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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Long-term Investment Funds

(Text with EEA relevance)

{SWD(2013) 230}

{SWD(2013) 231}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Long-term investment is the provision of long-lived capital in order to finance tangible assets (such as energy, transport and communication infrastructures, industrial and service facilities, housing and climate change and eco-innovation technologies) as well as intangible assets (such as education and research and development) that boost innovation and competitiveness. Many of these investments have wider public benefits, since they generate greater returns for society as a whole by supporting essential services and improving living standards. This proposal intends to help increase the pool of capital available for long term investment in tomorrow's economy of the European Union with a view to finance transition to the smart, sustainable and inclusive growth. This will be done by creating a new form of fund vehicle, EU Long Term Investment Funds or ELTIFs. ELTIFs, by virtue of the asset classes that they are allowed to invest in, are expected to be able to provide investors with long term, stable returns. Eligible assets would be qualified as forming part of 'alternative investments' – asset classes that fall outside the traditional definition of listed shares and bonds. While alternative investments comprise real estate, venture capital, private equity, hedge funds, non-listed companies, distressed securities and commodities, ELTIFs would only focus on alternative investments that fall within a defined category of long-term asset classes whose successful development requires investors' long-term commitment. Therefore, real estate, unlisted companies or infrastructure projects would be eligible while commodities would not be.

There is a clear need therefore to ensure that barriers to investment with a long term perspective are tackled at the European Union level. This is particularly the case for assets such as infrastructure projects that depend on long term commitments. These assets depend, in part, on what is often called 'patient capital'. This kind of investment may not be able to be redeemed for a number of years but are invested in such a way as to be able to provide stable and predictable returns. Infrastructure projects, investments in human capital, or operating concessions would fit this description. Capital invested in this long term, 'patient' manner benefits the real economy by providing predictable and sustained flows of finance to firms and creates employment.

Investors such as insurance companies and pension funds with long term liabilities have expressed an appetite for investing in longer-term investment assets. At the same time they have pointed to the absence of readily available pooling mechanisms, such as investment funds, to facilitate access to these types of investments. As a result such investment opportunities are restricted to a few very large investors, such as large pension funds or insurance undertakings, able to raise and commit sufficient capital by virtue of their own resources. This, in turn, acts as a barrier to smaller investors such as local pension plans, municipalities, the pension schemes run by the liberal professions or corporate pension plans who might otherwise benefit from diversifying their investments into such assets. The absence of these investor groups, in turn, deprives the real economy from accessing deeper pools of capital-backed financing. Last, but not least, also individual retail investors faced with a future liability (home purchases, education or the financing of major renovations) might benefit from the yield or regular returns offered by long-term investment funds.

The large-scale and long-term capital commitments required for operating efficient investment pools for long-term assets have hitherto been hampered by regulatory fragmentation among Member States. Where funds and incentives do exist on a national level they are not coherent with comparable initiatives in other Member States. This prevents the scale of pooling of capital and investment expertise that creates economies of scale for funds

and therefore benefits investors. On the other hand, the majority of Member States have no fund models or equivalent incentives that address long-term asset classes. In the absence of a cross-border fund vehicle, investors in these markets are excluded from investing in long-term asset classes.

The end result is that there is no readily available mechanism to channel funds that are to be committed for long periods of time to real economy projects in need of such financing. This acts as a brake on the development of long term investing. Expertise amongst investment professionals is not developed because of lack of demand. Economies of scale that lead to a reduction of the costs of operating a long-term investment fund fail to materialise.

In addition, large-scale infrastructure or industrial engineering projects may require having access to capital pools that are not always available when capital is raised in a single Member State only. Large-scale projects also may involve businesses based in a number of different Member States. Any funding mechanism has to deal with this problem of fragmentation and facilitate investors and projects in a variety of European Union countries.

There is, therefore, the need to facilitate a funding vehicle that is designed specifically to address these problems. To maximise the efficiency of any funding mechanism it needs to be able to have access to investors across the Union. The importance of tackling these issues was set out already in the Single Market Act II (SMA II).¹ One of its twelve key objectives is to boost long-term investment in the real economy. In order to achieve this goal, the SMA II proposed developing a new set of EU rules facilitating cross-border capital raising of the capital necessary to operate cost-efficient investment funds that target long term investments opportunities.

The wider context of this work has been set out in the European Commission's Green Paper, the Long-Term Financing of the European Economy,² outlining supply and demand-side issues across all financing structures. The Green Paper also confirmed the need for measures on investment funds, as outlined in this proposal, whilst concentrating on the context of the wider need to revive funding of the real economy by improving the mixture and overall resilience of different funding sources. In this the new ELTIF can contribute to increasing non-bank finance available to businesses, to compliment access to bank financing.

Currently, EU investment fund markets are dominated by funds operating under the UCITS (Undertakings in Collective Investments in Transferable Securities) Directive, first introduced in 1985. UCITS assets under management have now reached €6,697 billion.³ The UCITS Directive contains a set of product rules which are used by investment funds available to retail investors, but is focused on transferable securities for the purposes of ensuring adequate liquidity is available to support redemptions on demand. As a result, UCITS are not able to contribute to the funding of patient capital commitments to infrastructure and other projects. While the UCITS initiative does not necessarily mean the creation of ELTIF will attract similar levels of investor interest, given the value that highly liquid funds have for many retail investors, its success show that EU-wide initiatives can have a strong impact in developing a market and building investor confidence.

The creation of the European Venture Capital Funds (EuVECA) and the European Social Entrepreneurship Funds (EuSEF) will, along the ELTIFs, help to contribute to the financing of the European economy. But the EuVECA and EuSEF schemes target a very specific niche

¹ See http://ec.europa.eu/internal_market/smact/docs/single-market-act2_en.pdf

² See http://ec.europa.eu/internal_market/finances/financing-growth/long-term/index_en.htm

³ EFAMA Investment Fund Industry Factsheet, March 2013

of the EU economy: start ups financed by venture capital and businesses specialising in achieving social impact.

The proposal on ELTIFs follows a broader approach than EuVECA and EuSEF. It intends to target a broad range of long-term asset classes and it intends to create an investment fund that can also be sold to retail investors. This raises the need for three core features: (1) specific product rules covering eligible assets and their diversification; (2) a high degree of competence for those who are allowed to manage and market ELTIFs and (3) alignment between the ELTIFs investment horizon and the redemption expectations of its investors.

The need for product rules

The aim is that the new ELTIF framework is to create a 'second retail passport' that follows the tried-and-tested UCITS approach on product specifications and risk spreading. There is considerable investor interest in having an opportunity to invest in long-term asset classes that either appreciate over their life cycle (small or mid-sized companies) or that produce regular income throughout the holding period (infrastructure assets). Especially pension plans run by municipalities, boroughs, small and large companies or the liberal professions want such a vehicle. Due to the fact that such a long-term asset funds do not exist in many Member States, investors in those States are shut out from this investment opportunity. A cross-border passport will remedy that situation.

To accommodate these investor needs, the ELTIF will be able to invest in all kind of assets that are not traded on regulated markets. These assets are illiquid and, for that reason alone, require a fund to make a long term commitment when purchasing them. The same is true for those who invest in such a fund. Assets that are not traded on a secondary market and whose owners would require considerable time in finding a purchaser would comprise the following: (1) Investments in infrastructure projects, such as in the field of transport, energy or education; (2) Investments in unlisted companies, in practice mainly SMEs; (3) investments in real estate assets, such as buildings or direct purchase of an infrastructure asset

Therefore, the mere fact that an asset is not traded on a regulated market will qualify it as a long-term asset. These assets are illiquid simply on account of the fact that, without a public trading venue, you will not find readily available buyers for your asset. Also, these assets are often quite idiosyncratic and will only be attractive for buyers who can conduct their own due diligence and are specialist in the relevant field. For example, once an ELTIF invest in a project company, it anticipates that there will be no immediately identifiable buyer of this stake for a considerable period of time.

In light of their intrinsic lack of liquidity, the ELTIF proposal refrains from prescribing pre-determined holding periods. In light of the high level of due diligence that an investment in a long-term asset requires, it does not appear prudent policy to prescribe minimum holding periods. This is because each investment decision will be different and the ELTIF managers are best placed to decide how long they want to remain invested in the asset in order to generate the promised return. This is a big difference for UCITS managers who follow macroeconomic developments or the daily fluctuations on a stock exchange.

It also appears necessary to provide for managerial flexibility with respect to the precise time frame in which a portfolio of long-term assets has to be assembled. This is why the proposal allows for a five year period in which the long-term asset portfolio can be build up. In addition, the proposal allows the manager to invest up to 30% of the ELTIF's capital in liquid securities. This liquidity buffer has been conceived to allow the ELTIF to manage the cash flow that arises while the long-term portfolio is being constituted. It also allows the manager

to place surplus cash that is achieved 'between investments' – that is when a long-term asset is sold in order to be replaced by another.

To create investor trust and legal certainty, especially but not only for retail investors targeted by ELTIFs, the proposed scheme requires a set of robust yet flexible product rules. Product rules represent the most appropriate way of helping to meet the long term funding needs identified and to provide ELTIFs with a predictable product profile. Once authorised, ELTIFs will be available to be marketed to professional as well as retail investors in other Member States.

ELTIF provide opportunities for investors to diversify their investment portfolios. The assets the proposed ELTIF may invest in are alternative investments and therefore very different in nature to the more traditional listed shares and securities held by many investors. While the strict diversification rules contained in the UCITS framework might make it costly or even impossible to operate an ELTIF, the latter would still benefit from a reasonable level of asset diversification.

This diversification benefit applies equally to retail as well as it does to institutional or 'sophisticated' investors such as high net worth individuals. The strong product rules proposed and the investor protection they create are designed to make ELTIF suitable for retail investors.

The need for a high level of managerial competence

Due to their lack of liquidity and due to the fact that participations in long term asset classes targeted by an ELTIF are not listed on a regulated market, all long-term assets that an ELTIF is allowed to invest in fall within the category of 'alternative investments' (see the description of alternative investments above). It is therefore necessary that ELTIFs will be managed by undertakings that are duly authorised under the AIFMD to manage and market alternative investments.

Therefore, the proposed ELTIF framework will build on the managerial authorisation in the AIFM Directive⁴, which lays down the general rules for alternative investment fund managers who manage and market their funds to professional investors. Specific LTIF product rules will be added so that ELTIFs can be easily identified by both professional and retail investors who are interested in the yield and return profiles associated with investments in long-term assets.

The proposed ELTIF framework builds on the cross-border provisions in the AIFMD, adding to the "European" passport for marketing professional investors a "European" passport for marketing to retail investors across the EU with regard to ELTIFs. As ELTIFs can be sold to retail consumers, there is an increased consumer protection need, for example the stricter ELTIF rules prohibiting investment in assets that may create a conflict of interest, transparency rules requiring the publication of a key investor document and specific marketing conditions.

In light of the above, for an ELTIF to be authorised its manager must also be authorised under the AIFMD. The majority of assets an ELTIF invests in must be by definition be assets that need to be held for a long duration. Over-concentration in a single asset or undertaking creates risks for investors that can prove to be very difficult to manage. To mitigate this risk an ELTIF will have to comply with diversification rules. Moreover, limits are proposed on the use of derivatives in relation to ELTIF assets as well as a cap on borrowing.

The need to align investment and redemption horizons

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Directive 2011/61/EU

The assets an ELTIF invests in will by their very nature be illiquid. That is to say, they will not be available to be bought and sold very easily. There may be no reliable secondary market for long-term assets, a fact which could render their valuation and sale more difficult. The illiquid nature of the assets is not of itself a problem and the ELTIF proposal is designed to create a funding vehicle suited to this kind of assets. The requirements of the AIFMD also address these issues, for example, in relation to valuation and the requirement that managers have appropriate valuation policies and mechanisms in place.

The illiquid nature of the assets could make it difficult for funds to meet a redemption requests made by investors before an asset or project invested in reaches its expected maturity. A need to maintain liquid assets to meet redemption requests would also divert money away from the primary purpose of ELTIFs - to invest in long-term assets. Further, options to redeem early, i.e., before the end of the fund's investment lifecycle, would raise the need to dispose of assets to meet early redemption requests. There is a danger these assets may have to be sold at 'fire sale' prices well below what the fund manager may believe the asset should be worth in an un-forced sale. Such a sale could also reduce any income stream being paid to other investors who remain invested in the ELTIF. ELTIFs will therefore not offer early redemption to investors. This approach will remove the potential conflicts of interests between exiting and remaining investors.

The ELTIF combined with the AIFMD will provide a strong management and product framework designed to give investors the confidence that their investments are being prudently, competently and honestly managed. The fact that redemptions will not be allowed during the life of the investments selected will have to be clearly indicated as to avoid misplaced expectations about the liquidity of the fund. Widening ELTIF to retail investors will also ensure that the widest possible capital pool is made available.

In addition, the illiquidity premium associated with an investment in a long-term asset can only be reaped if the manager of an ELTIF is at liberty to engage in projects for a significant period of time without facing constant redemption pressure. As pointed out in the impact assessment, the illiquidity premium inherent in investing in long term assets requires holding periods of between 10 and 20 years. For example, the annualised real estate performance of 12.71% beat the S&P 500 (equity index) at 10.94% and the typical bond index at 7.70% when assessed over a period of 14 years. Likewise, the favourable performance of venture capital funds in the US - annualised returns of 16.5% vs. the S&P 500 at 11.2% - can only be achieved when choosing an investment horizon of 20 years.

The positive returns of an investment in long-term assets should also be assessed against the risks that they carry. As with traditional investments in stocks and bonds, the risk to lose the entire capital is naturally present. But what distinguishes the long-term assets from transferable securities dealt with on a regulated market is their illiquidity risk. Contrary to stocks and bonds which can normally be easily sold on a regulated market, long-term assets do not benefit from liquid secondary markets and it often requires months or years to be able to sell such an asset. This is why the draft proposal requires that the chosen lifecycle of an ELTIF has to be sufficiently long to accommodate the diligent choice and long-term engagement with a chosen project, company or real asset.

In these circumstances, the future fund passport has to be accompanied by a sufficient degree of managerial flexibility in choosing assets and determining the timeframe in which they are held prior to divestiture. This explains why the approach in the draft proposal does not prescribe fixed time periods for holding investment assets or for the duration of the ELTIF itself.

The new ELTIF should therefore be flexible in its investment policies and holding periods. The aim is to attract a critical mass of managers who will offer the vehicle across borders thus attracting a critical mass of assets and investors. Therefore, the lifecycle of the fund should match the particular profile of the assets in which it will invest. This has implications on the redemption opportunities that such a fund can realistically offer. Experience with open-ended long-term funds in national markets shows that a fund cannot offer redemptions while it remains invested in long-term assets targeted by the proposal. Matching the lifecycle of the fund with that of its investment assets is the best possible approach to ensure that the managers have scope to invest in assets that require long-term commitments and thereby finance the economy. Offering redemption possibilities at an earlier stage invariably dilutes the long-term outlook of the fund; this would reduce its attractiveness for most of the pension plan investors who want a long-term and steady income instead of early redemption facilities.

This does not, however, imply that investors cannot redeem their investments prior to the end of the ELTIF's lifecycle. Many of the successful long-term funds that the Commission's impact assessment found at national level have been structured as listed entities. That allows investors to trade their shares or units in the fund on a secondary market. If long-term investing is really supposed to become attractive for smaller-scale investors or the retail community at large, secondary markets will be the principal venue in which you can buy into or leave the long term fund.

ELTIF will be investment products within the meaning of the Markets in Financial Instruments Directive (MiFID)⁵ and therefore subject to all the requirements of that directive in relation to marketing, selling and disclosure.

The proposed new ELTIF will be available for marketing to investors across the European Union. It is therefore important that investors have the confidence of knowing that the level of protection they will receive will be the same regardless of the origin of the fund manager.. For this reason, the legal instrument proposed is a Regulation since this is the most appropriate way of achieving consistent, clear and directly applicable rules throughout the Union.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation with interested parties

Since mid-2012 the European Commission has engaged in extensive consultations with representatives from a wide range of organisations. The consultations has taken the form of bilateral and multilateral meetings, a written public consultation on asset management issues⁶ including long term investment (LTI) and a follow up questionnaire which was circulated among interested parties. The Commission services received 65 responses relating to the LTI section. The follow up questionnaire resulted in 50 responses. Further bilateral discussions were held with fund managers operating in the infrastructure and long term markets, fund management associations and retail as well as institutional investor representatives.

2.2. Impact assessment

In line with its policy on 'better regulation' the Commission conducted an impact assessment of policy alternatives. These alternatives contained a wide range of policy options, ranging from taking no action, integrating long-term asset classes into the existing UCITS framework, to creating a fund vehicle for professional investors only, or a fund vehicle open to all investors, with or without redemption facilities.

⁵ Directive 2004/39/EC

⁶ See http://ec.europa.eu/internal_market/consultations/docs/2012/ucits/ucits_consultation_en.pdf

All of these options were analysed against the general principles of increasing the capital flows available to long term financing for the European real economy and increasing the coherence of the single market. However, any new funding mechanism also needs to be framed with in such a way that the objective of creating economies of scale for fund managers and increase choice does not conflict with the need to inform and provide appropriate protection for all investor categories.

The selected option is to create a long-term investment fund vehicle open to both professional and retail investors. In line with the illiquid properties of long-term asset classes, there would be no redemption rights prior to the termination of the fund's lifecycle. The characteristics of the proposed ELTIF would be to allow the widest range of investors to access ELTIFs. In this way, the potential pool of capital available to make such investments would be maximised. The ELTIFs would be subject to product rules designed to ensure sufficient diversification, address potential conflicts of interest, increase transparency as regards costs and limit the use of derivatives and leverage. These features are in place to provide investor protection for retail investors. By not providing redemption rights during the lifespan of the fund, more of its capital can be invested in assets that are illiquid. This absence of a redemption right also signals strongly to retail and professional investors the long term nature of the commitment.

The comments by the Impact Assessment Board set out in their opinion of 31 May 2013 have been taken into account. The problem description has been strengthened to give greater clarity on the size of the problem being addressed as well as the timing of the proposal. The description of the options has also been improved as has the analysis of the effectiveness of the preferred option. The Impact Assessment now also clarifies in greater detail the reasons why the proposal deviates from some of the views expressed by certain stakeholders during the consultation process. In particular, the reasoning was strengthened around the choice to exclude redemption rights, both from the perspective of investor protection, and from the perspective of the expected take-up of the new option by investors. While some retail investors may be less likely to invest in a fund without rights of redemption on demand, the risks attached to offering such rights could undermine the fund model, while the reduced efficiency of investments to ensure additional liquidity would reduce the impact of any additional retail demand.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis and choice of the legal form

Article 114(1) TFEU serves as the legal basis for a Regulation creating uniform provisions aimed at the functioning of the internal market. Prudential product rules establish the limits of the risks linked to investment funds that are targeting long-term assets. As such, they do not regulate access to asset management activities but govern the way such activities are carried out, in order to ensure investor protection and financial stability. They underpin the correct functioning of the internal market.

In pursuit of the objective of the internal market integrity the proposed legislative measure will create a regulatory framework for ELTIFs, with a view to ensure that such funds are subject to consistent rules across the EU and that they are identifiable as such by investors throughout the EU. The target of the proposed Regulation is to create a robust, yet flexible, set of rules that specifically correspond to the long-term nature of the investments in question. The proposed rules should also ensure a level playing field between different long term investment fund managers. This legislative proposal, therefore, harmonises the operating conditions for all relevant players in the investment fund market, for the benefit of all investors and for the smooth functioning of the single market in financial services.

A Regulation is considered to be the most appropriate legal instrument to introduce uniform requirements that will deal, amongst others, with the scope of eligible assets, the portfolio composition, diversification rules, redemption policy, as well as rules regarding the authorisation of the funds intending to engage in long-term investments. The objective of these product rules is to ensure the ELTIFs work in a more efficient way. The taking up of activities as manager of an ELTIF is regulated by the AIFM Directive. The activities of the managers will continue to be subject to AIFMD, but the long-term investment products are governed by the proposed Regulation, in addition to the rules of the AIFM-D.

3.2. Subsidiarity and proportionality

National regulatory approaches are inherently limited to the Member State in question. Regulating the product profile of an ELTIF only at national level entails the risk of different investment products all being sold as long-term investment funds with different characteristics. This would create investor confusion and would impede the emergence of a Union-wide level playing field for those managers who offer ELTIFs to professional and/or retail investors.

As the asset management sector is essentially cross-border in nature, the current fragmentation of the ELTIF market has led this sector to operate below the efficient level. The proposed harmonised and sustainable framework covering ELTIF will act as a source of long-term financing for the European economy. The new framework will ensure the financing of various projects and sectors and will provide stable sources of return for long-term investors. Therefore, a pan-European ELTIF market is needed and the proposed legislative measure is consistent with the subsidiarity principle set out in Article 5(3) TEU and the Second Protocol on the Application of the Principles of Subsidiarity and Proportionality.

As regards proportionality, set out in Article 5(4) TEU, the Proposal strikes the appropriate balance between the public interest at stake and the cost-efficiency of the measure. The proposed rules seek to create a common product label for which there is a strong public interest and which would lay down a foundation for a common, competitive and cost-efficient market for ELTIF across the Union. The requirements imposed on the different parties concerned have been carefully calibrated. Whenever possible, requirements have been crafted as minimum standards (e.g. issuer diversification limits,) and regulatory requirements have been tailored so as not to unnecessarily disrupt existing business models. In particular, the proposed Regulation has combined parameters suitable for long-term investments and specific investor groups, by taking into full account the safety and trust considerations relating to any ELTIFs designation. The Proposal therefore does not go beyond what is necessary to achieve a common legal framework for ELTIF, while at the same time it addresses the regulatory issues which would affect the reliability of the label.

3.3. Detailed explanations of the proposal

The proposal for a Regulation on European Long-Term Investment Funds (ELTIF) is structured in seven chapters.

3.3.1. Chapter I – General provisions (Articles 1-5)

Chapter I contains general rules, such as the subject matter and scope of the proposed fund framework, definitions, the procedure for authorisation of ELTIFs (at fund level), and the interplay of the proposed Regulation with existing rules governing the authorisation of managers of alternative investment funds, as set out in Directive 2011/61/EU (AIFMD).

Article 1 specifies the subject matter and delineates the scope of the Regulation. It makes clear that the requirements contained in the Regulation are exhaustive, thus leaving no scope for 'gold-plating' at national level. Article 2 contains essential definitions necessary for the

uniform application of the proposed Regulation. Article 3 requires EU AIFs to be authorised in accordance with the proposed Regulation in order to be marketed or managed across the Union as ELTIFs. The designation 'European Long-term Investment Funds' (ELTIFs) shall be reserved to those EU AIFs that comply with the proposed Regulation. This implies that a manager of alternative asset classes that wants to manage or market funds focused on long-term assets without using the proposed designation is not obliged to comply with the proposed Regulation.

Article 4 provides a harmonised procedure for the authorisation of ELTIFs whereas article 5 lays down the conditions for such an authorization. Article 6 describes the interaction between the existing AIFMD rules and the proposed Regulation, essentially specifying that compliance with the Regulation shall be ensured by the manager of the ELTIF.

3.3.2. Chapter II – Obligations concerning the investment policies of ELTIFs (Articles 7-15)

Chapter II contains the rules on permissible investment policies to be pursued by an ELTIF, such as rules relating to eligible investments, portfolio composition and diversification, conflict of interest, concentration and cash borrowing.

Article 7 provides that, where applicable, each investment compartment of an ELTIF shall be regarded as a separate ELTIF for the purposes of Chapter II.

Article 8 describes two categories of financial assets that an ELTIF can invest in: long-term assets and assets listed in Article 50(1) of Directive 2009/65/EC (UCITS Directive). However, an ELTIF shall not engage in short selling of assets, gain exposure to commodities, enter into securities lending or securities borrowing agreements, enter into repurchase agreements or use financial derivative instruments unless these instruments are used for hedging purposes.

Article 9 elaborates on the eligibility conditions for long-term assets, such as the different categories of instruments used to gain access to qualified portfolio undertakings, the investment in units or shares of other ELTIFs and participations in real assets, such as real estate, ships or aircrafts. Article 10 sets out the conditions for an undertaking to become a qualified portfolio undertaking. The qualified portfolio undertaking should be unlisted, domiciled in the EU and have the purpose of financing infrastructure projects, companies or real estate, ships and aircrafts. It should not take the form of a collective investment undertaking,

Article 11 contains a general rule on the treatment of conflicts of interest by the ELTIF manager. The manager may not have any personal interest in a long-term asset in which the ELTIF is invested.

Article 12 provides detailed rules on the portfolio composition characterising an ELTIF. It also covers the diversification rules that each ELTIF has to respect in the context of eligible investment assets, such as rules on the maximum risk exposure that an ELTIF can have vis-à-vis a single counterparty. Article 13 stipulates the maximum limits that an ELTIF can hold in a single issuer (concentration limits). Article 14 provides for the conditions under which the ELTIF may borrow cash. Article 15 contains provisions on the application of the portfolio composition and the diversification rules, taking into account the different stages in the ELTIF fund life.

3.3.3. Chapter III – Redemption, trading and issue of ELTIF shares or units and distribution of income

Chapter III deals with the redemption policy of ELTIFs, the possibility of trading units or shares of ELTIF on a secondary market, the issuance of new shares or units, the disposal of ELTIF assets and the distribution of income to the investors of an ELTIF.

Article 16 precludes an ELTIF from offering a redemption right to its investors before the end of the life-cycle of the ELTIF. The life-cycle is defined in the ELTIF rules and corresponds to the life-cycle of the individual assets of the ELTIF and its long-term investment objectives.

Article 17 provides for the trading of units or shares of an ELTIF on regulated markets, as well as the free transfer of units or shares of an ELTIF to third parties. Article 18 contains the conditions for the issuance of new shares or units by the ELTIF, such as the prior offering to existing investors when the issuance price is below the NAV of the ELTIF. Article 19 deals with the procedure that each ELTIF shall adopt for the disposal of its assets. Article 20 lays down the applicable rules for the distribution of the income generated by the assets of the ELTIF and requires an ELTIF to set out its distribution policy in its fund rules.

3.3.4. Chapter IV – Transparency requirements (Article 21)

Chapter IV contains transparency rules where ELTIFs are being advertised to investors.

Article 21 requires the prior publication of a key information document and a prospectus before the ELTIF is marketed to retail investors. The prospectus and any other marketing document shall inform the investors about the special nature of the long-term investment into an ELTIF. Article 22 requires the ELTIF manager to disclose in a detailed way to the investors all costs attached to the fund.

3.3.5. Chapter V – Marketing (Articles 23-25)

Chapter V contains the rules applicable to an EU AIFM for marketing units or shares of an ELTIF to professional and retail investors.

Article 23 requires managers of ELTIFs to have facilities in place in each Member State where they intend to market their ELTIFs. Article 24 provides the additional requirements that managers have to comply with in order to market to retail investors. Article 25 builds on the notification procedures contained in the AIFM Directive for authorising the managers of ELTIFs to market the units or shares of their ELTIFs to investors both in their home and in potential host Member States.

3.3.6. Chapter VI – Supervision (Articles 26-29)

Chapter VI sets out the applicable rules on supervision of ELTIFs.

Article 26 clarifies the respective roles of the competent authorities of the ELTIF and of the manager of the ELTIF. Article 27 states that the powers of the competent authorities under UCITS and AIFM Directives should be exercised also with respect to the proposed Regulation. Article 28 refers to the power of ESMA, whereas Article 29 provides for the cooperation between supervisory authorities.

3.3.7. Chapter VII – Final Provisions (Articles 30-31)

Chapter VII contains rules on a review of the functioning of the envisaged rules to be prepared by the Commission as well as provisions on the entry into force of the proposed Regulation.

4. BUDGETARY IMPLICATIONS

The budgetary impact of the ELTIF regulation is as indicated in the Legislative Financial Statement attached to the proposal.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Long-term finance is a crucial enabling tool for putting the European economy on a path of sustainable, smart and inclusive growth and for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance to various infrastructure projects or unlisted companies of lasting duration that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the Union economies.
- (2) On the demand side, ELTIFs can provide a steady income stream for pension administrators, insurance companies and other entities that face regular and recurrent liabilities. While providing less liquidity than investments in transferable securities, ELTIFs can provide a steady income stream for individual investors that rely on the regular cash flow that an ELTIF can produce. ELTIFs can also offer good opportunities for capital appreciation over time for those investors not receiving a steady income stream.
- (3) Financing for projects, regarding transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), roll-out of new technologies and systems that reduce use of resources and energy or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect.
- (4) While individual investors may be interested in investing in an ELTIF, the illiquid nature of most investments in long-term projects precludes an ELTIF from offering regular redemptions to its investors. The commitment of the individual investor to an

⁷ OJ C , , p. .

investment in such assets is by its nature made to the full term of the investment. ELTIFs should, consequently, be structured so as not to offer regular redemptions before the end of life of the ELTIF. A report, three years after the adoption of this Regulation, shall investigate whether this rule will have achieved the expected results in terms of ELTIF distribution or whether the introduction, in a limited number of cases, of the possibility, for some individual retail investors, to redeem their units or shares before the end of the ELTIF, may contribute to increase the distribution of ELTIF among the individual retail investors.

- (5) Long-term asset classes within the meaning of this Regulation should comprise non-listed undertakings that issue equity or debt instruments for which there is no readily identifiable buyer. This Regulation should also covers real assets that require significant up-front capital expenditure.
- (6) In the absence of a Regulation setting out rules on ELTIFs, diverging measures might be adopted at national level, which are likely to cause distortions of competition resulting from differences in investment protection measures. Diverging requirements on portfolio composition, diversification and eligible assets, in particular the investment in commodities, create obstacles to the cross-border marketing of funds that focus on non-listed undertakings and real assets because investors cannot easily compare the different investment propositions offered to them. Divergent national requirements also lead to different levels of investor protection. Furthermore, different national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of derivative financial instruments, rules applicable to short selling or securities financing transactions lead to discrepancies in the level of investor protection. In addition, different requirements on redemption and/or holding periods impede the cross-border selling of funds investing in non-listed assets. Those divergences can undermine the confidence of investors when considering investments in such funds, and reduce the scope for investors to choose effectively between various long-term investment opportunities. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty, as interpreted by consistent case law of the Court of Justice of the European Union.
- (7) Uniform rules across the Union are necessary to ensure that ELTIFs display a coherent product profile across the Union. In order to ensure the smooth functioning of the internal market and a high level of investor protection, it is necessary to establish uniform rules regarding the operation of ELTIFs, in particular on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use in order to gain exposure to non-listed undertakings and real assets. Uniform rules on the portfolio of an ELTIF are also required to ensure that ELTIFs that aim to generate regular income maintain a diversified portfolio of investment assets suitable to maintain the regular cash flow.
- (8) It is essential to ensure that the definition of the operation of ELTIFs, in particular on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use be directly applicable to the managers of ELTIFs and therefore these new rules need to be adopted as a Regulation. This also ensures uniform conditions for the use of the designation ELTIF by preventing diverging national requirements. Managers of ELTIFs should follow the same rules across the Union, in order to also enhance the confidence of investors in ELTIFs and ensure sustainable trustworthiness of the designation. At the same time, by adopting uniform rules, the complexity of the regulatory requirements applicable to ELTIFs is reduced. By means of uniform rules, the managers' cost of compliance with divergent national rules

governing funds that invest in non-listed undertakings and comparable real asset classes is also reduced. This is especially true for managers that wish to raise capital on a cross-border basis. It also contributes to eliminate competitive distortions.

- (9) The new rules on ELTIFs are closely linked to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁸ since that Directive forms the legal framework governing the management and marketing of alternative investment funds (AIFs) in the Union. By definition ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.
- (10) Whereas Directive 2011/61/EU also foresees a staged third country regime governing non-EU AIFMs and non-EU AIFs, the new rules on ELTIFs have a more limited scope emphasising the European dimension of the new long term investment product. Hence, only an EU AIF as defined in Directive 2011/61/EU is eligible to become an authorised ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU.
- (11) The new rules applicable to ELTIFs should build on the existing regulatory framework established through Directive 2011/61/EU and the acts adopted for its implementation. Therefore, the product rules concerning ELTIFs should apply in addition to the rules laid down in the existing Union legislation. Particularly, the management and marketing rules laid down in Directive 2011/61/EU should apply to ELTIFs. Equally, the rules on the cross-border provision of services and freedom of establishment laid down in Directive 2011/61/EU should apply accordingly to the cross-border activities of ELTIFs. These should be supplemented by the specific marketing rules designed for the cross-border marketing of ELTIFs to both retail and professional investors across the Union.
- (12) Uniform rules should apply to all those EU AIFs that wish to market themselves as ELTIFs. EU AIFs that do not wish to market themselves as ELTIFs should not be bound by these rules, thereby also consenting not to benefit from the advantages that ensue. On the other hand, Undertakings for collective investment in transferable securities (UCITS) and non-EU AIFs would not be eligible for marketing as ELTIFs.
- (13) In order to ensure the compliance of ELTIFs with the harmonised rules governing the activity of these funds, it is necessary to require that competent authorities authorise ELTIFs. The harmonised authorisation and supervision procedures for AIFMs under Directive 2011/61/EU should therefore be supplemented with a special authorisation procedure for ELTIFs. Procedures should be established to ensure that only EU AIFMs authorised in accordance with Directive 2011/61/EU and capable of managing an ELTIF may manage ELTIFs. All appropriate steps are taken to ensure that the ELTIF shall be able to comply with the harmonised rules governing the activity of these funds.
- (14) Given that EU AIFs may take different legal forms that do not necessarily endow them with legal personality, the provisions requiring ELTIFs to take action should be understood to refer to the manager of the ELTIF in cases where the ELTIF is constituted as an EU AIF that is not in a position to act by itself because it has no legal personality of its own.

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OJ L 174, 1.7.2011, p. 1.

- (15) In order to ensure that ELTIFs target long-term investments, rules on the portfolio of ELTIFs should require a clear identification of the categories of assets that should be eligible for investment by ELTIFs and of the conditions under which they should be eligible. An ELTIF should invest at least 70% of its capital in eligible investment assets. To ensure the integrity of ELTIFs it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by raising additional risks different to those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the duration and currency risk of the other assets. Given the liquid nature of commodities and financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded. This rationale does not apply to investments in infrastructure or companies related to commodities or whose performance is linked indirectly to the performance of commodities, such as farms in the case of agricultural commodities or power plants in the case of energy commodities.
- (16) The definition of what constitutes a long-term investment is broad. Without necessarily requiring long-term holding periods for the ELTIF manager, eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. 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. As a result such assets do not suit investments with redemption rights.
- (17) An ELTIF should be allowed to invest in assets other than eligible investment assets, as may be necessary to efficiently manage its cash flow, but only so long as this is consistent with the ELTIF's long term investment strategy.
- (18) Eligible investment assets must be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings and loans provided to them. They should also include participation in other funds that are focused on assets such as investments in non-listed undertakings that issue equity or debt instruments for which there is not always a readily identifiable buyer. Direct holdings of real assets, unless they are securitised, should also form a class of eligible assets.
- (19) Quasi-equity instruments must be understood to comprise a type of financing instrument, which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking, and where the repayment of the instrument in the event of default is not fully secured. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants.
- (20) To reflect existing business practices, an ELTIF should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. Also, for the purposes of ensuring the widest possible opportunities for

fundraising, investments into other ELTIFs should be permitted. To prevent dilution of the investments into qualifying portfolio undertakings, ELTIFs should only be permitted to invest in other ELTIFs, provided that those ELTIFs have not themselves invested more than 10 % of their capital in other ELTIFs.

- (21) The use of financial undertakings can be necessary in order to pool and organise the contributions of different investors, including investments of a public nature, into infrastructure projects. ELTIFs should therefore be permitted to invest in eligible investment assets by means of financial undertakings, so long as these undertakings are dedicated to financing long-term projects.
- (22) In order to provide investors with the assurance that ELTIFs contribute directly to the development of long-term investments, ELTIFs should be limited to investments in undertakings that have not been listed. Therefore qualifying portfolio undertakings should not be listed on regulated markets. Qualifying portfolio undertakings include infrastructure projects, investment in unlisted companies seeking growth and investments in real estate or other real assets that could be suitable for long term investment purposes.
- (23) Due to the scale of infrastructure projects, these require large amounts of capital that have to remain invested for long periods of time. Such infrastructure projects include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks and waste management infrastructure such as recycling or collection systems.
- (24) Unlisted undertakings can face difficulties accessing capital markets and financing further growth and expansion. Private financing through equity stakes or loans are typical ways of raising financing. Because such instruments are by their nature long-term investments they require patient capital that ELTIFs can provide.
- (25) Investments in real assets require patient capital due to the absence of liquid secondary markets. Investment funds represent an essential source of financing for assets that require large capital expenditure. For these assets, capital pooling is often necessary to achieve the desired level of funding. Such investments require long periods of time due to the generally long economic cycle attached to these assets. It generally takes several years to amortize the investment in large real assets. In order to facilitate the development of such large assets, ELTIFs should be able to invest directly in real assets with a value of more than €10 million. In practice this would include assets such as infrastructure, real estate, ships, aircraft or rolling stock. For these reasons it is necessary to treat direct holdings in real assets and investments in qualifying portfolio undertakings in like manner.
- (26) Where the manager holds a stake in a portfolio undertaking, there is a risk that the manager puts its interests ahead of the interests of investors in the fund. To avoid such conflict of interests, the ELTIF should only invest in assets that are unrelated to the manager.
- (27) In order to allow managers of ELTIFs a certain degree of flexibility in the investment of their funds, trading in assets other than long-term investments should be permitted up to a maximum threshold of 30 % of their capital.

- (28) In order to limit risk-taking by ELTIFs it is essential to reduce counterparty risk by subjecting the portfolio of ELTIFs to clear diversification requirements. All over-the-counter (OTC) derivatives should be subject to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁹.
- (29) In order to prevent the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body, it is necessary to avoid excessive concentration by an ELTIF in the same investment.
- (30) In order to allow ELTIF managers to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to 30% of the capital of the fund. This should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should only borrow in the currency the manager expects to acquire the asset in.
- (31) Due to the long-term and illiquid nature of the investments of an ELTIF, the managers should have sufficient time to apply the investment limits. The time required to implement these limits should take account of the peculiarities and characteristics of the investments but should not exceed five years.
- (32) Notwithstanding the fact that ELTIFs do not offer redemption rights before the end of life of the ELTIF, nothing should prevent an ELTIF from seeking admission of these shares or units to a regulated market as defined in Article 4(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,¹⁰ to a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC, or to an organised trading facility as defined in point (...) of Regulation (...), thus providing investors with an opportunity to sell their units or shares before the end of life of the ELTIF. The rules or instruments of incorporation of an ELTIF should therefore not prevent units or shares from being admitted to or from being dealt in regulated markets, nor should they prevent investors from freely transferring their shares or units to third parties who wish to purchase those shares or units.
- (33) In order for investors to effectively redeem their units or shares at the end of the fund's life, the manager should start to sell the portfolio of assets of the ELTIF in good time to ensure the value is properly realised. In determining an orderly disinvestment schedule, the ELTIF manager should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested. Due to the impracticality of maintaining the investment limits during this liquidation period, they should cease to apply when the liquidation period starts.
- (34) The assets in which an ELTIF is invested may obtain a listing on a regulated market during the life of the fund. Where this happens, the asset would no longer comply with the non-listing requirement of this Regulation. In order to allow managers to disinvest from such an asset in an orderly manner, this asset could continue to count towards the 70% limit of eligible investment assets for up to three years.
- (35) Given the specific characteristics of ELTIFs, as well as the targeted retail and professional investors it is important that solid transparency requirements be put in place that are capable of allowing prospective investors to make an informed

⁹ OJ L 201. 27.7.2012. p.1

¹⁰ OJ L 145, 30.4.2004, p.1.

judgement and be fully aware of the risks implied. In addition to the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should necessarily include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council¹¹ and Commission Regulation (EC) No 908/2004.¹² For the marketing of an ELTIF to retail investors it should be mandatory to publish a key information document (KID) in accordance with Regulation No [...] of [...] of the European Parliament and the Council. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF.

- (36) As ELTIFs target both professional and retail investors across the Union, it is necessary that certain requirements be added to the marketing requirements laid down in Directive 2011/61/EU in order to ensure an appropriate degree of investor protection. Thus, facilities should be made available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide. Moreover, in order to ensure that retail investors are not disadvantaged with respect to experienced professional investors certain safeguards have to be put in place when ELTIFs are marketed to retail investors.
- (37) The competent authority of the ELTIF should verify whether an ELTIF is able to comply with this Regulation on an on-going basis. As the competent authorities are already provided with extensive powers under Directive 2011/61/EU, it is necessary that such powers be extended in order to be exercised by reference to the new common rules on ELTIFs.
- (38) ESMA should be able to exercise all the powers conferred under Directive 2011/61/EU with respect to this Regulation.
- (39) The European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (ESMA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC,¹³ should play a central role in the application of the rules concerning ELTIFs by ensuring consistent application of Union rules by national competent authorities. As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission, in respect of the circumstances in which the life of an ELTIF will be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, the features of the schedule for the orderly disposal of ELTIF assets, the definitions, calculation methodologies and presentation of cost disclosures, and the characteristics of the facilities to be set up by ELTIFs in each Member State where they intend to market units or shares.
- (40) The new uniform rules on ELTIFs should comply with the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free

¹¹ OJ L 345, 31.12.2003, p.64.

¹² OJ L 149, 30.4.2004, p.1.

¹³ OJ L 331, 15.12.2010, p.84.

movement of such data¹⁴ and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data¹⁵.

- (41) Since the objectives of this Regulation, namely to ensure uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, while taking full account of the need to balance safety and reliability of ELTIFs with the efficient operation of the market for long-term financing and the cost for its various stakeholders, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (42) The new uniform rules on ELTIFs respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data. The new uniform rules on ELTIFs should be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1 *Subject matter*

1. This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (AIFs) that are marketed in the Union as European long-term investment funds (ELTIFs).
2. Member States shall not add any additional requirements in the field covered by this Regulation.

Article 2 *Definitions*

For the purposes of this Regulation the following definitions apply:

- (1) 'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses which are directly or indirectly borne by investors;
- (2) 'equity' means ownership interest in an undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;

¹⁴ OJ L 281, 23.11.1995, p. 31–50

¹⁵ OJ L 8, 12.1.2001, p. 1–22

- (3) 'quasi-equity' means any type of financing instrument where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;
- (4) 'financial undertaking' means any of the following:
 - (a) a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council¹⁶;
 - (b) an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC;
 - (c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council¹⁷;
 - (d) a financial holding company as defined in point (19) of Article 4 of Directive 2006/48/EC;
 - (e) a mixed-activity holding company as defined in point (20) of Article 4 of Directive 2006/48/EC;
- (5) 'competent authority of the ELTIF' means the competent authority of the home Member State of the EU AIF as defined in Article 4(1)(p) of Directive 2011/61/EU;
- (6) 'ELTIF home Member State' means the Member State where the ELTIF is authorised.

Article 3

Authorisation and use of designation

- 1. Only EU AIFs shall be eligible for authorisation as an ELTIF.
- 2. An ELTIF shall only be marketed in the Union where it has been authorised in accordance with this Regulation.
The authorisation as an ELTIF shall be valid for all Member States.
- 3. A collective investment undertaking shall only use the designation 'ELTIF' or 'long-term investment fund' in relation to itself or the units or shares it issues where it has been authorised in accordance with this Regulation.
- 4. The competent authorities of the ELTIF shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn pursuant to this Regulation.
ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation, its manager and the competent authority of the ELTIF. The register shall be made available in electronic format.

Article 4

Application for authorisation as ELTIF

- 1. An ELTIF shall apply for authorisation to its competent authority.
The application for authorisation as an ELTIF shall include the following:
 - (a) the fund rules or instruments of incorporation;

¹⁶ OJ L 177, 30.6.2006, p.1.

¹⁷ OJ L 335, 17.12.2009, p.1.

- (b) information on the identity of the manager;
 - (c) information on the identity of the depositary;
 - (d) a description of the information to be made available to investors;
 - (e) any other information or document requested by the competent authority of the ELTIF to verify compliance with the requirements of this Regulation.
2. An EU alternative investment fund manager (AIFM) authorised under Directive 2011/61/EU shall apply to the competent authority of the ELTIF for approval to manage an ELTIF that has submitted an application for authorisation in accordance with paragraph 1.

The application for managing the ELTIF shall include the following:

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

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

3. The ELTIF and the EU AIFM shall be informed within two months from the date of submission of a complete application whether authorisation of the ELTIF has been granted.
4. Any subsequent modifications of the documentation referred to in paragraphs 1 and 2 shall be immediately notified to the competent authority of the ELTIF.

Article 5

Conditions for granting the authorisation

1. An applicant ELTIF shall be authorised only where its competent authority:
- (a) is satisfied that the applicant ELTIF is able to meet all the requirements of this Regulation;
 - (b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules and the choice of the depositary.
2. The competent authority of the ELTIF may refuse the application of the EU AIFM to manage the ELTIF only where:
- (a) the EU AIFM does not comply with this Regulation;
 - (b) the EU AIFM does not comply with Directive 2011/61/EU;
 - (c) the EU AIFM is not authorised by its competent authority to manage AIFs that include funds of the type covered in this Regulation;
 - (d) the EU AIFM has not provided the documentation referred to in Article 4(2).

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

3. The competent authority shall not grant authorisation as an ELTIF if the applicant ELTIF is legally prevented from marketing its units or shares in its home Member State.
4. Authorisation as an ELTIF shall not be subject to a requirement that the ELTIF be managed by an EU AIFM authorised in the ELTIF home Member State or that the EU AIFM pursue or delegate any activities in the ELTIF home Member State

Article 6

Applicable rules and liability

1. An ELTIF shall comply at all times with the provisions of this Regulation.
2. An ELTIF and its manager shall comply at all times with the requirements of Directive 2011/61/EU.
3. The manager of the ELTIF shall be responsible for ensuring compliance with this Regulation. The manager shall be liable for any loss or damage resulting from non-compliance with this Regulation.

Chapter II

Obligations concerning the investment policies of ELTIFs

SECTION 1

GENERAL RULES AND ELIGIBLE ASSETS

Article 7

Investment compartments

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

Article 8

Eligible investments

1. An ELTIF shall only invest in the following categories of assets and only under the conditions specified in this Regulation:
 - (a) eligible investment assets;
 - (b) assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council.¹⁸
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;

¹⁸

OJ L 302, 17.11.2009, p. 32.

- (c) entering into securities lending agreements, securities borrowing agreements, and repurchase agreements or any other agreement that would encumber the assets of the ELTIF;
- (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.

Article 9

Eligible investment assets

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

- (a) equity or quasi-equity instruments which have been:
 - (i) issued by a qualifying portfolio undertaking and acquired directly by the ELTIF from the qualifying portfolio undertaking;
 - (ii) issued by a qualifying portfolio undertaking in exchange for an equity instrument previously acquired directly by the ELTIF from the qualifying portfolio undertaking;
 - (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary, in exchange for an equity instrument acquired in accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking;
- (b) debt instruments issued by a qualifying portfolio undertaking;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking;
- (d) units or shares of one or several other ELTIFs, European Venture Capital Funds (EuVECAs) and European Social Entrepreneurship Funds (EuSEFs) provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10% of their capital in ELTIFs;
- (e) direct holdings of individual real assets that require up-front capital expenditure of at least EUR 10 million or its equivalent in the currency, and at the time, in which the expenditure is incurred.

Article 10

Qualifying portfolio undertaking

1. A qualifying portfolio undertaking referred to in Article 9(1) shall be a portfolio undertaking other than a collective investment undertaking, that fulfils all of the following requirements:
 - (a) it is not a financial undertaking;
 - (b) it is not admitted to trading:
 - (i) on a regulated market as defined in Article 4(14) of Directive 2004/39/EC;
 - (ii) on a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC;

- (iii) on organised trading facilities as defined in point [...] of Regulation [...];
 - (c) it shall be established in a Member State, or in a third country provided that the third country:
 - (i) is not a high-risk and non-cooperative jurisdictions identified by the Financial Action Task Force (FATF);
 - (ii) has signed an agreement with the home Member State of the manager of the ELTIF and with every other Member State in which the units or shares of the ELTIF are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.
2. By way of derogation from paragraph 1(a) of this Article, a qualifying portfolio undertaking may be a financial undertaking that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article and in real assets referred to in Article 9.

Article 11 *Conflict of interest*

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

SECTION 2 **PROVISIONS ON INVESTMENT POLICIES**

Article 12 *Portfolio composition and diversification*

1. An ELTIF shall invest at least 70% of its capital in eligible investment assets.
2. An ELTIF shall invest no more than:
 - (a) 10% of its capital in assets issued by any single qualifying portfolio undertaking;
 - (b) 10% of its capital in an individual real asset;
 - (c) 10% of its capital in units or shares of any single ELTIF, EuVECA or EuSEF;
 - (d) 5% of its capital in assets referred to in Article 8(1)(b) where those assets have been issued by any single body.
3. The aggregate value of units or shares of ELTIFs, EuVECAs and EuSEFs in an ELTIF portfolio shall not exceed 20% of the value of its capital.
4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over the counter (OTC) derivative transactions or reverse repurchase agreements shall not exceed 5% of its capital.
5. By way of derogation from paragraph 2(a) and 2(b), the ELTIF may raise the 10% limit referred to therein to 20%, provided that the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets in

which it invests more than 10% of its capital does not exceed 40% of the value of its capital.

6. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Seventh Council Directive 83/349/EEC¹⁹ or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 5.

Article 13 *Concentration*

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

Article 14 *Borrowing of cash*

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

- (a) it represents no more than 30% of the capital of the ELTIF;
- (b) it serves the purpose of acquiring a participation in eligible investment assets;
- (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash;
- (d) it does not hinder the realisation of any asset held in the portfolio of the ELTIF;
- (e) it does not encumber the assets held in the portfolio of the ELTIF.

Article 15 *Application of portfolio composition and diversification rules*

1. The investment limits laid down in Article 12(1) shall:
 - (a) apply by the date specified in the ELTIF rules or instruments of incorporation, where this date shall take account of the peculiarities and characteristics of the assets to be invested by the ELTIF and shall not be later than five years after the authorisation of the ELTIF. In exceptional circumstances, the competent authority of the ELTIF, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year;
 - (b) cease to apply once the ELTIF starts to sell assets in accordance with its redemption policy as set out in Article 16;
 - (c) be temporarily suspended where the ELTIF raises additional capital, so long as such a suspension lasts no longer than 12 months.
2. Where a long-term asset in which the ELTIF has invested is issued by a qualifying portfolio undertaking that no longer complies with Article 10(1)(b), the long-term

¹⁹ Name+oj

asset may continue to be counted for the purpose of calculating the 70% referred to in Article 12(1) for a maximum of three years as of the date when the portfolio undertaking no longer fulfils the requirements in Article 10.

Chapter III

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

Article 16 *Redemption policy*

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

The end of life of the ELTIF shall be clearly indicated as a specific date in the ELTIF rules or instruments of incorporation and disclosed to investors.

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

2. The life of the ELTIF shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset, and the stated investment objective of the ELTIF.
3. Investors may request the winding down of the ELTIF if their redemption requests have not been satisfied within one year after the end of life of the ELTIF.
4. Investors shall always have the option to be repaid in cash.
5. Repayment in kind out of the ELTIF's assets shall be possible only where all of the following conditions are met:
 - (a) the ELTIF rules or instrument of incorporation foresees this possibility, under the condition that all investors receive fair treatment;
 - (b) the investor asks in writing to be repaid through a share of the assets of the fund;
 - (c) no specific rules restrict the transfer of those assets.
6. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF.

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

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

Article 17
Secondary market

1. The ELTIF rules or instrument of incorporation shall not prevent units or shares of an ELTIF from being admitted to trading on a regulated market as defined in Article 4(14) of Directive 2004/39/EC or on a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC or on an organised trading facility as defined in point (...) of Regulation (...).
2. The ELTIF rules or instrument of incorporation shall not prevent investors from freely transferring their shares or units to third parties.

Article 18
Issuance of new shares or units

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

Article 19
Disposal of ELTIF assets

1. Each ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors after the end of life of the ELTIF.
2. The schedule referred to in paragraph 1 shall include:
 - (a) an assessment of the market for potential buyers;
 - (b) an assessment and comparison of potential sales prices;
 - (c) a valuation for the assets to be divested;
 - (d) a precise timeframe for the disposal schedule.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and valuation in point (c) of paragraph 2.

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

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

Article 20
Distribution of income

1. An ELTIF may regularly distribute to investors the income generated by the assets contained in the portfolio. This income shall be composed of:
 - (a) any income that the assets are regularly producing;
 - (b) the capital appreciation realized after the disposal of an asset, but excluding the original capital commitments made.

2. The income shall not be distributed to the extent that it is required for future commitments of the ELTIF.
3. The ELTIF shall state in its fund rules or instruments of incorporation the distribution policy that it will adopt during the life of the fund.

Chapter IV

Transparency requirements

Article 21

Transparency

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

The units or shares of an authorised ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document (KID) in accordance with Regulation No[...] of [...] of the European Parliament and the Council.²⁰

2. The prospectus shall include the information necessary for investors to be able to make an informed judgement regarding the investment proposed to them, and, in particular, the risks attached thereto.
3. The prospectus shall contain at least the following:

- (a) a statement setting out how the ELTIF's investment objectives and strategy for achieving these objectives qualify the fund as long term in nature;
- (b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council²¹ and Commission Regulation (EC) No 809/2004²²;
- (c) information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU, if it is not already covered under point(b) of this paragraph;
- (d) prominent indication of the categories of assets the ELTIF is authorised to invest in;
- (e) any other information considered by the competent authorities to be relevant for the purpose of paragraph 2.

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

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

- (a) inform investors about the long-term nature of the ELTIF's investments;
- (b) inform investors about the end of life of the ELTIF;
- (c) state whether the ELTIF is intended to be marketed to retail investors;

²⁰ OJ Reference.

²¹ OJ L 345, 31.12.2003, p.64.

²² OJ L 149, 30.4.2004, p. 1.

- (d) state that investors shall have no right to redeem their investment until the end of the life of the ELTIF;
- (e) state the frequency and the timing of any income payments, if any, to the investors during the life of the fund;
- (f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF.

Article 22

Cost disclosure

1. The prospectus shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investor. The different costs shall be grouped according to the following headings:
 - (a) costs of setting-up the ELTIF;
 - (b) the costs related to the acquisition of assets;
 - (c) management costs;
 - (d) distribution costs;
 - (e) other costs, including administrative, regulatory, custodial, and audit costs.
2. The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF.
3. The key information document shall reflect all of the costs outlined in the prospectus within its expression of total costs in monetary and percentage terms.
4. ESMA shall develop draft regulatory technical standards to specify:
 - (a) the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2;
 - (b) the common definition, calculation methodology and presentation format of the expression of total costs in paragraph 3.

When developing these draft regulatory technical standards, ESMA shall take into account the draft regulatory standards referred to in point (...) of Regulation (...) [PRIPS].

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

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

Chapter V

Marketing of units or shares of ELTIFs

Article 23

Facilities available to investors

1. The manager of an ELTIF shall, in each Member State where it intends to market units or shares of that ELTIF, put in place facilities available for making

subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide.

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

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

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 24

Additional requirements for marketing to retail investors

The manager of an ELTIF shall be able to market the units or shares of that ELTIF to retail investors provided that all of the following additional requirements are fulfilled:

- (f) the ELTIF's rules or instruments of incorporation provide that all investors benefit from equal treatment and no preferential treatment or specific economic benefits are granted to individual investors or groups of investors;
- (g) the ELTIF is not structured as a partnership;
- (h) retail investors may, during the subscription period and at least two weeks after subscription of units or shares of the ELTIF, cancel their subscription and have the money returned without penalty.

Article 25

Marketing of units or shares of ELTIFs

1. The manager of an ELTIF shall be able to market the units or shares of that authorised ELTIF to professional and retail investors in its home Member State upon notification in accordance with Article 31 of Directive 2011/61/EU.
2. The manager of an ELTIF shall be able to market the units or shares of that authorised ELTIF to professional and retail investors in Member States other than in the home Member State of the ELTIF manager upon notification in accordance with Article 32 of Directive 2011/61/EU.
3. The manager of the ELTIF shall in respect of each ELTIF specify to its competent authority whether or not it intends to market it to retail investors.
4. In addition to the documentation and information required pursuant to Articles 31 and 32 of Directive 2011/61/EU the manager of the ELTIF shall provide to its competent authority all of the following:
 - (a) the prospectus of the ELTIF;
 - (b) the key information document of the ELTIF in case of marketing to retail investors;
 - (c) information on the facilities referred to in Article 22.

5. The competences and powers of the the competent authorities pursuant to Articles 31 and 32 of Directive 2011/61/EU shall be understood to also refer to the marketing of ELTIFs to retail investors and to cover the additional requirements laid down in this Regulation.
6. In addition to its powers in accordance with Article 31(3) first paragraph of Directive 2011/61/EU, the competent authority of the home Member State of the ELTIF manager shall also prevent the marketing of an authorised ELTIF if the ELTIF manager does not or will not comply with this Regulation.
7. In addition to its powers in accordance with Article 32(3) first paragraph of Directive 2011/61/EU, the competent authority of the home Member State of the ELTIF manager shall also refuse the transmission of a complete notification file to the competent authorities of the Member State where the ELTIF is intended to be marketed, if the ELTIF manager does not or will not comply with this Regulation.

Chapter VI

Supervision

Article 26

Supervision by the competent authorities

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

The competent authority of the manager shall be responsible for supervising compliance of the ELTIFs manager with this Regulation.
5. Competent authorities shall monitor collective investment undertakings established or marketed in their territories to verify that they do not use the ELTIF designation or suggest that they are an ELTIF unless they are authorised and comply with this Regulation.

Article 27

Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.
2. The powers conferred on competent authorities in accordance with Directive 2011/61/EU shall be exercised also with respect to this Regulation.

Article 28
Powers and competences of ESMA

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

Article 29
Cooperation between authorities

1. The competent authority of the ELTIF and the competent authority of the manager, if different, shall cooperate with each other and exchange information for the purpose of carrying out their duties under this Regulation.
2. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010.
3. Competent authorities and ESMA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to identify and remedy breaches of this Regulation.

Chapter VII

Final provisions

Article 30
Review

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

- (a) the impact of the provision in Article 16(1) that excludes investors from redeeming their units or shares before the end of life of the ELTIF. The review, taking into account ELTIF's distribution to different investor categories, shall also assess whether exempting a limited number of individual retail investors from such a rule would have the effect of increasing demand for ELTIF amongst retail investors;
- (b) the impact on asset diversification of the application of the minimum threshold of 70% of eligible investment assets laid down in Article 12(1), in particular to assess whether increased measures on liquidity would be necessary should a limited number of individual retail investors be exempted from the prohibition on redeeming their units before the end of life of the ELTIF;
- (c) the extent to which ELTIFs are marketed in the Union, including whether AIFMs falling under Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs.

The results of this review shall be communicated to the European Parliament and the Council accompanied, where necessary, by appropriate proposals for amendments.

Article 31
Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) envisaged

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on Long-term Investment Funds

1.2. Policy area(s) concerned in the ABM/ABB structure²³

Internal Market – Financial markets

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action²⁴**

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Increase the safety and the efficiency of the financial markets; boost the internal market for financial services

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Act as a source for long-term financing for the European economy; ensure a level-playing field between long-term investment fund managers; increase the non-bank finance available to businesses; ensure investor protection and financial stability

²³ ABM: activity-based management – ABB: activity-based budgeting.

²⁴ As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal aims at: enhancing the cross-border marketing of European long-term investment funds (ELTIFS) to both retail and professional investors across the Union; providing for a harmonised procedure for the authorisation of long-term investment funds; identifying the permissible investment policies to be pursued by long-term investment funds; preventing conflicts of interest; setting solid transparency requirements and specific marketing conditions

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

Reports should be prepared on:
developments on cross-border marketing of ELTIFs; impact of the proposed Regulation on investor protection; progress made in achieving undistorted competition; impact of the proposed measures on the pool of capital available for long-term investments (e.g. investments on infrastructure projects, real estate and unlisted companies)

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

As a result of the adoption of the proposed Regulation:

- Increased cross-border marketing of long-term investment funds is predicted;
- The authorisation of the long-term investment funds by the national competent authorities would be harmonised and the coordination between the national supervisors would be improved;
- Further development of long-term investing across the Union: the harmonisation of the operating conditions for all relevant players in the investment fund market will ensure the efficiency of long-term investment funds, as well as it will enable the emergence of economies of scale;
- Institutional investors, such as insurance companies and pension funds, as well as individual retail investors will benefit from yield of regular returns offered by long-term investment funds;
- Increased investor choice and quality of service received;
- Improved transparency will boost investor confidence and it is likely to lead to better competition;
- The long-term financing of the European economy would be enhanced, with a special view to infrastructure projects and the financing of small and medium enterprises (SMEs);

1.5.2. *Added value of EU involvement Besoin(s) à satisfaire à court ou à long terme*

1) The regulatory fragmentation prevents investors from gaining exposure to long-term assets and thus it prevents the increase of pooling of capital and investment expertise that creates economies of scale for long-term investment funds;

2) A lack of action at EU level would result in investor confusion and would impede the emergence of a Union-wide level playing field between long-term investment fund managers;

1.5.3. *Lessons learned from similar experiences in the past*

The UCITS (Undertakings in Collective Investments for Transferable Securities) Directive has first introduced a robust set of product rules used by investment funds available to retail investors. UCITS assets under management have now reached €6,697 billion . While the UCITS initiative does not necessarily mean that the creation of ELTIF will attract similar levels of investor interest, but it does indicate the success such EU-wide initiatives can have.

1.5.4. *Compatibility and possible synergy with other appropriate instruments Besoin(s) à satisfaire à court ou à long terme*

The proposed rules build on the existing regulatory framework established through Directive 2011/61/EU (Alternative Investment Fund Managers Directive – AIFMD) and the acts adopted for its implementation. The harmonised authorisation and supervision procedures for AIFMs under the AIFMD are supplemented with an authorisation procedure for ELTIFs. Moreover, the product rules concerning ELTIFs apply in addition to the rules laid down in the existing Union legislation, unless they are explicitly dis-applied. Particularly, the management and marketing rules laid down in the existing framework, as well as the rules on the cross-border provision of services and the freedom of establishment included in AIFMD will apply accordingly to ELTIFs.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

x Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2015 to 2020,
- followed by full-scale operation.

1.7. Management mode(s) planned²⁵

☐ **Centralised direct management** by the Commission

☐ **Centralised indirect management** with the delegation of implementation tasks to:

– ☐ executive agencies

– x ☒ bodies set up by the Communities²⁶

– ☐ national public-sector bodies/bodies with public-service mission

– ☐ persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

☐ **Shared management** with the Member States

☐ **Decentralised management** with third countries

☐ **Joint management** with international organisations (to be specified)

– *If more than one management mode is indicated, please provide details in the "Comments" section.*

²⁵ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

²⁶ As referred to in Article 185 of the Financial Regulation.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions. Besoin(s) à satisfaire à court ou à long terme

Article 81 of the Regulation establishing the European Securities and Markets Pension Authority (ESMA) provides for the evaluation of the experience acquired at a result of the operation of ESMA within three years from the effective start of its operation. To this end, the Commission will publish a general report that will be forwarded to the European Parliament and to the Council.

2.2. Management and control system

2.2.1. Risk(s) identified Besoin(s) à satisfaire à court ou à long terme

The additional resource to ESMA foreseen as a result of the current proposal is needed in order to allow ESMA to carry out its competences and notably its role in:

- Ensuring harmonisation and coordination of rules of the ELITF Regulation by drafting regulatory standards;
- Reinforcing and ensuring consistent application of national regulatory powers by issuing guidelines and by drafting implementing technical standards;
- Collecting and publishing the necessary information concerning long-term financial market participants;

The lack of this resource could not ensure a timely and efficient fulfilment of the role of ESMA.

2.2.2. Information concerning the internal control system set up Besoin(s) à satisfaire à court ou à long terme

Management and control systems as provided for in the ESMA Regulation will apply also with regard to the role of ESMA according to the present proposal.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the ESMA without any restriction, as stipulated in Article 66(1) of the ESMA Regulation.

ESMA shall accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all ESMA staff, as provided for in Article 66(2) of the ESMA Regulation.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...] [Heading.....]	Diff./non-diff. (27)	from EFTA countries 28	from candidate countries ²⁹	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1.a	[12.03.04][ESMA]	Diff.	YES	YES	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...] [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation

²⁷ Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

²⁸ EFTA: European Free Trade Association.

²⁹ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

The only impact on expenditures relates to the hiring of 2 additional temporary agents for an unlimited period of time. The new tasks will be carried out with the human resources available within the annual budgetary allocation procedure, in the light of budgetary constraints, which are applicable to all EU bodies and in line with the financial programming for agencies.

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework			1.a	Competitiveness for Growth and jobs					
DG: MARKT			2015	2016	2017	2018	2019	2020	TOTAL
• Operational appropriations									
12.03.04 ESMA	Commitments	(1)	0.140	0.130	0.130	0.130	0.130	0.130	0.788
	Payments	(2)	0.140	0.130	0.130	0.130	0.130	0.130	0.788
Number of budget line	Commitments	(1a)							
	Payments	(2a)							
Appropriations of an administrative nature financed from the envelope of specific programmes ³⁰									
Number of budget line		(3)							
TOTAL appropriations for DG MARKT	Commitments	=1+1a +3	0.140	0.130	0.130	0.130	0.130	0.130	0.788
	Payments	=2+2a +3	0.140	0.130	0.130	0.130	0.130	0.130	0.788

³⁰ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	0.140	0.130	0.130	0.130	0.130	0.130	0.788
	Payments	(5)	0.140	0.130	0.130	0.130	0.130	0.130	0.788
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)							
TOTAL appropriations for HEADING 1.a of the multiannual financial framework	Commitments	=4+ 6	0.140	0.130	0.130	0.130	0.130	0.130	0.788
	Payments	=5+ 6	0.140	0.130	0.130	0.130	0.130	0.130	0.788

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Comment: this takes into account only 40% of the total costs, the other 60% are financed by Member States

Heading of multiannual financial framework	5	" Administrative expenditure "
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EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		TOTAL
DG: <.....>								
• Human resources								
• Other administrative expenditure								
TOTAL DG <.....>	Appropriations							

TOTAL appropriations for HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								
--	---	--	--	--	--	--	--	--	--

EUR million (to three decimal places)

		2015	2016	2017	2018	2019	2020	TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.140	0.130	0.130	0.130	0.130	0.130	0.788
	Payments	0.140	0.130	0.130	0.130	0.130	0.130	0.788

3.2.2. Estimated impact on operational appropriations

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Comment:

See above.

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type ³¹	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No total	Total cost
SPECIFIC OBJECTIVE No 1 ³² ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE NO 2 ...																		
- Output																		
Subtotal for specific objective No 2																		

³¹ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

³² As described in point 1.4.2. 'Specific objective(s)...

TOTAL COST																
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3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- ☒ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N ³³	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
--	-------------------------	-------------	-------------	-------------	--	-------

HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								

Outside HEADING 5³⁴ of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								

TOTAL								
--------------	--	--	--	--	--	--	--	--

The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

³³

Year N is the year in which implementation of the proposal/initiative starts.

³⁴

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- ☒ The proposal/initiative does not require the use of human resources.
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Comment:

- No additional human and administrative resources will be needed in DG MARKT as a result of the proposal. 2 additional temporary agents will be hired at ESMA for an unlimited period.

Estimate to be expressed in full time equivalent units

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessa ry to show the duratio n of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)³⁵							
XX 01 02 01 (CA, SNE, INT from the "global envelope")							
XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)							
XX 01 04 yy ³⁶	- at Headquarters						
	- Delegations						
XX 01 05 02 (CA, SNE, INT - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

³⁵ CA= Contract Staff; LA = Local Staff; SNE= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations).

³⁶ Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

Officials and temporary staff	
External staff	

3.2.4. Compatibility with the current multiannual financial framework

- ☒ Proposal/initiative is compatible the current multiannual financial framework.
- ☐ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework³⁷.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties.
- ☒ The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	2015	2016	2017	2018	2019	2020	TOTAL
<i>Member States via EU national supervisors</i> *	0.210	0.194	0.194	0.194	0.194	0.194	1,181
TOTAL appropriations cofinanced	0.210	0.194	0.194	0.194	0.194	0.194	1,181

* Estimation based on current financing mechanism in ESMA regulation (Member States 60%, Community 40%)

³⁷ See points 19 and 24 of the Interinstitutional Agreement (for the period 2007-2013).

3.3. Estimated impact on revenue

- ☒ Proposal/initiative has no financial impact on revenue.
- ☐ Proposal/initiative has the following financial impact:
 - ☐ on own resources
 - ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ³⁸						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article								

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

³⁸ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

Annex to the Legislative Financial Statement for a proposal for Regulation of the European Parliament and of the Council on European Long-Term Investment Funds (ELTIF)

This proposal intends to help increase the pool of capital available for long term investment in the European Union's real economy. It will do this by creating a new form of fund vehicle, EU Long Term Investment Funds or ELTIFs. ELTIFs, by virtue of the asset classes that they are allowed to invest in, are expected to be able to provide investors with long term, stable returns. Eligible assets would be qualified as forming part of 'alternative investments' – asset classes that fall outside the traditional definition of listed shares and bonds. While alternative investments comprise real estate, venture capital, private equity, hedge funds, non-listed companies, distressed securities and commodities, ELTIFs would only focus on alternative investments that fall within a defined category of long-term asset classes whose successful development requires a long-term commitment from investors.

There is a clear need to refocus investors' approach away from only investing with a short-term outlook or in assets requiring short-term commitments. One way of achieving this is to reduce barriers to making longer-term commitments to assets such as infrastructure projects, by providing what is often called 'patient capital'. This kind of investment may not be able to be redeemed for a number of years but are invested in such a way as to be able to provide stable and predictable returns. Infrastructure projects or operating concessions would fit this description. Capital invested in this long term, 'patient' manner benefits the real economy by providing predictable and sustained flows of finance to firms and creates employment.

To ensure the effective removal of barriers to a pan-European market for ELTIFs and the trust of investors in these funds, it is necessary to ensure the highest level of supervisory convergence and proportionate oversight. The role of ESMA therefore will be of great importance, both in terms of the development of detailed regulatory requirements to achieve convergence and uniformity in the market, and in supporting ongoing supervisory oversight.

The costs related to tasks to be carried out by ESMA have been estimated for staff expenditure (Title 1), in conformity with the cost classification in the ESMA draft budget. The proposal of the Commission includes provisions for ESMA to develop 4 regulatory technical standards. In addition, ESMA will have to keep a central register on all authorized ELTIFs. ESMA will also have the opportunity to develop guidelines on the fields covered by this Regulation. ESMA will also have a role in relation to ensuring smooth cooperation and coordination of supervision of ELTIFs by the competent authorities of Member States.

It has been assumed that the Regulation will enter into force in early 2015, and therefore the additional ESMA resources are required from 2015. Additional staff has been estimated for the technical standards, advice and register to be produced by ESMA; and for other permanent tasks that accompany the function of ESMA in enhancing cooperation with the competent authorities and convergence in supervisory practices. As regards the nature of positions, the successful and timely delivery of new technical standards will require, in particular, additional policy, legal and impact assessment officers.

The following assumptions were applied to assess the impact on number of FTEs required to develop technical standards, guidelines and reports:

- One policy officer can draft on average 1,5 technical standards a year. All this work requires preparatory work such as:
- Bilateral and multilateral meetings with stakeholders
- Analysis and assessment of options and drafting of consultation documents
- Public consultation of stakeholders
- Setting up and management of standing expert groups composed of supervisors from Member States
- Setting up and management of ad hoc expert groups composed of market participants and representatives of investors
- Analysis of the responses to consultations
- Drafting of cost/benefit analysis
- Drafting of the legal text

A central register would need to be developed (IT project specified, tenders assessed, project managed). This register would then be subject to ongoing maintenance, in view of ensuring its accuracy and completeness.

In addition, other work will be necessary on an ongoing basis, including coordination of the action of Member State supervisors, work to identify supervisory practices and drive convergence in these, dispute resolution and mediation processes, and market monitoring and assessment work to identify trends in the European market of long-term investments and clarify any emerging risks for investors or barriers to the smooth functioning of the single market for such funds.

This means an additional 2 FTEs are needed from 2015. It was assumed that this increase in FTEs will be maintained in 2016 to 2020 since the standards will most likely be finalised only in 2016-2017 and implementation will be required till 2020, while ongoing tasks as outlined above would increase for ESMA following the implementation work.

Other assumptions:

- Based on the distribution of FTEs as from 2015, the additional 2 FTEs are assumed to be comprised of 2 temporary agents
- Average annual salary costs for different categories of personnel are based on DG BUDG guidance;
- Salary weighting coefficient for Paris of 1,16;
- Mission costs assumed at €10,000 per year
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) estimated at €12,700,
- The method of calculating the increase in the required budget for the 6 years is presented in more detail in table below. The calculation reflects the fact that the Community budget funds 40% of the costs.

Cost types	Calculations	Amount (in thousands)			
		2015	2016	...	2020
Title 1: Staff expenditure:					
11 Salaries and allowances					
- of which temporary agents	=2*131*1,16	304	304	304	304
- of SNEs					
- of which contract agents					
12 Expenditure related to recruitment	=2*12.7	25			
13 Mission expenses	=2*10	20	20	20	20
Total title 1 : Staff expenditure		349	324	324	324
Of which Community contribution (40%)		140	130	130	130
Of which Member State contribution (60%)		210	194	194	194

The following table presents the proposed establishment plan for the 2 temporary agent positions:

Function group and grade	Posts
AD16	
AD15	
AD14	
AD13	
AD12	
AD11	
AD10	

AD9	
AD8	
AD7	1
AD6	1
AD5	
AD Total	2