of EU legislation and the associated regulatory framework include:

    a. CESR's guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document (10-674);

    b. CESR's template for the key investor information document (10-1321);

    c. Implementing Regulation 583/2010 as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (hereafter the KII Regulation) of the UCITS Directive

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?

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

    a. the common definitions;

    b. calculation methodologies [of the costs referred to in paragraph 1 of Article 25];

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[7] *A discussion paper was published on 17 November 2014: http://www.esma.europa.eu/system/files/jc_dp_2014_02_-_priips_discussion_paper.pdf*

[8] This approach is also subject to the outcome of the discussions with the Commission mentioned in paragraph 45.

c. presentation formats of the costs referred to in paragraph 1 of Article 25;

d. and the overall ratio referred to in paragraph 2 of Article 25.

49. In relation to the common definition referred to above, ESMA is of the view that elements of paragraphs 2 to 9 of the CESR guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document (KIID) (the CESR guidelines) should be taken into account. This should be complemented by information on the types of cost (costs of setting up the ELTIF, distribution costs, certain types of costs related to the acquisition of assets) included in Article 25(2) of the ELTIFs Regulation that were not referred to in the CESR guidelines.

50. ESMA also suggests adding the general principles governing the internal procedures of the ELTIF manager in relation to defining and calculating of the costs of the ELTIF. These should be based on the equivalent rules for UCITS set out in paragraph 1 of the CESR guidelines.

51. In relation to the calculation methodologies and the overall ratio, ESMA is of the view that elements of paragraphs 10 to 18 of the CESR guidelines should be taken into account. More specifically on the overall ratio, ESMA considers that some of the costs covered by Article 25(2) are entry costs borne by the investor, and that a specific methodology should therefore be set up to include such costs in the overall ratio, together with the other types of costs that are on-going charges, in a consistent way. In that respect, it might be necessary to make an assumption on the duration of the holding period of the investment, and the amortization methodology for these costs. A reasonable assumption would appear to be that the duration of the holding period of the investment equals the life of the ELTIF as referred to in Article 18(2) of the ELTIFs Regulation.

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

Q10 Do you agree with the abovementioned assumptions?

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

a. management and performance related fees (as referred to in Article 25(1)(c));

b. other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs (as referred to in Article 25(1)(e));

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

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?

54. In contrast, ESMA considers that the following types of cost are fixed costs (entry costs) where an assumption on the duration of the investment is necessary to calculate the corresponding costs to be included in the numerator of the overall ratio referred to in Article 25(2), provided that this overall ratio is a yearly ratio:

    a. costs of setting up the ELTIF (as referred to in Article 25(1)(a));

    b. distribution costs (as referred to in Article 25(1)(d));

Q14 Do you agree that the types of cost 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 Article 25(2), provided that this overall ratio is a yearly ratio?

55. ESMA considers that, when applicable, exit costs should be indicated.

56. Provided that the overall ratio mentioned in Article 25(2) is a yearly ratio the costs mentioned in paragraph 53 should be calculated by dividing the total value of these costs by the life of the ELTIF (in years).

57. Regarding the costs related to the acquisition of assets as referred to in Article 25(1)(b), ESMA is of the view that, due to the nature and overall strategy of an ELTIF as defined in the ELTIFs Regulation, the part of these costs that are fixed (i.e. the costs related to the acquisition of the main assets of the portfolio of the ELTIF) largely exceeds the part of these costs that are ongoing charges. As a result, ESMA considers that these costs should be calculated following the same methodology that will apply to the types of costs listed in paragraph 54.

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?

58. In relation to the presentation formats of the costs referred to in paragraph 1 of Article 22, ESMA is of the view that the costs section of CESR's template for the KIID should be used as a basis. However, ESMA considers that the detailed design of the presentation formats should not be standardized in the RTS because the purpose and issues at stake in relation to the prospectus of the ELTIF are different from those in relation to the PRIIPs KID.

8 Specifications on the facilities available to retail investors

8.1 Level 1 provisions

59. Article 26 of the ELTIFs Regulation provides that:

> 1. The manager of an ELTIF the units or shares of which are intended to be marketed to retail investors shall, in each Member State where it intends to market such units or shares, put in place facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide.
>
> 2. 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.

8.2 Proposed regulatory technical standards

60. Recital 43 states that "As ELTIFs target not only professional but also retail investors across the Union, it is necessary that certain additional requirements be added to the marketing requirements already laid down in Directive 2011/61/EU, in order to ensure an appropriate degree of retail investor protection. Accordingly, facilities should be made available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares, and making available the information which the ELTIF and the manager of the ELTIF are required to provide. […]".

61. The requirement to put in place facilities for retail investors is inspired by the similar provisions in Article 92 of the UCITS Directive according to which "*UCITS shall, 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*".

62. The only significant difference between the provisions of the UCITS Directive and the ELTIF Regulation as regards the facilities for retail investors is that the ELTIF Regulation

makes clear that these facilities shall also ensure that investors may make subscriptions to the units or share of the ELTIF.

63. Given the similarities between the requirements under the UCITS Directive and the ELTIF Regulation and the fact that both provisions are intended to protect retail investors, ESMA considers it appropriate to take the existing practices under the UCITS Directive into account when developing the specifications on the facilities available to investors.

64. Based on the requirements existing at national level under the UCITS Directive, ESMA proposes to set out the following main requirements:

    (a) the entity should act as a contact point for investors and facilitate the handling of any issues that retail investors have relating to the ELTIF;

    (b) the facilities should include the possibility to directly subscribe to the units or shares of the ELTIF and to make repurchase and redemption requests;

    (c) the facilities should ensure payments to retail investors, including in relation to any distribution of proceeds and capital;

    (d) the rules or instruments of incorporation of the ELTIF, its sales document and its latest annual reports should be made available to retail investors through the facilities.

65. In order to ensure an adequate level of flexibility, ESMA proposes to allow the manager of the ELTIF to appoint one or more entities to provide the relevant facilities or to provide the facilities itself in the relevant Member State of marketing.

66. In order to reduce the administrative burden to which ELTIFs are subject, ESMA considers that any type of entity should be entitled to provide the facilities in the relevant Member State of marketing and the facilities may be provided by one or more entities, including the manager of the ELTIF. However, the provision of services – such as the reception and transmission of orders – which are regulated under Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) should be subject to the national provisions transposing MiFID II in the relevant Member State in which the ELTIF is marketed.

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?

9 Entry into force of the RTS

67. ESMA envisages that the proposed RTS should enter into force on the on the twentieth day following their publication in the *Official Journal of the European Union* and should apply from the date of application of the ELTIF Regulation.

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?

10 Annexes

10.1 Annex I

Summary of questions

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?

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?

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

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.

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.

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?**

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?**

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?**

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.**

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.**

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.

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.

10.2 **Annex II**

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.

10.3 Annex III

Cost-benefit analysis

1. Introduction

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

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

3. This consultation paper sets out proposals for the 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, (iv) the definitions of, and calculation methodologies for costs borne by investors, presentation of cost disclosures, and (v) 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 draft 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 draft CBA is qualitative in nature. However, ad hoc questions have been introduced in the text below in order to elicit market participants' input on the quantitative impact of the proposals. Should relevant data be received through the consultation process, ESMA will take it into account when finalising its RTS and will include it in the CBA accompanying the final report.

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	**A**rticles 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, and in particular the IFRS related framework; 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.

2.2. 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 consult on 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.[9]
Preferred Option	ESMA decided to consult on 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.[10] 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

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

[9] 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).

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

	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 consult on option 2 and discarded 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.

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 consult on option 1 and discarded 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 2 could have led to a disproportionate approach. In particular, the requirement to limit the provisions of the facilities to certain entities only seems 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 draft 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.

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?

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.

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.

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.[11] Therefore, ESMA does not expect this option to trigger substantive costs for ELTIF managers.

[11] See the above mentioned above mentioned document 'Valuation of investment properties' published by the Danish Property Federation.

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.

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.

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.

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.

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.

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?

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.

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.

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:

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

3. 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.

4. 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) Portugal

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) <u>Ireland</u>

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) Hungary

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. 172 (2) g) of Government Emergency Ordinance no 32/2012 (available at http://www.csa-isc.ro/en/legislation/sectorial-legislation/capital-market/primary-legislation-cnvm), 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.

10.4 Annex IV

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[12], and in particular Articles 9(3), 18(7), 21(3), 25(3) and 26(2) thereof,

Whereas:

(1) In order to promote a common approach to the application of Regulation (EU) 2015/760, 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 (hereinafter '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 should be clarified.

(2) To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and easy access to them by persons

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

subject to those obligations, it is desirable to include all regulatory technical standards required by Regulation (EU) 2015/760 in a single Regulation.

(3) It is important that all these supplementing rules begin to apply at the same time as Regulation (EU) 2015/760 so that the new requirements imposed on ELTIFs can be effectively put into operation. The provisions in this Regulation are closely interrelated, since they deal with the obligations concerning the eligible assets, redemption policy, disposal of assets, transparency and marketing of ELTIFs, which are inextricably linked aspects inherent to the taking up and pursuit of the asset management business.

(4) Assets into which an ELTIF invests may have a different maturity profile. In situations where an ELTIF invests into assets that have different maturity profiles, the life of an ELTIF should be set in a manner that ensures that the assets with the longest maturity are appropriately taken into account. Therefore, the life of an ELTIF should be determined with reference to the individual asset within the ELTIF portfolio which has the longest life-cycle.

(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 dependent on obtaining loans from third parties, the risk of illiquidity of the assets upon sale, risks associated with legislative or political changes and risk of deterioration of the economic situation in the market which is relevant to the ELTIF assets.

(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, an additional valuation should not be required in case the ELTIF carried out a valuation according to Directive 2011/61/EU on Alternative Investment Fund Managers at a moment in time that is sufficiently close to the beginning of the disposal of the assets. Nevertheless, the preparation of the schedule for the orderly disposal of the ELTIF assets should start as soon as it is appropriate ahead of the deadline for its disclosure to the competent authority of the ELTIF.

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

(8) It is important to clarify that the costs to be disclosed are the different costs borne directly or indirectly by the investors. These costs may be expressed or calculated in a variety of ways (e.g. a flat fee, a proportion of assets, a charge per transaction etc.).

(9) The list of the costs set out in this Regulation should be exhaustive in the sense that all costs that are borne by the investor should be included.

(10) It is important to clarify that the 'other costs', including administrative, regulatory, depository, custodial, professional, service and audit costs, as referred to in this Regulation also comprise all payments to any person providing outsourced services, such as providers of valuation and fund accounting services, and shareholder service providers, such as the transfer agent and broker dealers that are record owners of the ELTIF' shares and provide sub-accounting services to the beneficial owners of those shares. All these costs should be assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.

(11) 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 should process subscription, repurchase and redemption orders relating to the units or shares of the ELTIF, make payments to units- or shareholders, provide them with an adequate level of information and assist them in any issues that they may face in relation to their investment in the relevant ELTIF. In order to limit the administrative burden, any type of entity should be entitled to provide the facilities in the relevant Member State of marketing. The facilities may be provided by one or more entities, including the manager of the ELTIF. This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(12) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and 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[13], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Hedging derivatives

A financial derivative instrument shall be considered as 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 when, by itself or in combination with other financial derivative instruments, directly or through closely correlated instruments, it meets both of the following criteria:

[13] *OJ L 331, 15.12.2010, p. 84.*

(a) it qualifies as a hedging instrument that is eligible for hedge accounting purposes pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards;

(b) it mitigates the risks arising from the potential impact on the value of the investments referred to in Article 9(2)(d) of Regulation (EU) 2015/760, resulting from fluctuation of hedged items, as referred to in IFRS adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 .

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:

   (a) it is set with reference to the individual asset within the ELTIF portfolio which has the longest life-cycle, and

   (b) it is taken into account when setting the investment objective of the ELTIF in such a way that any investment made after the length of the life of the ELTIF is determined does not have a residual life-cycle that exceeds the time period remaining before the end of the life of the ELTIF.

2. For the purpose of paragraph 1(a), the individual asset which has the longest life-cycle has to be determined at the time of the submission of the application for authorisation as an ELTIF to the competent authority of the ELTIF, based on the assets in which the ELTIF envisages investing at that time according to its investment strategy.

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 schedule for the orderly disposal of the ELTIF assets shall assess the following elements in relation to the eligible investment assets as defined in Article 10 of Regulation (EU) 2015/760:

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

(b) whether the potential buyers are dependent on external financing;

(c) if there are no potential buyers for all or any of the eligible investment assets, the length of time necessary to find one or several buyers for those assets;

(d) the different maturity profiles of the investments;

(e) whether there is any risk associated with legislative changes that could affect the market for potential buyers;

(f) whether there is any political risk that could affect the market for potential buyers; and

(g) the impact that the overall economic conditions in the market which is relevant to the ELTIF assets and their foreseeable evolution during the disposal period may have on the elements listed under (a) and (b), including in relation to a part of the ELTIF assets only.

Article 4

Criteria for the valuation of the assets to be divested

For the purpose of Article 21(2)(c) of Regulation (EU) 2015/760, the criteria to be used for the valuation of the assets to be divested are as follows:

(a) the valuation shall take place no more than 6 months before the schedule referred to in Article 21(1) of Regulation (EU) 2015/760 is disclosed to the competent authority of the ELTIF; and

(b) for eligible investment assets as defined in Article 10 of Regulation (EU) 2015/760, the valuation shall be based on the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date .

For the purposes of point (a), valuations made according to Article 21 of the AIFMD may be taken into account to determine whether a valuation has taken place no more than 6 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

Common definitions, calculation methodologies and presentation formats of costs

1. The costs of setting up the ELTIF comprises all administrative, regulatory, depositary, custodial, professional service and audit costs related to the setting up of the ELTIF irrespective of whether they are paid to the manager of the ELTIF or to any third party.

2. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed capital.

(c) The costs related to the acquisition of assets comprises all administrative, regulatory, depositary, custodial, professional service and audit costs related to the acquisition of the assets of the ELTIF.

3. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed.

(d) The management and performance related fees comprises all payments to the manager of the ELTIF, including any person to whom this function has been delegated, except the fees that are related to the acquisition of assets.

4. The management fees shall be expressed as a percentage of the total capital contributions and uncalled committed capital of the ELTIF over a one year period.

(e) The distribution costs comprise all administrative, regulatory, professional service and audit costs related to distribution.

5. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed capital.

6. other costs, including administrative, regulatory, depository, custodial, professional, service and audit costs comprises all payments to the following persons, including any person to whom they have delegated any function:

(a) the depositary;

(b) the custodian(s);

(c) any investment adviser.

7. These costs do not include the costs related to the setting up the ELTIF, the acquisition of assets and management and performance related fees.

8. These costs also comprise all payments to any person providing outsourced services to any of the above, and all payments to legal and professional advisers, audit fees, registration fees, regulatory fees.

9. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed over a one year period.

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

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

12. The total costs shall equal the sum of the managements fees and the other costs as referred to in (e) above, plus the sum of the costs of setting up the ELTIF, the costs related to the acquisition of assets and the distribution costs, divided by the life of the ELTIF.

13. The capital shall relate to the same period as the costs. Until the capital of the ELTIF is known, the capital shall be the minimum target capital under which the ELTIF will not start operations.

14. The ratio shall be based on the most recent cost calculations which the management company has determined. The costs are assessed on an 'all taxes included' basis.

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

Article 6

Specifications on the facilities available to retail investors

1. The facilities referred to in Article 26(1) of Regulation (EU) 2015/760 shall provide the following tasks:

   (a) when receiving retail investors' subscription, repurchase and redemption orders relating to the units or shares of the ELTIF, they shall process them according to the conditions set out in the ELTIF marketing documents;

   (b) they shall inform retail investors on how the orders mentioned under letter (a) can be made and how the repurchase and redemption proceeds are paid;

   (c) they shall make payments to unit- or shareholders of the ELTIF, including in relation to any distribution of proceeds and capital made according to Article 22 of Regulation (EU) 2015/760;

   (d) they shall facilitate the handling of any issues that retail investors have relating to their investment in the ELTIF in the Member State where the ELTIF is marketed; and

   (e) they shall 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;

      iii) the latest published annual report of the ELTIF.

2. In case the facilities referred to in Article 26(1) of Regulation (EU) 2015/760 are not provided by the manager of the ELTIF, a written agreement shall be concluded between the manager of the ELTIF and the entity providing the facilities to ensure that the latter is provided by the manager of the ELTIF with all the relevant information and documents to perform the tasks mentioned under paragraph 2.

Article 7

Entry into force

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

It shall apply from 9 December 2015.

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]

ANNEX

PRESENTATION OF COSTS

Presentation formats

The costs of setting up the ELTIF shall be presented as follows:

One-off costs	
The costs of setting up the ELTIF	%

A narrative explanation shall accompany this figure to detail the contents of these costs.

The costs related to the acquisition of the assets of the ELTIF shall be presented as follows:

The costs related to the acquisition of assets	%

A narrative explanation shall accompany this figure to detail the contents of these costs.

The distribution costs referred to in paragraph 4 (d) shall be presented as follows:

Distribution costs	%

A narrative explanation shall accompany this figure to detail the contents of these costs.

The management fees referred to in paragraph 4 (c) shall be presented as follows:

Charges taken from the ELTIF over a year	
Management fees	yearly %

A narrative explanation shall accompany this figure to detail the contents of these costs.

The other costs shall be presented as follows:

Other costs	yearly %

A narrative explanation shall accompany this figure to detail the contents of these costs.

The performance fees shall be presented as follows:

Charges taken from the ELTIF under specific conditions	
Performance fees	yearly %

A narrative explanation shall accompany this figure to detail the contents of these costs.

The different costs shall be presented in a table structured in the following way:

One-off costs	
The costs of setting up the ELTIF	%
The costs related to the acquisition of assets	%
Distribution costs	%

Charges taken from the ELTIF over a year	
Management fees	yearly %
Other costs	yearly %

Charges taken from	

the ELTIF under specific conditions	
Performance fees	yearly %

Aggregate all the costs and charges mentioned above	
Overall ratio	yearly%