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THE EUROPEAN PARLIAMENT

THE COUNCIL

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**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON EUROPEAN LONG-TERM INVESTMENT FUNDS**

REGULATION (EU) 2015/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2015

on European Long-term Investment Funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 67, 6.3.2014, p. 71.

² OJ C 126, 26.4.2014, p. 8.

³ Position of the European Parliament of 10 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

Whereas:

- (1) Long-term finance is a crucial enabling tool for putting the European economy on a path of smart, sustainable and inclusive growth, in accordance with the Europe 2020 strategy, high employment, and competitiveness for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance of lasting duration to various infrastructure projects, unlisted companies, or listed small and medium-sized enterprises (SMEs) that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the Union's real economy and the implementation of its policies.
- (2) On the demand side, ELTIFs can provide a steady income stream for pension administrators, insurance companies, foundations, municipalities and other entities that face regular and recurrent liabilities and are seeking long-term returns within well-regulated structures. While providing less liquidity than investments in transferable securities, ELTIFs can provide a steady income stream for individual investors that rely on the regular cash flow that an ELTIF can produce. ELTIFs can also offer good opportunities for capital appreciation over time for those investors not receiving a steady income stream.

- (3) Financing for projects such as transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), the roll-out of new technologies and systems that reduce use of resources and energy, or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect, and can also mobilise capital by attracting third-country investors.
- (4) The focus of this Regulation is to boost European long-term investments in the real economy. Long-term investments in projects, undertakings, and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy. Therefore, such investments should not be prevented.

- (5) 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 national requirements on portfolio composition, diversification, and eligible assets, in particular investment in commodities, create obstacles to the cross-border marketing of investment funds that focus on unlisted undertakings and real assets because investors cannot easily compare the different investment propositions offered to them. Diverging national requirements also lead to different levels of investor protection. Furthermore, diverging national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of financial derivative instruments, rules applicable to short selling or to securities financing transactions, lead to discrepancies in the level of investor protection. In addition, diverging national requirements on redemption or holding periods impede the cross-border selling of funds investing in unlisted assets. By increasing legal uncertainty, those divergences can undermine the confidence of investors when considering investments in such funds and reduce the scope for investors to choose effectively between various long-term investment opportunities. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty on the Functioning of the European Union, as interpreted by consistent case law of the Court of Justice of the European Union.

- (6) Uniform rules are necessary to ensure that ELTIFs display a coherent and stable product profile across the Union. More specifically, 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 their portfolio and the investment instruments that they are allowed to use in order to gain exposure to long-term assets, such as equity or debt instruments issued by listed SMEs and by unlisted undertakings, as well as real assets. Uniform rules on the portfolio of an ELTIF are also required to ensure that ELTIFs that aim to generate regular income maintain a diversified portfolio of investment assets suitable for maintaining a regular cash flow. ELTIFs are a first step towards creating an integrated internal market for raising capital that can be channelled towards long-term investments in the European economy. The smooth functioning of the internal market for long-term investments requires the Commission to continue its assessment of potential barriers that might stand in the way of raising long-term capital across borders, including barriers that arise from the fiscal treatment of such investments.

- (7) It is essential to ensure that the rules on the operation of ELTIFs, in particular regarding the composition of their portfolio 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 the emergence of diverging national requirements. Managers of ELTIFs should follow the same rules across the Union in order to enhance the confidence of investors in ELTIFs and ensure enduring trustworthiness of the ‘ELTIF’ 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 diverging national requirements governing funds that invest in listed and unlisted undertakings and comparable categories of real assets is also reduced. This is especially true for managers of ELTIFs that wish to raise capital on a cross-border basis. The adoption of uniform rules also contributes to the elimination of competitive distortions.

- (8) The new rules on ELTIFs are closely linked to Directive 2011/61/EU of the European Parliament and of the Council¹, 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.
- (9) Whereas Directive 2011/61/EU also provides for a staged third-country regime governing non-EU AIFMs and non-EU AIFs, the new rules on ELTIFs have a more limited scope emphasising the European dimension of the new long-term investment product. Accordingly, only an EU AIF as defined in Directive 2011/61/EU should be eligible to become an ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU.

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (10) The new rules applicable to ELTIFs should build on the existing regulatory framework established by 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 existing Union law. In particular, 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 correspondingly to the cross-border activities of ELTIFs. These should be supplemented by specific marketing rules designed for the cross-border marketing of ELTIFs to both retail and professional investors across the Union.
- (11) Uniform rules should apply to all 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 accepting that they do not benefit from the advantages that ensue. Undertakings for collective investment in transferable securities (UCITS) and non-EU AIFs should not be eligible for marketing as ELTIFs.

- (12) In order to ensure the compliance of ELTIFs with the harmonised rules governing the activity of these funds, it is necessary to require competent authorities to 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 put in place 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 should be taken to ensure that an ELTIF will be able to comply with the harmonised rules governing the activity of these funds. A specific authorisation procedure should apply where the ELTIF is internally managed and no external AIFM is appointed.
- (13) 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.

- (14) In order to ensure that ELTIFs target long-term investments and contribute to the financing of a sustainable growth of the Union's economy, rules on the portfolio of ELTIFs should require the clear identification of the categories of assets that are 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. In order to ensure the integrity of ELTIFs, it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by giving rise to risks that are different from those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long-term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the risks inherent to its own investments. Given the liquid nature of commodities and the financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded from eligible investment assets. That 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.

- (15) The definition of what constitutes a long-term investment is broad. Eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. Nevertheless, as listed SMEs may face problems of liquidity and access to the secondary market, they should also be considered to be qualifying portfolio undertakings. The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns.
- (16) An ELTIF should be allowed to invest in assets other than eligible investment assets as may be necessary to manage its cash flow efficiently, but only so long as this is consistent with the ELTIF's long-term investment strategy.

- (17) Eligible investment assets should be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings, and loans provided to them. They should also include participations in other funds that are focused on assets, such as investments in unlisted 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 category of eligible assets, provided that they yield a predictable cash flow, whether regular or irregular, in the sense that they can be modelled and valued based on a discounted cash flow valuation method. Those assets could indicatively include social infrastructure that yields a predictable return, such as energy, transport and communication infrastructure, as well as education, health, welfare support or industrial facilities. Conversely, assets such as works of art, manuscripts, wine stocks or jewellery should not be eligible as they do not normally yield a predictable cash flow.

- (18) Eligible investment assets should include real assets with a value of more than EUR 10 000 000 that generate an economic and social benefit. Such assets include infrastructure, intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property. Investments in commercial property or housing should be permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth or to the Union's energy, regional and cohesion policies. Investments in such immovable property should be clearly documented so as to demonstrate the long-term commitment in the property. This Regulation is not seeking to promote speculative investments.
- (19) The scale of infrastructure projects means that they require large amounts of capital to remain invested for long periods of time. Such infrastructure projects include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks, and waste management infrastructure such as recycling or collection systems.

- (20) Quasi-equity instruments should 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.
- (21) 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. In addition, for the purposes of ensuring the widest possible opportunities for fundraising, investments in other ELTIFs, European Venture Capital Funds (EuVEECAs), regulated by Regulation (EU) No 345/2013 of the European Parliament and of the Council¹, and European Social Entrepreneurship Funds (EuSEFs), regulated by Regulation (EU) No 346/2013 of the European Parliament and of the Council², should be permitted. To prevent dilution of the investments in qualifying portfolio undertakings, ELTIFs should only be permitted to invest in other ELTIFs, EuVEECAs, and EuSEFs provided that they have not themselves invested more than 10 % of their capital in other ELTIFs.

¹ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

² Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

- (22) The use of financial undertakings may be necessary in order to pool and organise the contributions of different investors, including investments of a public nature, in 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, as well as the growth of SMEs.
- (23) 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 which ELTIFs can provide. Moreover, listed SMEs often face significant obstacles in acquiring long-term financing and ELTIFs may provide valuable alternative sources of funding.
- (24) Categories of long-term assets within the meaning of this Regulation should therefore comprise unlisted undertakings that issue equity or debt instruments for which there might not be a readily identifiable buyer, and listed undertakings with a maximum capitalisation of EUR 500 000 000.

- (25) Where the manager of an ELTIF holds a stake in a portfolio undertaking, there is a risk that the manager puts its own interests ahead of the interests of investors in the ELTIF. To avoid such a conflict of interests, and to ensure sound corporate governance, an ELTIF should only invest in assets that are unrelated to the manager of the ELTIF, unless the ELTIF invests in units or shares of other ELTIFs, EuVECAs, or EuSEFs that are managed by the manager of the ELTIF.
- (26) 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 the capital of the ELTIF.
- (27) 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 Council¹.
- (28) 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.

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

- (29) In order to allow managers of ELTIFs to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to 30 % of the value of the capital of the ELTIF. That should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should borrow only in the currency in which the manager of the ELTIF expects to acquire the asset .In order to address concerns related to shadow banking activities, the cash borrowed by the ELTIF should not be used for granting loans to qualifying portfolio undertakings.
- (30) Due to the long-term and illiquid nature of the investments of an ELTIF, the manager of the ELTIF should have sufficient time to apply the investment limits. The time required to implement these limits should take account of the particular features and characteristics of the investments but should not exceed five years after the date of the authorisation as an ELTIF or half the life of the ELTIF, whichever is the earlier.

- (31) ELTIFs, on account of their portfolio profile and their focus on categories of long-term assets, are designed to channel private savings toward the European economy. ELTIFs are also conceived as an investment vehicle through which the European Investment Bank (the EIB) Group can channel its European infrastructure or SME financing. By virtue of this Regulation, ELTIFs are structured as a pooled investment vehicle that responds to the EIB Group's focus on contributing to a balanced and steady development of an internal market for long-term investments in the interest of the Union. Given their focus on categories of long-term assets, ELTIFs can fulfil their designated role as a priority tool to accomplish the Investment Plan for Europe set out in the Commission communication of 26 November 2014.
- (32) The Commission should prioritize and streamline its processes for all applications by ELTIFs for financing from the EIB. The Commission should therefore streamline the delivery of any opinions or contributions on any applications by ELTIFs for financing from the EIB.
- (33) Moreover, Member States, as well as regional and local authorities, may have an interest in making potential investors and the public aware of ELTIFs.

- (34) Notwithstanding the fact that an ELTIF is not required to offer redemption rights before the end of its life, nothing should prevent an ELTIF from seeking admission of its units or shares to a regulated market or to a multilateral trading facility, thus providing investors with an opportunity to sell their units or shares before the end of the life of the ELTIF. The rules or instruments of incorporation of an ELTIF should not prevent units or shares of the ELTIF being admitted to trading on a regulated market or on a multilateral trading facility, nor should they prevent investors from freely transferring their units or shares to third parties who wish to purchase those units or shares. This is intended to promote secondary markets as an important venue for retail investors for buying and selling units or shares of ELTIFs.
- (35) While individual investors may be interested in investing in an ELTIF, the illiquid nature of most investments in long-term projects precludes an ELTIF from offering regular redemptions to its investors. The commitment of the individual investor to an investment in such assets is, by its nature, made to the full term of the investment. ELTIFs should, consequently, be structured in principle so as not to offer regular redemptions before the end of the life of the ELTIF.

- (36) In order to incentivise investors, in particular retail investors, who might not be willing to lock their capital up for a long period of time, an ELTIF should be able to offer, under certain conditions, early redemption rights to its investors. Therefore, the manager of the ELTIF should be given discretion to decide whether to establish ELTIFs with or without redemption rights, according to the ELTIF's investment strategy. When a redemption rights regime is in place, those rights and their main features should be clearly predefined and disclosed in the rules or instruments of incorporation of the ELTIF.
- (37) In order for investors to redeem effectively their units or shares at the end of the ELTIF's life, the manager of the ELTIF should start to sell the portfolio of assets of the ELTIF in good time to ensure that its value is properly realised. In determining an orderly disinvestment schedule, the manager of the ELTIF should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested. Due to the impracticality of maintaining the investment limits during this liquidation period, they should cease to apply when the liquidation period starts.

- (38) In order to broaden retail investors' access to ELTIFs, a UCITS is able to invest in units or shares issued by an ELTIF to the extent that the ELTIF's units or shares are eligible under Directive 2009/65/EC of the European Parliament and of the Council¹.
- (39) It should be possible for an ELTIF to reduce its capital on a pro rata basis in the event that it has divested itself of one of its assets, in particular in the case of an infrastructure investment.
- (40) The unlisted assets in which an ELTIF has invested may obtain a listing on a regulated market during the life of the fund. Where that happens, the assets may no longer comply with the non-listing requirement of this Regulation. In order to allow the manager of the ELTIF to disinvest in an orderly manner from such assets that would no longer be eligible, the assets could continue to count towards the 70 % limit of eligible investment assets for up to three years.

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

- (41) Given the specific characteristics of ELTIFs, as well as of the retail and professional investors they target, it is important that sound transparency requirements be put in place that are capable of allowing prospective investors to make an informed judgement and be fully aware of the risks involved. In addition to complying with the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should 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 Council¹ and Commission Regulation (EC) No 809/2004². When marketing an ELTIF to retail investors, it should be mandatory to publish a key information document in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council³. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF.

¹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

² Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1).

³ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

- (42) ELTIFs may be attractive to investors, such as municipalities, churches, charities and foundations, which should be able to request to be treated as professional clients in circumstances where they meet the conditions of Section II of Annex II of Directive 2014/65/EU of the European Parliament and of the Council¹.
- (43) As ELTIFs target not only professional but also retail investors across the Union, it is necessary that certain additional requirements be added to the marketing requirements already laid down in Directive 2011/61/EU, in order to ensure an appropriate degree of retail investor protection. Accordingly, facilities should be made available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares, and making available the information which the ELTIF and the manager of the ELTIF are required to provide. Moreover, in order to ensure that retail investors are not at a disadvantage relative to professional investors, certain safeguards should be put in place when ELTIFs are marketed to retail investors. In the event that the marketing or placing of ELTIFs to retail investors is done through a distributor, such distributor should comply with the relevant requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council².

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

- (44) The manager of the ELTIF or the distributor should obtain all necessary information regarding the retail investor's knowledge and experience, financial situation, risk appetite, investment objectives and time horizon in order to assess whether the ELTIF is suitable for marketing to that retail investor, taking into account, inter alia, the life and the intended investment strategy of the ELTIF. In addition, where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, the manager of the ELTIF or the distributor should indicate clearly and in written form that this product may not be suitable for those retail investors unable to sustain such a long-term and illiquid commitment.
- (45) When an ELTIF is marketed to retail investors, the depositary of the ELTIF should comply with the provisions of Directive 2009/65/EC as regards the eligible entities that are permitted to act as depositaries, the "no discharge of liability" rule, and the reuse of assets.
- (46) With a view to strengthening the protection of retail investors, this Regulation in addition provides that for retail investors whose portfolio, composed of cash deposits and financial instruments excluding any financial instruments that have been given as collateral, does not exceed EUR 500 000, the manager of the ELTIF or any distributor, after having performed a suitability test and having provided appropriate investment advice, should ensure that the retail investor does not invest an aggregate amount exceeding 10 % of the investor's portfolio in ELTIFs and the initial amount invested in one or more ELTIFs is not less than EUR 10 000.

- (47) Under exceptional circumstances specified in the rules or instruments of incorporation of an ELTIF, the life of the ELTIF could be extended or reduced to allow for more flexibility where, for instance, a project is completed later or earlier than expected, in order to bring it into line with its long-term investment strategy.
- (48) The competent authority of the ELTIF should verify on an on-going basis whether an ELTIF complies with this Regulation. As the competent authorities are already provided with extensive powers under Directive 2011/61/EU, it is necessary to extend those powers having regard to this Regulation.
- (49) The European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹, should be able to exercise all the powers conferred on it under Directive 2011/61/EU with respect to this Regulation and should be provided with all resources necessary for that purpose, in particular human resources.

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (50) ESMA 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 drawing up of draft regulatory technical standards which do not involve policy choices for submission to the Commission. These regulatory technical standards should concern the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments, 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 of, and calculation methodologies for costs borne by investors, 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.
- (51) Directive 95/46/EC of the European Parliament and of the Council¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council² should be fully applicable to the exchange, transmission and processing of personal data for the purposes of this Regulation.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (52) 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 but can rather, by reason of their 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.
- (53) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data as well as access to services of general economic interest. This Regulation has to be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter and objective

1. This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (EU AIFs) or compartments of EU AIFs that are marketed in the Union as European long-term investment funds (ELTIFs).
2. The objective of this Regulation is to raise and channel capital towards European long-term investments in the real economy, in line with the Union objective of smart, sustainable and inclusive growth.
3. Member States shall not add any further 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 that are directly or indirectly borne by investors;
- (2) 'professional investor' means an investor which is considered to be a professional client, or may, on request, be treated as a professional client in accordance with Annex II to Directive 2014/65/EU;
- (3) 'retail investor' means an investor who is not a professional investor;
- (4) 'equity' means ownership interest in a qualifying portfolio undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;
- (5) '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;

- (6) ‘real asset’ means an asset that has value due to its substance and properties and may provide returns, including infrastructure and other assets that give rise to economic or social benefit, such as education, counselling, research and development, and including commercial property or housing only where they are integral to, or an ancillary element of, a long-term investment project that contributes to the Union objective of smart, sustainable and inclusive growth;
- (7) ‘financial undertaking’ means any of the following:
- (a) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹;
 - (b) an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;
 - (c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council²;
 - (d) a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;
 - (e) a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- (f) a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC;
- (g) an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU.
- (8) 'EU AIF' means EU AIF as defined in point (k) of Article 4(1) of Directive 2011/61/EU;
- (9) 'EU AIFM' means EU AIFM as defined in point (l) of Article 4(1) of Directive 2011/61/EU;
- (10) 'competent authority of the ELTIF' means the competent authority of the EU AIF within the meaning of point (h) of Article 4(1) of Directive 2011/61/EU;
- (11) 'home Member State of the ELTIF' means the Member State where the ELTIF is authorised;
- (12) 'manager of the ELTIF' means the authorised EU AIFM approved to manage an ELTIF, or the internally managed ELTIF where the legal form of the ELTIF permits internal management and where no external AIFM has been appointed;
- (13) 'competent authority of the manager of the ELTIF' means the competent authority of the home Member State of the AIFM within the meaning of point (q) of Article 4(1) of Directive 2011/61/EU;

- (14) ‘securities lending’ and ‘securities borrowing’ mean any transaction in which a counterparty transfers securities subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, that transaction being considered as securities lending for the counterparty transferring the securities and being considered as securities borrowing for the counterparty to which they are transferred;
- (15) ‘repurchase transaction’ means a repurchase transaction as defined in point (83) of Article 4(1) of Regulation (EU) No 575/2013;
- (16) ‘financial instrument’ means a financial instrument as specified in Section C of Annex I to Directive 2014/65/EU;
- (17) ‘short selling’ means an activity as defined in point (b) of Article 2(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council¹;
- (18) ‘regulated market’ means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (19) ‘multilateral trading facility’ means a multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/65/EU.

¹ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

Article 3

Authorisation and central public register

1. An ELTIF may only be marketed in the Union when it has been authorised in accordance with this Regulation. Authorisation as an ELTIF shall be valid for all Member States.
2. Only EU AIFs shall be eligible to apply for and to be granted authorisation as an ELTIF.
3. The competent authorities of the ELTIFs 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, the manager of the ELTIF and the competent authority of the ELTIF. The register shall be made available in electronic format.

Article 4

Designation and prohibition on transformation

1. The designation 'ELTIF' or 'European long-term investment fund' in relation to a collective investment undertaking, or the units or shares it issues, may only be used where the collective investment undertaking has been authorised in accordance with this Regulation.
2. ELTIFs shall be prohibited from transforming themselves into collective investment undertakings that are not covered by this Regulation.

Article 5

Application for authorisation as an ELTIF

1. An application for authorisation as an ELTIF shall be made to the competent authority of the ELTIF.

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

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

The competent authority of the ELTIF may request clarification and information as regards the documentation and information provided under the second subparagraph.

2. Only an EU AIFM authorised under Directive 2011/61/EU may apply to the competent authority of the ELTIF for approval to manage an ELTIF for which authorisation is requested in accordance with paragraph 1. In the event that the competent authority of the ELTIF is the same as the competent authority of the EU AIFM, such an application for approval shall refer to the documentation submitted for authorisation under Directive 2011/61/EU.

An application for approval to manage an 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 EU 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 on which it received the request submitted by the competent authority of the ELTIF.

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

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

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

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

Article 6

Conditions for granting authorisation as an ELTIF

1. An EU AIF shall be authorised as an ELTIF only where its competent authority:
 - (a) is satisfied that the EU AIF is able to meet all the requirements of this Regulation;
 - (b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules or instruments of incorporation, and the choice of the depositary.
2. In the event that an EU AIF makes an application pursuant to Article 5(5) of this Regulation, the competent authority shall authorise the EU AIF only where it is satisfied that the EU AIF complies with both the requirements of this Regulation and of Directive 2011/61/EU regarding the authorisation of an EU AIFM.
3. The competent authority of the ELTIF may refuse to approve the application of an EU AIFM to manage an ELTIF only where the EU AIFM:
 - (a) does not comply with this Regulation;
 - (b) does not comply with Directive 2011/61/EU;
 - (c) is not authorised by its competent authority to manage AIFs that follow investment strategies of the type covered by this Regulation; or

- (d) has not provided the documentation referred to in Article 5(2), or any clarification or information requested thereunder.

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

4. The competent authority of the ELTIF shall not grant authorisation as an ELTIF to the EU AIF that has made an application for authorisation if it is legally prevented from marketing its units or shares in its home Member State.
5. The competent authority of the ELTIF shall communicate to the EU AIF the reason for its refusal to grant authorisation as an ELTIF.
6. An application which has been rejected under this Chapter shall not be resubmitted to the competent authorities of other Member States.
7. Authorisation as an ELTIF shall not be subject to a requirement that the ELTIF be managed by an EU AIFM authorised in the home Member State of the ELTIF or that the EU AIFM pursue or delegate any activities in the home Member State of the ELTIF.

Article 7

Applicable rules and liability

1. An ELTIF shall comply at all times with the provisions of this Regulation.

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

Chapter II

Obligations concerning the investment policies of ELTIFs

SECTION 1

GENERAL RULES AND ELIGIBLE ASSETS

Article 8

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 9
Eligible investments

1. In accordance with the objectives referred to in Article 1(2), an ELTIF shall invest only 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.

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 financial derivative instruments, certificates representing them, indices based on them or any other means or instrument that would give an exposure to them;
 - (c) entering into securities lending, securities borrowing, repurchase transactions, or any other agreement which has an equivalent economic effect and poses similar risks, if thereby more than 10 % of the assets of the ELTIF are affected;
 - (d) using financial derivative instruments, except where the use of such instruments solely serves the purpose of hedging the risks inherent to other investments of the ELTIF.

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

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

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

Article 10

Eligible investment assets

An asset referred to in point (a) of Article 9(1) shall be eligible for investment by an ELTIF only where it falls into one of the following categories:

- (a) equity or quasi-equity instruments which have been:
 - (i) issued by a qualifying portfolio undertaking and acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;

⁺ OJ please insert the date: 3 months after the date of entry into force of this Regulation.

- (ii) issued by a qualifying portfolio undertaking in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
 - (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority owned subsidiary, in exchange for an equity or quasi-equity instrument acquired in accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
- (b) debt instruments issued by a qualifying portfolio undertaking;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking with a maturity no longer than the life of the ELTIF;
- (d) units or shares of one or several other ELTIFs, EuVECAs and EuSEFs provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10 % of their capital in ELTIFs;
- (e) direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets with a value of at least EUR 10 000 000 or its equivalent in the currency in which, and at the time when, the expenditure is incurred.

Article 11

Qualifying portfolio undertaking

1. A qualifying portfolio undertaking referred to in Article 10 shall be a portfolio undertaking other than a collective investment undertaking that fulfils the following requirements:
 - (a) it is not a financial undertaking;
 - (b) it is an undertaking which:
 - (i) is not admitted to trading on a regulated market or on a multilateral trading facility; or
 - (ii) is admitted to trading on a regulated market or on a multilateral trading facility and at the same time has a market capitalisation of no more than EUR 500 000 000;
 - (c) it is established in a Member State, or in a third country provided that the third country:
 - (i) is not a high-risk and non-cooperative jurisdiction identified by the Financial Action Task Force;

(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 point (a) of paragraph 1 of this Article, a qualifying portfolio undertaking may be a financial undertaking that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10.

Article 12

Conflict of interest

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

SECTION 2
PROVISIONS ON INVESTMENT POLICIES

Article 13

Portfolio composition and diversification

1. An ELTIF shall invest at least 70 % of its capital in eligible investment assets.
2. An ELTIF shall invest no more than:
 - (a) 10 % of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking;
 - (b) 10 % of its capital directly or indirectly in a single real asset;
 - (c) 10 % of its capital in units or shares of any single ELTIF, EuVECA or EuSEF;
 - (d) 5 % of its capital in assets referred to in point (b) of Article 9(1) 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 the capital of the ELTIF.

4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over-the-counter (OTC) derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 5 % of the value of the capital of the ELTIF.
5. By way of derogation from points (a) and (b) of paragraph 2, an 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 the capital of the ELTIF.
6. By way of derogation from point (d) of paragraph 2, an ELTIF may raise the 5 % limit referred to therein to 25 % where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

7. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Directive 2013/34/EU of the European Parliament and of the Council¹ 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 6.

Article 14

Rectification of investment positions

In the event that an ELTIF infringes the diversification requirements set out in Article 13(2) to 13(6) and the infringement is beyond the control of the manager of the ELTIF, the manager of the ELTIF shall, within an appropriate period of time, take such measures as are necessary to rectify the position, taking due account of the interests of the investors in the ELTIF.

¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Article 15
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 point (b) of Article 9(1) of this Regulation.

Article 16
Borrowing of cash

1. An ELTIF may borrow cash provided that such borrowing fulfils all of the following conditions:
 - (a) it represents no more than 30 % of the value of the capital of the ELTIF;
 - (b) it serves the purpose of investing in eligible investment assets, except for loans referred to in point (c) of Article 10, provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned;
 - (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash;

- (d) it has a maturity no longer than the life of the ELTIF;
 - (e) it encumbers assets that represent no more than 30 % of the value of the capital of the ELTIF.
2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether or not it intends to borrow cash as part of its investment strategy.

Article 17

Application of portfolio composition and diversification rules

1. The investment limit laid down in Article 13(1) shall:
- (a) apply by the date specified in the rules or instruments of incorporation of the ELTIF;
 - (b) cease to apply once the ELTIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the ELTIF;

- (c) be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months.

The date referred to in point (a) of the first subparagraph shall take account of the particular features and characteristics of the assets to be invested by the ELTIF, and shall be no later than either five years after the date of the authorisation as an ELTIF, or half the life of the ELTIF as determined in accordance with Article 18(3), whichever is the earlier. 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.

2. Where a long-term asset in which an ELTIF has invested is issued by a qualifying portfolio undertaking that no longer complies with point (b) of Article 11(1), the long-term asset may continue to be counted for the purpose of calculating the investment limit referred to in Article 13(1) for a maximum of three years from the date on which the qualifying portfolio undertaking no longer fulfils the requirements of point (b) of Article 11(1).

Chapter III

Redemption, trading and issue of units or shares of an ELTIF and distribution of proceeds and capital

Article 18

Redemption policy and life of ELTIFs

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

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

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

2. By way of derogation from paragraph 1, rules or instruments of incorporation of the ELTIF may provide for the possibility of redemptions before the end of the life of the ELTIF, provided that all of the following conditions are fulfilled:
- (a) redemptions are not granted before the date specified in point (a) of Article 17(1);
 - (b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authorities that an appropriate liquidity management system and effective procedures for monitoring the liquidity risk of the ELTIF are in place, which are compatible with the long-term investment strategy of the ELTIF and the proposed redemption policy;
 - (c) the manager of the ELTIF sets out a defined redemption policy, which clearly indicates the periods of time during which investors may request redemptions;
 - (d) the redemption policy of the ELTIF ensures that the overall amount of redemptions within any given period is limited to a percentage of those assets of the ELTIF which are referred to in point (b) of Article 9(1). This percentage shall be aligned to the liquidity management and investment strategy disclosed by the manager of the ELTIF;

- (e) the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the total amount of requests for redemptions within any given period of time exceed the percentage referred to in point (d) of this paragraph.
- 3. The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF.
- 4. Investors may request the winding down of an ELTIF if their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which they were made.
- 5. Investors shall always have the option to be repaid in cash.
- 6. Repayment in kind out of an ELTIF's assets shall be possible only where all of the following conditions are met:
 - (a) the rules or instruments of incorporation of the ELTIF provide for this possibility, provided that all investors are treated fairly;

- (b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;
 - (c) no specific rules restrict the transfer of those assets.
7. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, as referred to in paragraph 3.

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

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 19

Secondary market

1. The rules or instruments of incorporation of an ELTIF shall not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility.

⁺ OJ please insert the date: 3 months after the date of entry into force of this Regulation.

2. The rules or instruments of incorporation of an ELTIF shall not prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF.
3. An ELTIF shall publish in its periodical reports the market value of its listed units or shares along with the net asset value per unit or share.
4. In the event that there is a material change in the value of an asset, the manager of the ELTIF shall disclose this to investors in its periodical reports.

Article 20

Issuance of new units or shares

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

Article 21

Disposal of ELTIF assets

1. An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to the competent authority of the ELTIF at the latest one year before the date of the end of the life of the ELTIF.
2. The schedule referred to in paragraph 1 shall include:
 - (a) an assessment of the market for potential buyers;
 - (b) an assessment and comparison of potential sales prices;
 - (c) a valuation of the assets to be divested;
 - (d) a 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 the 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 22

Distribution of proceeds and capital

1. An ELTIF may regularly distribute to investors the proceeds generated by the assets contained in its portfolio. Those proceeds shall comprise:
 - (a) proceeds that the assets are regularly producing;
 - (b) capital appreciation realised after the disposal of an asset.
2. The proceeds shall not be distributed to the extent that they are required for future commitments of the ELTIF.

⁺ OJ please insert the date: 3 months after the date of entry into force of this Regulation.

3. An ELTIF may reduce its capital on a pro rata basis in the event of a disposal of an asset before the end of the life of the ELTIF, provided that such a disposal is duly considered to be in the investors' interests by the manager of the ELTIF.
4. The rules or instruments of incorporation of an ELTIF shall specify the distribution policy that the ELTIF will apply during its life.

Chapter IV

Transparency requirements

Article 23

Transparency

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

The units or shares of an ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document in accordance with Regulation (EU) No 1286/2014.

2. The prospectus shall include all information necessary to enable investors to make an informed assessment 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 and Regulation (EC) No 809/2004;
 - (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) a prominent indication of the categories of assets in which the ELTIF is authorised to invest;
 - (e) a prominent indication of the jurisdictions in which the ELTIF is allowed to invest;
 - (f) any other information considered by the competent authorities to be relevant for the purposes of paragraph 2.
4. The prospectus and any other marketing documents shall prominently inform investors about the illiquid nature of the ELTIF.

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

- (a) inform investors about the long-term nature of the ELTIF's investments;
- (b) inform investors about the end of the life of the ELTIF as well as the option to extend the life of the ELTIF, where this is provided for, and the conditions thereof;

- (c) state whether the ELTIF is intended to be marketed to retail investors;
- (d) explain the rights of investors to redeem their investment in accordance with Article 18 and with the rules or instruments of incorporation of the ELTIF;
- (e) state the frequency and the timing of distributions of proceeds, if any, to investors during the life of the ELTIF;
- (f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF;
- (g) describe the hedging policy of the ELTIF, including a prominent indication that financial derivative instruments may be used only for the purpose of hedging risks inherent to other investments of the ELTIF, and an indication of the possible impact of the use of financial derivative instruments on the risk profile of the ELTIF;
- (h) inform investors about the risks related to investing in real assets, including infrastructure;
- (i) inform investors regularly, at least once a year, of the jurisdictions in which the ELTIF has invested.

5. In addition to the information required under Article 22 of Directive 2011/61/EU, the annual report of an ELTIF shall contain the following:
 - (a) a cash flow statement;
 - (b) information on any participation in instruments involving Union budgetary funds;
 - (c) information on the value of the individual qualifying portfolio undertakings and the value of other assets in which the ELTIF has invested, including the value of financial derivative instruments used;
 - (d) information on the jurisdictions in which the assets of the ELTIF are located.
6. Upon the request of a retail investor, the manager of the ELTIF shall provide additional information relating to the quantitative limits that apply to the risk management of the ELTIF, the methods chosen to that end, and the recent evolution of the main risks and yields of the categories of assets.

Article 24

Additional requirements of the prospectus

1. An ELTIF shall send its prospectus and any amendments thereto, as well as its annual report, to the competent authorities of the ELTIF. Upon request, an ELTIF shall provide this documentation to the competent authority of the manager of the ELTIF. This documentation shall be provided by the ELTIF within the time period specified by these competent authorities.
2. The rules or instruments of incorporation of an ELTIF shall form an integral part of the prospectus and shall be annexed thereto.

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

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

4. The prospectus and the latest published annual report shall be provided to investors upon request and free of charge.

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

5. The essential elements of the prospectus shall be kept up to date.

Article 25

Cost disclosure

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

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

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

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.

⁺ OJ please insert the date: 3 months after the date of entry into force of this Regulation.

Chapter V

Marketing of units or shares of ELTIFs

Article 26

Facilities available to investors

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

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

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.

⁺ OJ please insert the date: 3 months after the date of entry into force of this Regulation.

Article 27

Internal assessment process for ELTIFs marketed to retail investors

1. The manager of an ELTIF, the units or shares of which are intended to be marketed to retail investors, shall establish and apply a specific internal process for the assessment of that ELTIF before it is marketed or distributed to retail investors.
2. As part of the internal process referred to in paragraph 1, the manager of the ELTIF shall assess whether the ELTIF is suitable for marketing to retail investors, taking into account at least:
 - (a) the life of the ELTIF; and
 - (b) the intended investment strategy of the ELTIF.
3. The manager of the ELTIF shall make available to any distributor all appropriate information on an ELTIF that is marketed to retail investors, including all information regarding its life and investment strategy, as well as the internal assessment process and the jurisdictions in which the ELTIF is allowed to invest.

Article 28

*Specific requirements concerning the distribution
of ELTIFs to retail investors*

1. When directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall obtain information regarding the following:
 - (a) the retail investor's knowledge and experience in the investment field relevant to the ELTIF;
 - (b) the retail investor's financial situation, including that investor's ability to bear losses;
 - (c) the retail investor's investment objectives, including that investor's time horizon.

Based on the information obtained under the first subparagraph, the manager of the ELTIF shall recommend the ELTIF only if it is suitable for that particular retail investor.

2. Where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, the manager of the ELTIF or the distributor shall issue a clear written alert that the ELTIF product may not be suitable for retail investors that are unable to sustain such a long-term and illiquid commitment.

Article 29

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

1. By way of derogation from Article 21(3) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall be an entity of the type referred to in Article 23(2) of Directive 2009/65/EC.
2. By way of derogation from the second subparagraph of Article 21(13) and Article 21(14) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.
3. The liability of the depositary referred to in Article 21(12) of Directive 2011/61/EU shall not be excluded or limited by agreement where the ELTIF is marketed to retail investors.
4. Any agreement that contravenes paragraph 3 shall be void.
5. The assets held in custody by the depositary of an ELTIF shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets held in custody by the depositary of an ELTIF are only allowed to be reused provided that:

- (a) the reuse of the assets is executed for the account of the ELTIF;
- (b) the depositary is carrying out the instructions of the manager of the ELTIF on behalf of the ELTIF;
- (c) the reuse is for the benefit of the ELTIF and in the interests of the unit- or shareholders; and
- (d) the transaction is covered by high quality and liquid collateral received by the ELTIF under a title transfer arrangement.

The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.

Article 30

Additional requirements for marketing ELTIFs to retail investors

1. The units or shares of an ELTIF may be marketed to retail investors on the condition that retail investors are provided with appropriate investment advice from the manager of the ELTIF or the distributor.

2. A manager of an ELTIF may directly offer or place units or shares of the ELTIF to retail investors only if that manager is authorised to provide the services referred to in points (a) and (b)(i) of Article 6(4) of Directive 2011/61/EU and only after that manager has performed the suitability test referred to in Article 28(1) of this Regulation.
3. Where the financial instrument portfolio of a potential retail investor does not exceed EUR 500 000, the manager of the ELTIF or any distributor, after having performed the suitability test referred to in Article 28(1) and having provided appropriate investment advice, shall ensure, on the basis of the information submitted by the potential retail investor, that the potential retail investor does not invest an aggregate amount exceeding 10 % of that investor's financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is EUR 10 000.

The potential retail investor shall be responsible for providing the manager of the ELTIF or the distributor with accurate information on the potential retail investor's financial instrument portfolio and investments in ELTIFs as referred to in the first subparagraph.

For the purpose of this paragraph, a financial instrument portfolio shall be understood to include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

4. The rules or instruments of incorporation of an ELTIF marketed to retail investors shall 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.
5. The legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment.
6. Retail investors shall be able, during the subscription period and at least two weeks after the date of their subscription to units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.
7. The manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which allow retail investors to file complaints in the official language or one of the official languages of their Member State.

Article 31

Marketing of units or shares of ELTIFs

1. The manager of an ELTIF shall be able to market the units or shares of that 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 ELTIF to professional and retail investors in Member States other than in the home Member State of the manager of the ELTIF upon notification in accordance with Article 32 of Directive 2011/61/EU.
3. The manager of an ELTIF shall, in respect of each ELTIF that it manages, specify to competent authorities whether or not it intends to market the ELTIF 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 competent authorities with the following:
 - (a) the prospectus of the ELTIF;
 - (b) the key information document of the ELTIF in the event that it is marketed to retail investors; and
 - (c) information on the facilities referred to in Article 26.

5. The competences and powers of the competent authorities pursuant to Articles 31 and 32 of Directive 2011/61/EU shall be understood to refer also 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 set out in the first subparagraph of Article 31(3) of Directive 2011/61/EU, the competent authority of the home Member State of the manager of the ELTIF shall also prevent the marketing of an ELTIF if the manager of the ELTIF does not or will not comply with this Regulation.
7. In addition to its powers set out in the first subparagraph of Article 32(3) of Directive 2011/61/EU, the competent authority of the home Member State of the manager of the ELTIF 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 manager of the ELTIF does not comply with this Regulation.

Chapter VI

Supervision

Article 32

Supervision by the competent authorities

1. The competent authorities shall supervise compliance with this Regulation on an ongoing 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 rules or instruments of incorporation of the ELTIF, and the obligations set out in the prospectus, which shall comply 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 of the ELTIF 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 that it manages.

The competent authority of the manager of the ELTIF shall be responsible for supervising compliance of the manager of the ELTIF 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 designation 'ELTIF' or suggest that they are an ELTIF unless they are authorised under, and comply with, this Regulation.

Article 33

Powers of competent authorities

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

Article 34

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 also be exercised 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 understood as a further legally binding Union act which confers tasks on ESMA as referred to in Article 1(2) of Regulation (EU) No 1095/2010.

Article 35

Cooperation between competent authorities

1. The competent authority of the ELTIF and the competent authority of the manager of the ELTIF, if different, shall cooperate with each other and exchange information for the purpose of carrying out their duties under this Regulation.
2. Competent authorities shall cooperate with each other in accordance with Directive 2011/61/EU.

3. 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.
4. 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 infringements of this Regulation.

Chapter VII

Final provisions

Article 36

Processing of applications by the Commission

The Commission shall prioritize and streamline its processes for all applications by ELTIFs for financing from the EIB. The Commission shall streamline the delivery of any opinions or contributions on any applications by ELTIFs for financing from the EIB.

Article 37

Review

1. No later than ...⁺, the Commission shall start a review of the application of this Regulation. The review shall analyse, in particular:
 - (a) the impact of Article 18;
 - (b) the impact on asset diversification of the application of the minimum threshold of 70 % of eligible investment assets laid down in Article 13(1);
 - (c) the extent to which ELTIFs are marketed in the Union, including whether AIFMs falling under Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;
 - (d) the extent to which the list of eligible assets and investments should be updated, as well as the diversification rules, portfolio composition and limits regarding the borrowing of cash.

⁺ OJ please insert the date: four years after the date of entry into force of this Regulation.

2. Following the review referred to in paragraph 1 of this Article, and after consulting ESMA, the Commission shall submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of ELTIFs to the completion of the Capital Markets Union and to the achievement of the objectives set out in Article 1(2). The report shall be accompanied, where appropriate, by a legislative proposal.

Article 38

Entry into force

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

It shall apply from ...⁺.

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

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President

⁺ OJ please insert the date: six months after entry into force of this Regulation.