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IMPACT ASSESSMENT REPORT

Accompanying the

Proposal for a Regulation of the European Parliament and of the Council

amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds

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GLOSSARY

Term or acronym	*Meaning or definition*
AIF or AIFs	Alternative Investment Funds
AIFM or AIFMs	Alternative Investment Fund Manager
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AMF	Autorité des Marchés Financiers
AuM	Assets under management
CMU	Capital Markets Union
CNMV	Comisión Nacional del Mercado de Valores
Consob	Commissione Nazionale per le Societa e la Borsa
CSSF	Commission de Surveillance du Secteur Financier
ELTIF or ELTIFs	European long-term investment fund(s)
ELTIF Regulation	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98)
ESMA	European Securities and Markets Authority
EuSEF	European Social Entrepreneurship Fund
EuVECA	European Venture Capital Fund
FISMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
HLF	High-Level Forum on the Capital Markets Union
KID	Key Information Document
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L 173, 12.6.2014, p. 349, as amended)
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L 173, 12.6.2014, p. 84, as amended)
NAV	Net Asset Value
NCA or NCAs	National Competent Authority(ies)
PRIIPs	Packaged Retail Investment and Insurance Products

PRIIPs Regulation	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, as amended)
Professional investor	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 (Article 2(2) of the ELTIF Regulation)
Retail investors	An investor who is not a professional investor (Article 2(3) of the ELTIF Regulation)
UCITS	Undertakings for Collective Investment in Transferable Securities
UCITS Directive	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, as amended)

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

1.1. Background

Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (hereinafter: ELTIF Regulation)[1] is a European framework for Alternative Investment Funds (AIFs) that invest in long-term investments, such as infrastructure projects, real estate, listed and unlisted SMEs. The ELTIF Regulation establishes uniform rules on the authorisation, investment policies and operating conditions and marketing of ELTIFs.

The ELTIF regime is intended to facilitate long-term investments in these types of assets by institutional and retail investors and provide an alternative, non-bank source of finance to the real economy. Such long-term finance can support the development of the European economy along the path of smart, sustainable and inclusive growth.

Since the adoption of the ELTIF legal framework in April 2015, only a limited number of ELTIFs have been launched with a relatively small amount of net assets under management (total assets under management are estimated at approximately EUR 2.4 billion in 2021). As of October 2021, ESMA's register of ELTIFs listed 57 authorised ELTIFs and these funds were domiciled in only four Member States (Luxembourg, France, Italy and Spain), while the remaining Member States had no domestic ELTIFs (for more detailed information on the ELTIF market see Annex 6).[2]

While the ELTIF is still a relatively new framework, the available market data indicates that the development of the market has not scaled up as expected, particularly given the Commission's objective of promoting long-term finance in the EU as part of the CMU. An evaluation of the framework in Annex 5 concludes that there is a need for a targeted review of certain legal and policy elements of the ELTIF framework.

Since the publication of the first Capital Markets Union (CMU) Action Plan in 2015, a number of actions have been taken in the context of developing more long-term sources of funding in the EU[3]. But it has become apparent that further policy interventions are necessary to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects, particularly during the recovery from the Covid-19 pandemic.

This review aims to increase uptake of ELTIFs across the EU for the benefit of the European economy and investors. This, in turn, would support the continued

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1 OJ L 123, 19.5.2015, p. 98.

2 Register of Authorised ELTIFs. ESMA34-46-101. Source: https://www.esma.europa.eu/document/register-authorised-european-long-term-investment-funds-eltifs (Available: 5 June 2021).

3 European Commission. Action plan on building a Capital Markets Union. Source: https://ec.europa.eu/info/publications/2015-action-plan-building-capital-markets-union_en (Available: 8 February 2021). In this connection, it needs to be noted that tackling the climate crisis and managing the energy transition to a low carbon economy, as well as other environmental and social challenges requires a long-term horizon and associated longer-term investments. The success of these investments in new technologies and infrastructures requires effective regulatory frameworks and robust and cost-effective financial structures.

development of the CMU, which also aims to make it easier for EU companies to access more stable and diverse long-term financing. The European Commission Green Paper on Long-term Financing of the European Economy[4] also revealed that Europe needs to promote more smart, sustainable and inclusive growth, creating jobs and enhance its global competitiveness. This priority was further supported by the Commission's Mid-Term Review of the CMU Action Plan[5], which determined that the EU has been suffering from a chronic lack of long-term financing for SMEs when compared to other major economies.

To fund long-term investments in the European economy, governments and businesses need access to predictable long-term financing. The availability of such financing depends on the ability of the financial system to channel the savings of governments, corporates and households safely and efficiently to the right investments through open and competitive markets. ELTIFs have a crucial role to play in this area by providing a dedicated investment product to mobilise capital for the financing of projects such as transport infrastructure, sustainable energy generation or distribution, social infrastructure (such as housing for seniors or hospitals), new technologies and systems that reduce the use of resources and energy and further growth of Europe's SME sector.

The Commission conducted an open public consultation (see Annex 2)[6] and a number of targeted consultations with a wide range of stakeholders to assess the functioning of the ELTIF framework (see sources and evidence used in the impact assessment in Section 5 of Annex I). These consultations allowed the Commission to explore with those stakeholders a range of possible policy options to tailor and, where appropriate, amend the provisions of the ELTIF Regulation.

This impact assessment identifies a number of barriers and limitations in the current framework that have limited the market's uptake of the ELTIFs and an assessment of the identified options to address these issues.

1.2. Political and legal context

In June 2020, the High Level Forum (HLF) on the Capital Markets Union (CMU) published its final report[7] that contained 17 recommendations aimed at removing barriers in the EU's capital markets, including a recommendation for the targeted review of the ELTIF Regulation. According to the report, a review of the ELTIF regime with targeted amendments could accelerate the uptake by investors with a long-term investment horizon and increase the flow of long-term financing to the real economy.[8]

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4 COM/2013/0150 final.

5 European Commission. COM(2017) 292 final. Source: https://ec.europa.eu/info/sites/default/files/communication-cmu-mid-term-review-june2017_en.pdf (2 May 2021).

6 European Commission. Consultation document: Public consultation on the review of the European long-term investment funds (ELTIF) regulatory framework. Source: https://ec.europa.eu/info/files/2020-eltif-review-consultation-document_en (8 February 2021).

7 Final report of the High Level Forum on the Capital Markets Union - A new vision for Europe's capital markets. 10 June 2020. Source: https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en (8 February 2021).

8 *Ibid*, page 12.

Furthermore, the Commission's revised CMU Action Plan[9] explicitly recognised the need to further support investment vehicles that channel financing to long-term investment projects.[10] In the Action Plan, the Commission committed to review the legislative framework for ELTIFs.[11]

It should be noted that the review of the ELTIF framework has strong links with the CMU, the European Green Deal[12], European Energy Union[13] and other Union policy initiatives, including the recovery from the Covid-19 pandemic. Against this background, on 2 December 2020, the Council of the European Union in its conclusions urged the Commission to review the ELTIF regime.[14]

The ELTIF regime is also closely linked to Alternative Investment Fund Managers Directive 2011/61/EU (the AIFMD) since the AIFMD 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 the AIFMD. As a result, the rules applicable to ELTIF managers are set out and governed by those in the AIFMD. Given the inter-linkages of the ELTIF Regulation with the AIFMD framework, it is also important to note that in addition to this ELTIF review, the Commission is also reviewing the AIFMD.[15] It is anticipated that both proposals will be adopted simultaneously[16]. Further information on the linkages between the two frameworks is set out in Section 2.3. of Annex 5.

The requirement to review the functioning of the ELTIF framework is mandated by the co-legislators in Article 37 of the ELTIF Regulation, which requires the Commission to review the functioning of the ELTIF framework.[17] Following the review and after consulting ESMA[18], which was completed in February 2021, the Commission is also

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9 Communication from the European Commission. A Capital Markets Union for people and businesses-new action plan. COM(2020) 590 final. 24 September 2020. Source: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12498-A-Capital-Markets-Union-for-people-and-businesses-new-action-plan (8 February 2021).

10 The Action Plan has discussed possible "changes to the legislative framework and increased incentives to use the ELTIF fund structure could promote the introduction of pan-European long-term investment funds and ultimately channel more funding, including from retail investors, into the EU's real economy". *Ibid*, page 8.

11 *Ibid,* page 8 (Action 3).

12 European Commission. A European Green Deal. Source: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en (6 June 2021).

13 European Commission. Energy Union Strategy. Source: https://ec.europa.eu/energy/topics/energy-strategy/energy-union_en (6 June 2021).

14 More specifically, the Council has urged the Commission "to prioritise and accelerate the work on … inter alia … improving the regulatory framework for long-term investment vehicles by reviewing the European Long-Term Investment Fund (ELTIF) Regulation, thereby particularly taking into account the need to support the non-bank financing of SMEs and of long-term investment in infrastructure, which is needed for the transition to a sustainable and digital economy". Council of the European Union Conclusions on the Commission's CMU Action Plan. Reference 12898/1/20. ECOFIN 1023. Point 19(e). Adopted 2 December 2020. Source: https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf (8 February 2021).

15 The rules applicable to ELTIFs are thereby built on the existing regulatory framework established by the AIFMD and the acts adopted for its implementation. See Recitals (8) to (10) of the ELTIF Regulation.

16 European Commission. Source: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Alternative-Investment-Fund-Managers-review-of-EU-rules/public-consultation_en (25 May 2021).

17 The ELTIF Regulation, Article 37, notably requires that the review should analyse, in particular the impact of the redemption policy and life of ELTIFs), the impact on asset diversification of the application of the minimum threshold of 70% of eligible investment assets, the extent to which ELTIFs are marketed in the Union, 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.

18 It should be noted that the European Commission has conducted the consultation of ESMA. *See* ESMA response to the European Commission dated 3 February 2021 on the functioning of the ELTIF regime. ESMA34-46-

required to submit to the co-legislators a report assessing the contribution of the ELTIF Regulation to the completion of the CMU and, if appropriate, present a legislative proposal.

2. PROBLEM DEFINITION

2.1. Evaluation

From the EU *acquis* perspective, ELTIFs are a sub-segment of AIFs and are subject to the rules of the AIFMD framework in addition to the requirements of the ELTIF framework. The ELTIF is a voluntary regulatory regime and asset managers can choose among a range of structures when establishing their funds.

Compared to these alternative AIF structures, the ELTIF regime has certain advantages. First, it is a fully harmonised European label for financial products, which allows for an EU-wide passport-based marketing to both professional and retail investors. In comparison, AIFs under the AIFMD can only be passported to professional investors and marketing to retail investors is subject to national rules. The ELTIF fund rules can also offer the capacity to withstand market volatility due their closed-ended nature and in certain cases preferential national tax treatments for ELTIF investors. ELTIFs can also represent a safer pathway for investors interested in private equity investments but present a lower risk profile than pure private equity funds.

Nevertheless, the advantages of ELTIFs are diminished by the restrictive fund rules and barriers to entry for retail investors, the combined effect of which reduce the utility, effectiveness and attractiveness of the ELTIF regime for managers and investors. Based on the evaluation of the functioning of the ELTIF regime (see Annex 5) and stakeholders' feedback, these restrictions are the key drivers of the ELTIFs failure to scale up significantly and reach their full potential to channel investments to the real economy.

As of October 2021, ESMA's register of ELTIFs has recorded only 57 ELTIFs. The approximate total ELTIF AuM across Europe only amounted to approximately EUR 2.4 billion, representing a tiny fraction of the total EU AIFs market (EUR 6.8 trillion as at the end of 2020).[19] As of May 2021, French and Luxembourg ELTIFs held the vast majority of the total AuM, to EUR 1.2 billion and EUR 950 million respectively. For Italian ELTIFs this amount was equal to EUR 222 million and for Spanish ELTIFs only EUR 28 million (see Annex 6 for more information on the ELTIF segment).[20]

Based on the data available in the AIFMD database and additional analysis of ELTIF portfolio composition by ESMA as of February 2021, 60% of the total AuM was invested in loans granted to qualifying undertakings, and roughly 11% of the total AuM was invested in equity and 6% in non-investment grade corporate bonds. The rest was

99. Source: https://www.esma.europa.eu/press-news/esma-news/esma-provides-input-commission-improvements-eltif (27 April 2021).

19 ESMA Statistical Report 2021. EU Alternative Investment Funds, page 6. Source: https://www.esma.europa.eu/sites/default/files/library/esma50-165-1734_asr_aif_2021.pdf (7 June 2021).

20 See ESMA ELTIF register and survey. ESMA34-46-103, pages 2 and 3.

made up by cash and cash equivalents, including in foreign currencies for hedging purposes.[21]

As of April 2021, all ELTIFs were domiciled in only four Member states (France, Luxembourg, Italy and Spain). While some ELTIFs were marketed in more than one Member State, most ELTIFs were solely marketed in the Member State of their domicile (see Annex 6).

Certain characteristics of the above description of the ELTIF market (i.e low number of funds, small net asset size, few jurisdictions in which ELTIFs are domiciled, portfolio composition largely skewed towards only one eligible investment category) demonstrate the concentrated nature of the market both geographically and in terms of investment type.

While there are indications of recent growth in the number of registered ELTIFs, albeit from a low basis from mid-2019 to mid-2021[22] (the recent growth in the number of new ELTIF authorisations is attributed to Italy (11 new ELTIFs), France (5 new ELTIFs) and Luxembourg (7 new ELTIFs)), however, this recent activity is not indicative of broader market use of the ELTIF and remains below the desired level.[23] For that reason, it is important that the ELTIF review address the range of issues identified by stakeholders to encourage greater market take-up of these funds.

The current sub-scale nature of the ELTIF market also exhibits significant unlocked potential in the legal framework with a view to effectively contributing to the real economy and the development of the CMU.

The following table below summarises the main findings of the evaluation of the ELTIF regime with a clear focus on the answers to the evaluation questions:

Table 1 – Evaluation of the ELTIF regime (key findings)

	Questions	Summary of the evaluation
Q 1	How effective has the EU intervention been?	The objectives of the ELTIF Regulation to establish a single market for ELTIFs has not been achieved entirely. The market remains underdeveloped. The EU ELTIF regime has not achieved its full potential to become a fund vehicle of choice for financing long-term projects in Europe.
Q 2	How efficient has the EU intervention been?	ELTIF rules regarding the establishment and the marketing of ELTIFs have proved to be generally cost-effective. However, the one-size-fits-all approach to the fund rules for both retail and institutional investors combined with overly restrictive fund rules limit the utility of ELTIFs.
Q 3	How relevant is the EU intervention?	The original rules remain relevant and provide for a strong legal foundation for a well-regulated and transparent legal regime for a passportable financial product available to both professional and retail investors. The original objectives of the ELTIF Regulation correspond to the current needs within the EU (financing of long-term projects) but require recalibration on the fund rules side.
Q 4	How coherent is the EU intervention?	The rules set out in the ELTIF Regulation are coherent with other pieces of EU legislation. ELTIFs are a sub-set of AIFs which links ELTIFs to the AIFMD framework.

[21] See Footnote 18.

[22] When the ELTIF review has started in mid-2019, there were around 20 ELTIFs in existence. In March 2020, ESMA has compiled a list of all authorised ELTIFs which has referred to 28 authorised ELTIFs. As on October 2021, the ELTIF register contained 57 ELTIFs.

[23] No projections can be made on whether new ELTIFs would be domiciled in new jurisdictions (those beyond France, Luxembourg, Italy or Spain), and anticipate the total number of funds and the net asset size of the ELTIF industry going forward.

Q 5	What is the EU-added value of the EU intervention?	The clear added value of the ELTIF Regulation is to realise its full potential to channel finance to long-term projects and meeting the needs of retail and professional investors while enabling the cross-border marketing of funds that are well-suited for a range of long-term projects.

Additional information on the evaluation of the functioning of the ELTIF framework could be found in Annex 5 hereto.

Annex 2 sets out the stakeholder feedback in detail. This feedback highlights market concern at the overly restrictive provisions in the ELTIF framework that limit its effectiveness and utility for both retail and professional investors to access ELTIFs. In particular, the barriers to entry for retail investors and the exposure thresholds have proven to be overly restrictive and prevent the average retail investor from accessing ELTIF products. In addition, overly restrictive fund rules limit the available investment universe, fund structures and available strategies. Some of these restrictions limit the ability to develop strategies for ELTIFs and access a sufficient range of eligible investments.

2.2. Problem tree overview

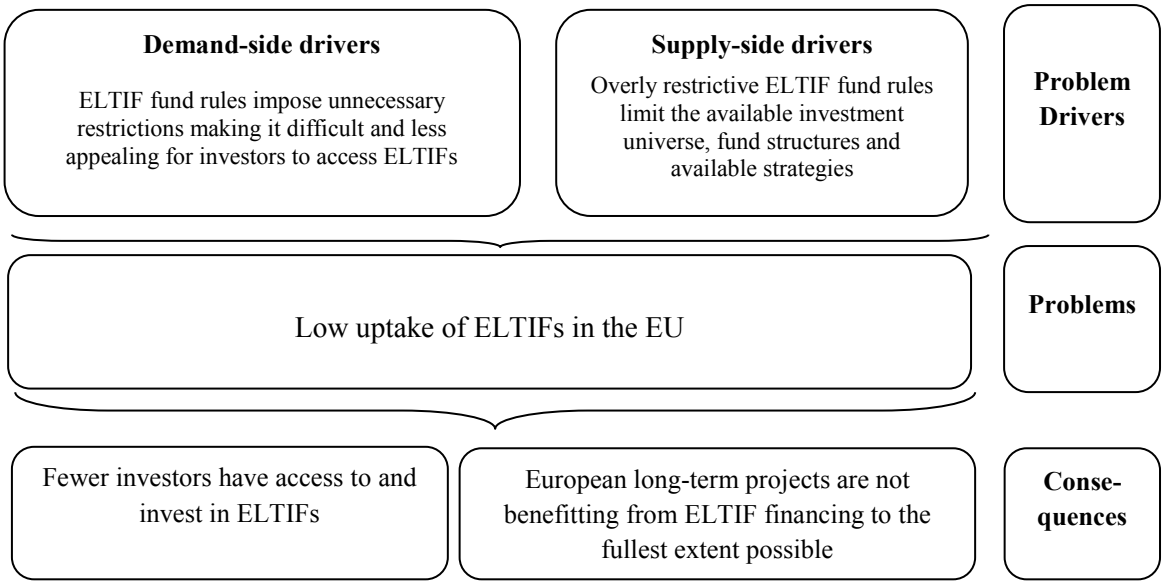
Since the global economic and financial crisis, the EU has suffered from low levels of investment, in particular sources of long-term capital. The ELTIF regime is uniquely positioned to provide this type of financing given the current low to negative interest rate environment, the resilience of ELTIFs to liquidity shocks as experienced in 2020 and the need to deploy capital and savings into less liquid assets to support the real economy, fund large infrastructure projects, create employment and support the shift to carbon neutral economies by investing in new technologies and green power generation. At the same time, the economic impact and cost of the Covid-19 pandemic have reduced the capacity for government spending in these areas creating an opportunity for ELTIFs to step into this space and provide market financing to support these projects.

However, the market for ELTIFs has failed to scale up significantly since the entry into force of the Regulation. With only 57 authorised ELTIFs managing approximately EUR 2.4 billion in assets and despite being a relatively recent framework, it is evident that the ELTIF regime has failed to achieve mainstream market appeal and realise its full potential to channel capital financing to long-term investments in the EU. In its current state, the ELTIF is also not supporting to the extent possible the development of the CMU, the European Green Deal and the pandemic recovery.

While a certain degree of new market growth as set out above has been identified (see Annex 2), the ongoing lack of significant market development and the limited offering of ELTIF products necessitates further examination to determine its causes and identify potential solutions to improve market adoption of ELTIFs by both fund managers and investors.

The following problem tree summarises the problem drivers, problems and consequences under consideration:

Graph 1 – Problem tree



In line with the problem tree, the section below summarises and presents the problems faced in the context of the ELTIF regime by asset managers, as well as by investors.

2.3. Problems

The core problem is the failure of the market for ELTIFs scale up both in terms of the number of funds and in terms of net assets. The low uptake by fund managers limits the contribution of the ELTIF to the real economy and the goals of the CMU while investors may not be able to access long term investment products that meet their financial needs.

The skew in the overall portfolio allocation by ELTIFs exposes the problem that – by deduction - certain eligible assets, such as real assets or other eligible investment funds (ELTIFs, EuSEFs and EuVECAs) are virtually not represented among those eligible assets in which ELTIFs may invest.

In this context, ELTIFs co-exist in parallel to other EU investment funds frameworks, including the AIFs managed by the AIFMs, national fund vehicles regulated under national laws of the EU Member States, and partially with EuVECAs and EuSEFs and even the private equity investments used for structuring certain long-term projects.[24]

The potential attractiveness of other legal fund frameworks, as well as the sub-optimal functioning of the ELTIF framework is linked to the insufficient interest among asset managers in establishing ELTIFs. Given the overly restrictive fund rules and the burden of the entry barriers for retail investors, managers may choose to use AIFs even though the ELTIF offers certain distinct advantages over those funds. These advantages are outweighed by the limitations of the framework.

[24] The availability of other fund regimes (such as a mainstream AIFMD regime or sub-segments thereof or national fund structures) is an important factor that should not be seen as per se diminishing the attractiveness or the effectiveness of the ELTIF framework. Instead, such regimes are complementary in providing a range of regulatory and market possibilities for facilitating the channelling of non-bank financing to real economy.

2.4. Problem drivers

2.4.1. Demand-side drivers

The key demand-side driver is that ELTIF rules impose restrictions making it difficult and less appealing for both retail and professional investors to access ELTIFs.

The analysis of the functioning of the ELTIF Regulation (see the evaluation in Annex 5) has exposed specific ELTIF rules that contain explicit limitations that have the effect of dissuading investments by retail investors.

The current ELTIF rules create significant barriers to entry for retail investors, such as the need to clarify the ELTIF requirements for the assessment of retail investor's knowledge and experience and align with the requirements in MiFID II framework. Current provisions of the Regulation notably require fund managers to assess whether the ELTIF is suitable for marketing to retail investors and conduct a suitability test to assess the retail investor's knowledge and experience, general financial situation and their investment objectives

The EUR 10,000 minimum initial investment participation (the so-called "entry ticket") and the 10% limitation on aggregate investment for investors whose portfolio does not exceed EUR 500,000 required by the ELTIF Regulation constitute a tangible barrier to the access of retail investors. It should also be noted that the 10% threshold is applied on an aggregate level. This means that the total (aggregate) amount allocated by retail investors to ELTIFs, as part of their financial portfolio, should not exceed 10% of the investor's portfolio. The ELTIF Regulation justifies the existence of such thresholds and limitations with the imperative of strengthening the protection of retail investors (see Recital 46 of the ELTIF Regulation).

It should, however, be recognised that both the EUR 10,000 minimum entry ticket in combination with the 10% aggregate maximum exposure while ostensibly for investor protection represent a significant obstacle for the average retail investor and conflict with the original goal of the ELTIF to establish a retail AIF product.

Investors face the disproportionately high hurdle of investing a considerable amount of one's disposable income, relative to one's savings, into one illiquid financial product which cannot be redeemed over a long period of time. Even where an investor can invest EUR 10,000 to an ELTIF, investing in other ELTIFs would prove more difficult given the application of the minimum entry ticket in conjunction with the 10% *aggregate* threshold.[25]

2.4.2. Supply-side drivers

The key supply-side problem drivers are overly restrictive fund rules that limit the available investment universe, fund structures and available investment strategies. Such

[25] One could envisage a scenario, where a retail investor with a financial portfolio of EUR 180,000 has acquired a EUR 10,000 worth of shares or units of an ELTIF. Such an investor would therefore be prevented from purchasing any other ELTIFs since it may, in aggregate, purchase EUR 18,000 or 10% of its total portfolio of ELTIFs. However, by purchasing the first ELTIF, the investor would have no "quota" left in allocating the remaining EUR 8,000 to purchasing another ELTIF due to the EUR 10,000 minimum investment ticket requirement.

restrictive provisions in the ELTIF framework reduce the attractiveness for asset managers for establishing ELTIFs as indicated in the evaluation and stakeholder feedback.

A fund manager's decision to establish, market and manage an investment fund is influenced by market-driven considerations (such as the attractiveness of the local market, prospective investor demand, availability of eligible assets, distribution networks, etc.) and regulatory considerations (choice of the jurisdiction of domicile, fund rules, jurisdictions where the fund will be marketed, etc.). In particular, when asset managers decide on the choice of the legal framework for the incorporation of the investment fund they consider, among other factors, to what extent the underlying fund rules are well-adapted to support the purported investment strategy pursued by the asset manager.[26] This flexibility of fund rules should ideally allow asset managers to pursue different investment strategies across a variety of asset classes[27].

However, every investment strategy and every investment project will have its unique characteristics, maturity profile, risk and reward profile and would often require distinct fund rules adapted to specific circumstances, identified investor demand, expected liquidity profile and other investment factors.

In this connection, as the evaluation confirms, the fund rules set out in the ELTIF regulatory regime appear to be excessively restrictive and prevent managers from pursuing a wider range of existing investment strategies that could otherwise be used to channel financing into long-term investment projects. In particular, certain ELTIF rules contain strict limitations that make the functioning of the ELTIFs inefficient, impracticable or unviable and in certain cases less attractive for the investment manager than the readily available AIF structures.

Stakeholders have highlighted these issues with the functioning of the ELTIF framework through the open public consultation (see Annex 2) and during subsequent bilateral consultations with a wide range of market participants and NCAs. Whilst different types of stakeholders prioritise the importance of different fund rules, the most important factors appear to focus on the outright limitations in the scope of eligible assets and investments, restrictive fund rules on the borrowing of cash, and requirements regarding diversification and portfolio composition requirements and concentration limits (see the evaluation of the ELTIF Regulation, Annex 5).

A fund manager's decision to establish, market and manage an investment fund is equally influenced by the category of investors to which units or shares of ELTIFs can be marketed.[28] These considerations are important for AIFMs because they may determine their market potential, the level of investor demand for the product, its marketing strategy, the optimal portfolio composition and costs associated thereto. The fund structure (*vis-à-vis* eligible investors) will also determine distribution-related aspects and other applicable regulatory requirements, such as the possibility for a two-week

[26] As discussed in Section 2.1.1 (a), a fund manager's decision to set up, market and manage an investment fund is influenced by a range of market considerations and regulatory considerations, in which the flexibility of fund rules is an important factor.

[27] For instance, investments in real assets, like smart grid, energy efficiency projects or high-speed railway infrastructure, investments in subordinated corporate debt of innovative SMEs in a particular geographical region, or outright equity investments in a listed and non-listed companies developing advanced carbon capture technology.

[28] ELTIFs could, at least theoretically, be marketed solely to professional investors or solely to retail investors, or a mix of both retail and professional investors.

withdrawal window for retail investors and the requirement to provide a Key Information Document (KID) for retail investors.

In this connection, it should be noted that the ELTIF Regulation applies the same fund rules for both professional and retail investors including restrictions on the use of leverage, diversification and portfolio composition requirements, concentration rules and limits on the eligible assets and investments. This means that all AIFMs when choosing the ELTIF structure as a possible vehicle of choice for setting an investment vehicle must comply with a "one-size-fits-all" set of fund rules irrespective of the targeted client group, preferred investment strategy, and the risk profile of the underlying portfolio assets.[29]

Same fund rules for both professional and retail investors seem to serve a very distinct category of investors with different time horizons, risk tolerance and investment needs, which may be seen as impairing the ability of managers to offer tailored products.

In addition, the participation of retail investors in an ELTIF may often lead to higher administrative burdens and associated costs for ELTIF managers compared to those ELTIFs that can be solely marketed to professional investors. While these burdens may appear to be largely administrative and compliance-driven (a requirement to publishing a Key Information Document under the PRIIPS Regulation, a 2-week withdrawal right without a penalty, extra procedures and staff to deal with any complaints by retail investors, a requirement for the nomination and contract documentation with a depositary, etc.), these fund rules have been consistently flagged to the Commission services as detracting from the attractiveness of ELTIFs when the intention is to only market to professional investors.[30]

2.4.4. Out-of-scope problem drivers

There are other significant problem drivers that impact on the attractiveness of ELTIFs but that are outside of the scope of the Commission's review.

Taxation – A number of industry representatives and asset managers responding to the open consultation pointed to taxation as an important barrier. Respondents reported that investment funds often lack or have difficulties with obtaining access to double tax treaties, due to their tax status in the territory where they are domiciled or because they cannot demonstrate that their investors meet particular residence or nationality requirements.[31] When they did have access to double tax treaties, respondents reported

[29] As an illustration, an ELTIF manager could have a limited capacity to opt for more concentrated portfolios (say, investing in subordinated debt to two qualifying SME undertakings) or using higher leverage (beyond the current 30% limit set out in the ELTIF regime) despite specific preferences and despite the fact that more focused asset allocation and higher leverage would allow that asset manager to set up an ELTIF that would otherwise be fully appropriate and suitable to the needs of such institutional investors, the manager would not be permitted to structure the fund in this way preventing them from meeting their clients requirements under the ELTIF. This means that many managers instead choose to use standard AIFs instead.

[30] In its letter to the Commission dated 3 February 2021, ESMA also highlighted its concerns regarding the one-size-fits-all approach of the ELTIF framework "*In this context, it should also be noted that Article 30(4) of the ELTIF Regulation (equal treatment of all investors), if interpreted strictly, could imply that no specific share classes can be launched within an ELTIF opened to retail investors. In that case, professional investors would be dissuaded to invest in an ELTIF opened to retail investors as they would have to pay the same percentage/amount of fees than retail investors although their subscriptions are generally much higher*".

[31] It should be noted that this third category of the possible Member State incentives such as tax reliefs are outside the mandate of the European Commission due to the powers stemming from the EU Treaties, and will hence not be addressed in the present initiative.

difficulties due to inconsistent and burdensome withholding tax recovery procedures, which are defined and applied at a national level.[32] Other tax issues highlighted by industry respondents and investors were diverging national tax reporting requirements, which discourages (retail) investors from investing cross-border.[33]
Taxation barriers are out of scope of this initiative as these would need to be addressed on a different treaty base and are the subject of other Commission work streams. This includes the work with national tax experts, which has led in 2017 to the publication of a Code of Conduct on Withholding Tax[34] on more efficient withholding tax relief and refund principles as part of the CMU Action Plan.

The High-Level Forum on the CMU has explicitly addressed taxation related concerns in its recommendations in relation to the ELTIF review.[35] The HLF on CMU also recommends (see Recommendation 15) to introduce a relief at source system for withholding tax procedures at EU level in the same vein as the Action Plan for fair and simple taxation supporting the recovery strategy.[36] However, the Report has explicitly acknowledged that taxation related issues must be solved at national level.[37]

Despite the fact that tax-related issues fall outside the scope of the ELTIF review initiative, it could be considered that national taxation plays a relatively important, albeit a non-decisive role in the uptake of ELTIFs in general.[38] Taxation-related aspects are analysed by asset managers amongst many economic, regulatory, financial, accounting and marketing considerations. The presence of tax incentives, when taken in aggregate, may lead to a specific feature design or marketing to a specific category of investors who may find it attractive to invest in a product due to a combination of economic, financial and investment aspects. The design of financial products is very rarely dictated solely by tax-related considerations.

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32 Inefficient withholding tax procedures on passive income payments has been a long-standing barrier for the well-functioning of the CMU and, in general, for the free movement of capitals. The Commission services are working on a solution, pursuant to Action 8 of the Action Plan for fair and simple taxation supporting the recovery strategy. European Commission. Task Action Plan for Fair and Simpler Taxation. Source: https://ec.europa.eu/taxation_customs/general-information-taxation/eu-tax-policy-strategy/package-fair-and-simple-taxation_en (18 May 2021).

33 In this connection, it should be noted that an attractive taxation regime is an important factor affecting the attractiveness of investments in investment funds in general. In the context of the ELTIF review, many stakeholders, including the High-Level Forum on the CMU experts have flagged the availability of favourable taxation regime and the elimination (or more favourable) withholding tax as potentially creating incentives for investments in ELTIFs. To support this argument, one should mention a relative uptake in Italian-domiciled ELTIFs, albeit from a low base, which have largely been linked to the adoption in 2019 of the Law Decree DL34/2019 (Growth Decree) seeking to improve the competitiveness of Italian companies, creating long-term economic growth and supporting new investments and employment. This Decree creates tax incentives for investors in Italian ELTIFs and, based on the feedback by some stakeholders, is a cornerstone of the increased fund activity in this area in Italy.

34 European Commission. Code of Conduct on Withholding Tax. Source: https://ec.europa.eu/taxation_customs/sites/taxation/files/code_of_conduct_on_witholding_tax.pdf (28 April 2021).

35 Notably, the Report has lamented that "by introducing targeted amendments to the ELTIFs regime, ELTIFs should become a coherent and stable product profile for investors to invest in. Nonetheless, specific national considerations, among which is tax, will continue to impinge on this. In view of the long-term nature of the investments, a favourable tax treatment of ELTIFs (no tax on dividends or capital gains) should be granted across EU jurisdictions. In order to render ELTIFs investments more attractive a favourable tax treatment could be considered at Member State level". Ibid, page 39.

36 *See* Footnote 7.

37 Notably "Any change in tax treatment (introduction of tax incentives) could only be done at a Member State level. The Commission has no competence to table a proposal to that effect. The success of this recommendation would therefore depend on the good will and agreement of the Member States to follow up on this". See *Ibid*, page 40.

38 Favourable national taxation regimes clearly play an important role when investors are evaluating their available investment products. In this respect, it is important to note that this issue is not unique to ELTIFs and would equally apply to any other investment product.

It is difficult to quantify exactly the *relative* role of national taxation in the growth potential of the ELTIF market as a sub-segment of AIFs. However, as part of its 2019 'Growth Decree', Italy introduced a range of tax measures to support investment and increase the access of Italian companies to alternative sources of finance, particularly through ELTIFs.[39] Despite the growth of Italian ELTIFs from two funds in the beginning of 2020 to 13 ELTIFs in mid-2021, it remains difficult to conclude with certainty if there is a legitimate or only circumstantial causal link between the Growth Decree and the growth of the Italian ELTIF industry.

Against this background, and in the absence of the legal mandate to propose measures in the taxation area under Article 144 of the Treaty on the Functioning of the EU, the ELTIF review cannot propose any measures on tax-related issues.

Solvency II rules and prudential treatment of ELTIFs – During the open public consultation several stakeholders advocated for a review of the Solvency II rules. In addition, the High-Level Forum on the CMU report recommended the promotion of institutional investor take up and to "consider explicit recognition of the ELTIF in relevant capital frameworks (e.g. Solvency II for insurers), and provide appropriate flexibility for investment strategies attractive to institutional investors to be addressed within the ELTIF framework".[40] This topic is beyond the scope of the ELTIF Regulation, and can only be appropriately addressed in the context of the review of the Solvency II framework and other EU legal acts governing the prudential treatment of certain assets (also see Section 2.3. of Annex 5)[41]. These topics are also being discussed, in parallel, at the level of the European Supervisory Authorities.[42]

Investors' behaviour – The broader issue of (retail) investors' behaviour is out of scope as this cannot be addressed through this targeted initiative. Economic research has demonstrated that fund investors are subject to several behavioural biases, including home and familiarity bias. It has been argued that investors might be willing to buy high fee funds with which they have become familiar, possibly through localized marketing efforts. Recent legislative initiatives, like PRIIPs, already aim to address investors' behaviour more broadly by providing simpler and comparable information on investment products, which is expected to significantly improve investors' decisions.

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[39] The fact that a Member State deemed it both appropriate and desirable to introduce such a taxation measure clearly demonstrates the value of ELTIFs as a source of finance for SMEs and the broader real economy. Whilst the direct causal link cannot yet be fully demonstrated with confidence, this treatment has contributed to the growth of Italian ELTIFs industry from solely two funds in the beginning of 2020 to 13 ELTIFs in mid-2021.

[40] *Ibid*, page 37.

[41] For instance, for the purpose of capital requirements, Solvency II framework already treats ELTIF more favourably than the average private equity or unlisted equity by (a) using the same capital charge as for listed equity (i.e. 39% instead of 49%) and (b) having a simpler access to the preferential treatment for long-term equity investments (i.e. 22%) as the criteria to be met are assessed at the level of the ELTIF fund and not the underlying assets. The HLF (and CMU AP) acknowledges that as regards S2 and equity investments, the main issue is to facilitate the criteria for LTE which are difficult to be met. The COM committed to review the criteria in the CMU Action Plan and by delivering on this commitment, ability of ELTIFs to benefit from the 22% treatment may also effectively be extended going forward.

[42] Notably, one of the topics covered by EIOPA in its review is the assessment of the equity risk and the review of the criteria for the ability to hold equity long-term, by making a link with long-term illiquid liabilities. Source: https://www.eiopa.europa.eu/content/opinion-2020-review-of-solvency-ii_en (28 April 2021). At the same time, certain provisions of the Commission Delegated Regulation (EU) 2015/35, in particular Article 171a(2) provide useful clarifications that where equities are held within ELTIFs [i.e. collective investment undertakings or within alternative investment funds referred to in points (a) to (d) of Article 168(6)], the conditions for the treatment of long-term investments set out in paragraph 1 of Article 171a may be assessed at the level of the funds and not of the underlying assets held within those funds. Source: http://publications.europa.eu/resource/cellar/a155174b-d6be-11ea-adf7-01aa75ed71a1.0007.02/DOC_1 (28 April 2021).

Miscellaneous – Based on the feedback to the consultations with market participants, there are other ancillary factors that may provide certain disincentives to the effective functioning of the ELTIF framework. These include the impact of vertical distribution channels and cultural preferences for domestic products (home and familiarity bias). However, these factors are outside the scope of the ELTIF framework and cannot be addressed through regulatory measures.

2.4.3. Relative Importance of the identified problems

Demand-side and supply-side related considerations are closely inter-connected. With fewer investors having access to and investing in ELTIFs, asset managers have no economic incentive to manufacture and market new financial products, and conversely, lack of high-quality retail financial products will reduce the number of investors and the total amount of invested funds.

Nevertheless, based on the extensive feedback of market participants, supply-side drivers, i.e. overly restrictive ELTIF fund rules limiting the available investment universe, fund structures and available strategies, were generally perceived as more important and burdensome as demand-side drivers (i.e. ELTIF fund rules imposing unnecessary restrictions making it difficult and less appealing for investors to access ELTIFs).

Furthermore, the voluntary nature of the ELTIFs and the availability of other regulatory alternatives for asset managers in choosing the vehicle for structuring an investment fund, such as AIFs under the AIFMD license or existing national fund structures, have amplified the *relative importance* of supply-side fund rules and related considerations. As an illustration, limited scope of eligible assets (or, a mere uncertainty in the legal definitions) or lack of flexibility on the execution of co-investment strategies which are customarily required by virtue of the standard asset management mandate by leading alternative asset managers, have been referred as frequent reasons that have prevented well-established AIFMs from opting for ELTIFs as a go-to regulatory vehicle for structuring long-term investments. At the same time, the possibility for passporting ELTIFs across the EU has relatively increased the appeal of this legal framework compared to other fund frameworks.

2.5. Consequences

2.5.1. Fewer investors have access to and invest in ELTIFs

Greater participation in capital markets and investor appetite for getting exposure to less liquid investments, such as private equity and debt are clear industry trends. The ELTIF framework has the potential to allow retail investors to participate more actively in these sectors of the economy while still ensuring effective levels of protection.

ELTIFs are a well-suited and well-regulated investment vehicle for both mass affluent investors and retail investors in Europe to diversify their investment portfolios into less liquid long-term assets. As highlighted in the 2020 CMU Action Plan, investors should be encouraged to supplement public pensions with life-long saving and investment. In some cases, ELTIF could be a vehicle to help ensure pension adequacy while supporting

the development of Europe's economy and the post-Covid19 pandemic recovery. But this opportunity to harness and grow on the back of general market trends is not being realised. An important factor in this sub-scale realisation of ELTIFs' potential is that fewer investors have access and invest in ELTIFs than would otherwise be possible without supply and demand-side drivers described above (see Section 2.3.).

Given the fact that ELTIFs are essentially closed-end funds where any investment is typically locked-up during the life of the fund, a commitment (the entry ticket size) of EUR 10,000 may limit retail investor's potential interest in ELTIF structures. That is mainly because a EUR 10,000 may, in many instances, constitute a much larger proportion of investor's disposable income (and of investor's investment portfolio). These investors may often prefer to increase their investment positions gradually, without a substantial up-front commitment.

In addition, the 10% aggregate threshold would *ex ante* limit investor's capacity to obtain exposure to several ELTIFs even when the risk tolerance, financial situation and other personal and financial characteristics of the investor's portfolio and personal situation would – in the overall portfolio context – make investments in ELTIFs a highly appropriate and suitable investment. Furthermore, these restrictions constitute additional administrative burdens on asset managers and distributors, who have to ensure compliance with these requirements, which may sometimes be difficult to enforce and validate.

As a result, retail investors may often decide to forego an investment in ELTIFs altogether, opting instead for other financial products, such as UCITS, national fund structures, AIFs marketed within a Member State, etc. and hence depriving investors from exposure to long-maturity sustainable assets which ELTIFs tend to include in their portfolios. This also undermines one of the fundamental objectives of the original proposal.

In this connection, smaller amounts of financing are channelled by ELTIFs by fewer investors and to fewer long-term projects than if ELTIFs were more commonly used as a vehicle of choice for long-term financing of projects in Europe.[43]

2.5.2. European long-term projects are not benefitting from ELTIF financing to the fullest extent possible

While still a relatively new framework, it is evident that the ELTIF has failed to achieve mainstream market appeal and realise its full potential to channel capital financing to long-term investments in the EU. It is therefore obvious that small number of authorised ELTIFs is linked to a small number of net assets, which is translated into fewer long-term projects getting financing channelled via ELTIFs.[44]

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[43] One cannot draw a definitive conclusion that such long-term initiatives were permanently deprived of financing. Instead, a more plausible context is that long-term projects that were otherwise eligible for financing by ELTIFs were instead financed by alternative means, such as bank lending, bonds or equity issuance, recourse to financing by EU AIFs or other investment fund structures, etc.

[44] According to the ELTIF statistics submitted by ESMA, only 57 ELTIFs were authorised as of October 2021. Moreover, all such ELTIFs manage an aggregate size of below EUR 2 billion, which is relatively a very small amount of assets under management when compared to the overall size of the EU AIF industry of over EUR 6.8 trillion. ESMA. EU Alternative Funds. ESMA Annual Statistical Report. Source: https://www.esma.europa.eu/sites/default/files/library/esma50-165-1734_asr_aif_2021.pdf (26 May 2021).

The ELTIF is thereby also not supporting to the extent possible the development of the CMU, the European Green Deal, post-Covid pandemic recovery and other European policy initiatives.

The low uptake of ELTIFs, in turn, could have diminished – to a degree which is difficult to precisely quantify – the availability of capital for those long-term projects in need of capital. This, in turn, could have made the financing of such long-term projects via other alternative methods, such as bank financing or bond issuance, more expensive (depending on the cost of capital and financing considerations) and potentially exposing project owners to additional risks (the need of additional pledge or security, financing conditions, etc.).[45]

2.6. Potential problem evolution without EU action: the baseline scenario

If no action were taken to reform the ELTIF regulatory regime, the original objectives of the Regulation will remain unfulfilled and the utility and effectiveness of ELTIFs for investment managers and investors would remain limited. That would leave the potential of the ELTIF framework to contribute to the development of the real economy and CMU unrealised.

No EU action in this area would lead to fewer long-term projects being funded by ELTIFs and, in aggregate, smaller amounts of funding being channelled by ELTIFs to long-term projects (see Section 2.5.).[46] Investors would also be unable to access a long-term investment product to help bridge the gap to longer term saving needs.

The opportunity costs and potential cost-savings that could have been generated with financing available from a well-developed ELTIF industry could continue making investments in long-term projects more expensive (or otherwise less attractive), when compared to a situation where ELTIFs are turned into a mature, well-functioning investment fund segment. Such cost savings would have been passed on to the project owners, and ultimately the beneficiaries of such long-term projects (citizens, societal benefits, etc.) and sustainable, green and smart European economy at large.

Conversely, access to high-quality investment projects by ELTIFs could make it appealing for asset managers to gain exposure to assets and thus offer ELTIF investors attractive long-term risk-adjusted returns. [47]

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45 The precise quantification of the consequences of the low uptake of ELTIFs and the opportunity costs of being left without ELTIF financing is difficult. Nevertheless, one could state that the effect long-term projects failing to benefit from ELTIF financing to the fullest extent possible are clearly negative for both the funding opportunities of the long-term projects in question, as well as the real economy at large and the broader CMU.

46 The ongoing review of the AIFMD can be expected to partially improve the overall attractiveness of the ELTIF regime. Since ELTIFs are a subset of AIFs by definition, they will also benefit from the reviewed AIFMD rules. However, it is unlikely that the review of the AIFMD alone, without a comprehensive targeted amendment of the ELTIF framework would overcome the identified problems.

47 This argument and an evolution scenario of the problem evolution of the ELTIF market could be illustrated by the following market-driven development observed in the Italian ELTIF market. Notably, it is important to note an increase throughout 2020 and the beginning of 2021 in the number of registered ELTIFs domiciled in Italy. This growth, albeit moderate in absolute numbers, can be attributed to the adoption and entry into application in 2020 of Italy's tax regime that favours certain investors that invest in Italian domiciled ELTIFs. In June 2019, the Italian government has approved the Law Decree DL34/2019 (Growth Decree) with the aim of improving the competitiveness of Italian companies, creating long-term economic growth and supporting new investments and employment. Since the introduction of the Italian taxation-incentives, the number of ELTIF authorisations has almost doubled (albeit from a low base, with 15 Italian ELTIFs currently accounting for a slightly less than a third of all ELTIFs registered in the EU as on April 2021).

Finally, without further EU action in this area it is highly likely that ELTIFs would remain a sub-scale and under-developed legal framework which could potentially be characterised by few new ELTIFs launched. It is also possible that EU Member States could choose to introduce sector-specific national fund frameworks to finance long term infrastructure projects or to fund their pandemic recovery, which would create an ever diverging range of national fund frameworks and further diminishing the relevance and the market acceptance of the ELTIF legal framework. Against this background, without EU action, ELTIFs would rarely be set up due to the lack of obvious appeal for asset managers in choosing ELTIF vehicle for structuring their investments in long-term projects.

3. EU'S RIGHT TO ACT AND JUSTIFICATION

3.1. Legal basis

The Treaty on the Functioning of the European Union (TFEU) confers upon the European institutions the competence to lay down appropriate provisions that have as their object the establishment and functioning of the internal market (Article 114 TFEU). In this connection, it should be noted that the ELTIF Regulation clearly refers to the availability of the legal basis (Article 114 TFEU). The amendment of the ELTIF Regulation would be based on the same legal basis.

Notably, the legislative action to be examined would lay down uniform product rules on investment funds that are targeting long term assets. It aims to ensure that such funds are subject to consistent rules across the EU and that they are more easily identified by investors throughout the EU. At the same time it also aims to ensure a level playing field between different long term investment fund managers and establish uniform conditions for the operation of such funds. This proposal harmonises the operating conditions for all relevant players in the investment fund market for the ultimate benefit of investors and the European economy.[48]

3.2. Subsidiarity: Necessity of EU action

Depending on the policy option chosen and the specific design of the rules, the appropriate legal base could also be Article 53(1) TFEU on the taking-up and pursuing of activities by self-employed persons, which is used to regulate financial intermediaries, their investment services and activities. Some Member States have put in place (or are considering) bespoke national regimes to regulate long-term investment funds. These

[48] Different rules that vary according to the national regulation in this area create an un-level playing field, erecting additional barriers to a Single Market in financial services and products. Member States have already taken divergent and uncoordinated action to develop national fund regulation related to long term investment funds, and it is likely that this development will continue, even as the marketing and management passports contained in the AIFMD come into force. Divergences in such rules increase costs and uncertainties for fund managers, distributors, and investors, and represent an impediment to the further cross-border development of the market for long term investment funds. These divergences represent an obstacle to the establishment and smooth functioning of the Single Market. Consequently, the appropriate legal basis is Article 114 TFEU.

national regimes can follow different approaches and create barriers to the cross-border provision of services in relation to long-term investments.[49]

The ELTIF Regulation also explicitly recognises ELTIFs as a conduit for supporting the CMU. EU action in the ELTIF sector, would add value by preventing market fragmentation through national regimes, addressing deficiencies identified in the framework and promoting further market growth and liquidity.

3.3. Subsidiarity: Added value of EU action

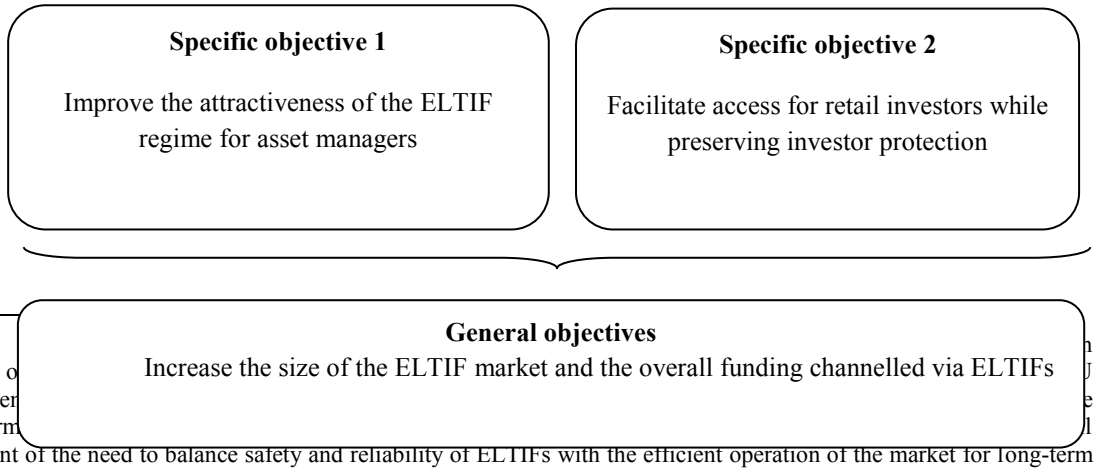
In accordance with the ELTIF Regulation, ELTIFs are explicitly recognised as a conduit for supporting and completing the CMU by providing a source of long-term funding for the real economy that is accessible to retail investors. The objectives of the ELTIF Regulation, namely to ensure uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, while taking full account of the need to balance the 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 alone.

Instead, it can due to their scale and effects be better achieved at Union level. The Union has the right to adopt measures in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, ELTIF Regulation does not go beyond what is necessary in order to achieve those objectives (i.e. added value under the subsidiarity).

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

The graph below provides a schematic overview of the objectives purported to be achieved by the review initiative. Such specific and general objectives are analysed in Sections 4.1 and 4.2 below.

Graph 2 – General and specific objectives



[49] terms o … interver … uniform … 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.".

4.1. General objectives

The general objectives of the ELTIF regime are set out in both the recitals and the enacting provisions of the ELTIF Regulation. The objective of the ELTIF framework 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 (Article 1(2) of the ELTIF Regulation). Furthermore, according to Recital 52 of the ELTIF Regulation, these objectives comprise ensuring uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, and 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 stakeholders.

The ELTIF review initiative would not change the initial underlying objectives of the ELTIF regime. The focus remains on targeted amendments to the current fund restrictions and improve the attractiveness of ELTIFs for fund managers and investors to realise the full potential of ELTIFs as an effective conduit for channelling capital towards European long-term projects to the benefit of the European economy and complementing the CMU with an emphasis on smart, sustainable and inclusive investments.

This initiative is intended to tackle those challenges in meeting the above-mentioned objectives and ensuring that the ELTIF market continues its growth by making the ELTIF regime more attractive and maximise its contribution to the real economy and CMU while meeting investors' needs.

4.2. Specific objectives

Specific objective of this initiative should be analysed through the lens of the effectiveness of the ELTIF framework and the attractiveness of the ELTIF fund rules for both asset managers and investors alike.

- *Specific objective 1: Improve the attractiveness of the ELTIF regime for asset managers*

Technical changes could facilitate the broadening of the scope of eligible assets and investments and removing certain fund rules limitations, which in turn, would help increase the attractiveness of certain investment strategies and their appeal for investors. This, in turn, would make it economically viable and financially profitable for asset managers to launch new ELTIFs.

- *Specific objective 2: Facilitate access for retail investors while preserving investor protection*

Improving the access of retail investors (primarily targeting numerical hurdles for retail investors) to ELTIFs in a manner that would not decrease the investor protection and preserve market integrity. Such investor safeguards (streamlining the suitability test and avoid duplications with MiFID II) should, in combination with other existing investor protection measures, ensure greater number of retail investors investing in ELTIFs and a

larger amount of funding channelled to long-term projects sourced from this investor base.

Both of the abovementioned objectives would increase investment in long-term assets, sustainable economic growth, job creation and innovation in the EU. Achieving the above-mentioned specific objectives is thereby linked to the general objectives outlined in Section 4.2. below.

5. AVAILABLE POLICY OPTIONS AND IMPACT

This section describes and assesses the policy options identified to tackle the ELTIF fund restrictions applying to both retail and professional investors, as well as retail-investor specific requirements and limitations for the access of retail investors to ELTIFs.

In each area, options are described, their impact on stakeholders analysed and compared for their effectiveness and efficiency with the 'no action' option[50] in meeting the specific objectives. The coherence with existing measures is analysed, and an explanation on whether the options conforms to the principles of subsidiarity and proportionality is provided. Preferred options are also identified below (see Section 7).

Certain technical aspects and more detailed fund rules are reflected in Annex 7 (eligibility of assets and investments, portfolio composition, diversification and concentration limit requirements, redemptions regime, borrowing of cash requirements, etc.).

5.1. Baseline from which options are assessed

In terms of market development, the ELTIF segment remains sub-scale, i.e. despite the ELTIF legal framework being in place for more than five years ELTIFs have failed to scale up significantly.[51]

Retail-investors specific requirements and limitations

In terms of the access of retail investors to ELTIFs, the ELTIF Regulation contains specific requirements to limit the participation of retail investors. 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 (Article 30(1) of the ELTIF Regulation). An ELTIF manager can directly offer or place ELTIFs to retail investors only if it is specifically authorised to do so and

[50] The following schema is used: 0 (baseline scenario, no policy change), ++ (strongly positive contribution), + (positive contribution), -- (strongly negative contribution), - (negative contribution), ≈ (marginal/neutral contribution), ? (uncertain contribution), n.a. (not applicable) and 0 (neutral contribution).

[51] ESMA data indicates that only 57 ELTIFs are authorised as of October 2021 and the total net assets of approximately EUR 2.4 billion. This is a small fraction of the EUR 6.8 trillion of the total EU AIF market. Currently, ELTIFs are domiciled in only 4 Member States (in France, Italy, Luxembourg and Spain). The other Member States have no domestic ELTIFs. According to ESMA's data, a large portion of authorised ELTIFs are only marketed in the jurisdiction of their domicile while some funds that have been authorised have not yet become fully operational.

only after that manager has performed the suitability test set out in the ELTIF Regulation.[52]

The manager of the ELTIF can only recommend ELTIFs if it is deemed suitable for that particular retail investor. It should be noted that the suitability test set out in the ELTIF Regulation are an approximation of such requirements set out in the MiFID II framework. [53]

Importantly, the ELTIF Regulation contains numeric thresholds that seek to further limit the participation of the retail investors in ELTIFs. Notably, Article 30(3) of the ELTIF Regulation sets out that 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 under the ELTIF Regulation, 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. Stakeholder feedback indicates that the 10% aggregate test is ineffective in practice as it relies on a voluntary declaration by the investor that the fund manager or the distributor of the product has no practical means to check or verify. These additional requirements (partially overlapping with those set out in MiFID II rules) represent an unnecessary administrative burden and costs for fund managers but do not enhance overall investor protection within the framework in an effective manner.

Both the minimum entry ticket of EUR 10,000 and the aggregate maximum amount of 10% of the financial portfolio are cumulative requirements that are imposed in addition to the suitability test of the ELTIF Regulation, and together have a deterrent effect on the ability and the capacity of retail investors to get exposure to ELTIFs.[54]

It is important to note the retail focus of the ELTIF to establish an AIF product suitable for retail investors and designed to help them meet their long-term investment needs with a well-regulated product framework that nevertheless allows them to invest in assets outside of the normal UCITS space.

The existing barriers to retail investors are regarded as overly restrictive and ineffective, particularly given the fact that ELTIFs can only be sold subject to appropriate investment advice. However, removing or re-calibrating these elements of the framework may only lead to minor improvements to investor take-up of ELTIFs. The more critical element lies with the availability or supply of ELTIFs in the market.

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[52] To that end, when directly offering or placing an ELTIF to a retail investor, the ELTIF manager shall obtain extensive information about the retail investor's knowledge and experience in the investment field relevant to the ELTIF, the retail investor's financial situation, including that investor's ability to bear losses, and the retail investor's investment objectives, including that investor's time horizon. Article 28(2) also sets out that "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".

[53] There are many commonalities between the suitability tests. However, the ELTIF Regulation is a partially overlapping regime that would in practice have to be separately implemented and complied with by asset managers, who are otherwise more familiar with the commonly accepted MiFID II legal regime for the distribution of financial products.

[54] The information on the sizes of financial portfolios are self-reported by retail investors, and it appears challenging for asset managers or distributers to control the accuracy of such self-reported information calling into questions the efficacy of this restriction in practice.

Single rule-book for ELTIFs

In terms of the applicability of the ELTIF rules, the ELTIF Regulation does not differentiate among ELTIFs that are marketed to different categories of investors. ELTIF has a single set of fund rules that are equally applicable to ELTIFs that are marketed to either professional or funds with a retail investor base. Notably, the ELTIF fund rules on the eligible assets, diversification and portfolio composition, concentration limits, borrowing of cash, and other requirements remain identical irrespective of the end-investor.

It should also be noted that to the extent that ELTIFs are marketed to retail investors, ELTIF managers have to adhere to additional requirements seeking to safeguard the interests of retail investors, such as a requirement to have arrangements for dealing with complaints submitted by retail investors (Article 5(1)(d) of the ELTIF Regulation), a 2-weeks withdrawal period by retail investors[55], a requirement to produce and make available the key information document (KID) of the ELTIF in the event that it is marketed to retail investors (Article 31(4) of the ELTIF Regulation), the requirement to have a depositary where an ELTIF is marketed to retail investors (Article 29 of the ELTIF Regulation), and other retail investor specific requirements.

This is a critical element identified by a range of stakeholders as impairing both the attractiveness and the utility of the ELTIF framework for investors and managers. The introduction of more flexible rules for both retail and professional ELTIFs will be a critical enabler for greater uptake of the regime in Europe. The additional flexibility for professional only funds would allow fund managers to design specific investment strategies and portfolios to meet the needs of their clients while still retaining the overall ELTIF label and its general rules and requirements which are particularly valued by investors.

As regards the additional flexibility for professional only ELTIFs, in terms of legal treatment no differentiation would be envisaged between ELTIFs that can be marketed to professional investors only and those ELTIFs that can be marketed to retail investors. All ELTIFs would continue to be subject to the full body of the requirements under the ELTIF regulation.

The key differences between the two types would be that those ELTIFs marketed exclusively to institutional investors would be as follows: no requirement to prepare the KID; no requirement for the 2-weeks withdrawal period; no requirement to have facilities and arrangements to deal with complaints with retail investors; more flexibility in terms of borrowing of cash for those ELTIFs that can be marketed solely to professional investors, than those ELTIFs to which retail investors may have access. Furthermore, for those ELTIFs marketed solely to professional investors, it would be appropriate to remove the 10% limitation in terms of exposures to instruments issued by, or loans granted to, any single qualifying portfolio undertaking, single-asset investments and investments in EuSEF, EuVECA or ELTIF portfolio.

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55 Article 30(6) of the ELTIF Regulation sets out that "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."

Maintaining a close alignment between the rules for ELTIF's marketed only to professional investors and those available to retail would remain key. Given the availability of alternative vehicles for professional investors (e.g. AIF's), stakeholders have highlighted that the appeal of ELTIF lies within possibility to offer this fund to both categories of investors on a pan-European basis. Whilst some additional protections are necessary for funds being marketed to retail investors, a further, more distinct separation would put at risk the attractiveness of ELTIF for fund managers. Investment alongside institutional capital providers would also allow retail investors to benefit in terms of better fund oversight and possibly better cost-performance.

ELTIF redemptions regime

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 was, consequently, been structured in principle so as not to offer regular or periodic redemptions before the end of the life of the ELTIF. To that end, the key standard rule of the ELTIF regime in this area is that investors in an ELTIF would not be able to request the redemption of their units or shares before the end of the life of the ELTIF. Redemptions to investors would, as a rule, solely be possible after the life of the ELTIF (typically the life cycle of an ELTIF is several years).

Nevertheless, in order to incentivise investors, in particular retail investors, who might not be willing to lock their capital up for such a long period of time but would otherwise seek to invest in ELTIFs, it would prove appropriate to consider policy merits of allowing ELTIFs to offer in exceptional and clearly pre-defined situations early redemption rights to investors. [56]

In this context, Article 18(2) of ELTIF regulation foresees that "*By way of derogation from paragraph 1 [no redemption allowed before the end of life of ELTIF], 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 conditions laid down in the ELTIF Regulation are fulfilled. In particular redemptions are possible up to a percentage of the liquid assets invested in the funds. Notably, these liquid assets represent less than 30% of its capital.

More flexible redemption options within the framework was requested by some stakeholders and may increase the appeal of ELTIFs to certain managers and investors but to a lesser extent than the differentiated fund rules and retail barriers to entry.

Parallel initiatives

Changes introduced to the AIFMD may also impact on the functioning of the ELTIF framework. It is important to note that the AIFMD review would contain targeted amendments to the regime as the framework is regarded as functioning effectively. Based

[56] The rationale behind the need to consider this proposal has been the feedback of some industry participants and the fact that some AIFs with similar eligible assets (real estate and SME) offer regular, albeit not frequent, redemptions under strict conditions and using respective liquidity management tools. In addition, it would be appropriate to consider placing such AIFMs under a degree of supervision to agree upon and monitor the fund liquidity profile.

on the current proposal, certain measures may lead to increased costs for AIFMs managing ELTIFs, but these would be outweighed by the need to support adequate supervisory oversight of the AIF sector to ensure investor protection and broader financial stability and there are no outright conflicting proposals between the two reviews. Additional information on the proposed amendments under the AIFMD review are set out in Annex 5.

5.2.1. Options assessing the application of the fund rules to all investor categories

The following options were considered:

Table 2 – Policy options assessing the application of the fund rules to all investor categories

Policy options	**Description**
1. No policy action	Retaining the one-size-fits-all ELTIF rules
2. More permissive fund rules	Allowing a more permissive fund rules regime for all ELTIFs irrespective of end investors
3. Differentiation between ELTIFs marketed to professional and/or retail investors	Introducing a clearer separation and more flexibility between fund rules depending on the funds investors (ELTIFs that can be marketed solely to professional investors and ELTIFs that can be marketed to retail investors)

Option 1 – No policy action

This Option would maintain the current status quo whereby ELTIFs would continue to be subject to the same fund rules.

Option 2 – More permissive fund rules for all ELTIFs

Since rules are considered too restrictive based on available evidence, a straight-forward option would be to make ELTIF fund rules more permissive. As rules currently do not distinguish between ELTIFs marketed to retail investors and those available only to professional investors. To meet the needs of ELTIF fund managers, such change would need to be quite sizeable to make funds attractive for professional investors.

However, this Option could raise concerns for retail investor protection. ELTIFs are not the same as UCITS and their risk-profile is not necessarily commensurate with a risk-tolerance of every retail investor. More permissive fund rules in such areas as leverage may not be appropriate for all retail investors. At the same time, it could yield substantial benefits for the attractiveness of ELTIFs to professional investors.

Option 3 – Clearer separation between fund rules for different classes of investors

Under Option 3, the flexibility contemplated in the ELTIF rules should be differentiated for retail and professional investors to allow, for instance, greater leverage for professional investors or more leeway in terms of portfolio composition rules and asset diversification requirements.[57]

[57] It should be noted that the "separation" between fund rules would not imply a "separation" in a legal sense or any sort of split in the way ELTIs are authorised, operated and invested in, i.e. a single label fund regime and its core requirements would not and are not aimed at creating a two-tier ELTIF.

This option stems from ESMA's technical advice to the Commission dated 3 February 2021, in which ESMA explicitly recognised the underlying conflict of the ELTIF framework in trying to serve the needs of both professional and retail investors with a single rulebook approach.[58] ESMA went on to recommend a clear separation between those ELTIFs that are marketed to solely professional investors and the rest, i.e. those ELTIFs that can be marketed to retail investors. More specifically, according to ESMA "*If it is considered relevant to create a specific type of ELTIFs for professional investors only, these ELTIFs could benefit e.g. from a higher level of leverage and more flexibility in terms of portfolio diversification and composition*."

5.2.2. Options assessing the specific requirements concerning reduction of ELTIF barriers to participation of retail investors

The following options were considered:

Table 3 – Policy options assessing the specific requirements concerning reduction of ELTIF barriers to participation of retail investors

Policy options	**Description**
1. No policy action	Retaining the minimum investment barrier and the 10% limit, and the current ELTIF-specific suitability tests
2. Reducing or eliminating both barriers to entry for retail investors	Eliminating both the minimum investment barrier and the 10% minimum investment limit, and removing the ad-hoc suitability tests to align fully with MiFID II

Option 1 – No policy action

Absence of policy action or retaining the status quo does not seem, *ex ante*, a viable option, since it would, at the very minimum, fall short of providing any new impetus to the development of the ELTIFs and attracting additional investments from retail investors. Option 1 means that retail investors would continuously to face barriers to investing into ELTIFs due to the significant deterrent effects the ELTIF specific tests have on the investment decisions and investment capacity of retail investors, and that ELTIF would continue failing to channel investment towards long-term projects and the real economy.

Option 2 – Reducing or eliminating both barriers for retail investors

This option would involve a combination of measures, including substantially reducing or removing the EUR 10,000 minimum initial investment participation (the "entry ticket") required by the ELTIF Regulation; and the 10% aggregate investment requirement for those retail investors whose financial portfolios are below EUR 500,000.

[58] According to ESMA, "*in this context, it should also be noted that Article 30(4) of the ELTIF Regulation (equal treatment of all investors), if interpreted strictly, could imply that no specific share classes can be launched within an ELTIF opened to retail investors. In that case, professional investors would be dissuaded to invest in an ELTIF opened to retail investors as they would have to pay the same percentage/amount of fees than retail investors although their subscriptions are generally much higher. It could therefore be necessary to further specify/clarify this requirement*".

Compared to Option 1, Option 2 would have the advantage of removing burdensome requirements which in themselves have the intention and the effect of dissuading the participation of retail investors. At the same time, Option 2 would fall short of the goal to remove unnecessary and ineffective barriers on the participation of retail investors. Deleting or substantially reducing the EUR 10,000 entry ticket while leaving intact the 10% aggregate investment threshold would ex ante limit the opportunity of retail investors to get exposure to ELTIFs in a manner that could, in aggregate, constitute a legitimate investment strategy that could be both suitable and appropriate for the retail investor. Importantly, the current 10% aggregate exposure limit is solely based on the self-reported information by the retail investors, who can simply misrepresent the size of their financial portfolios and/or their exposures to other ELTIFs.

It is both impracticable and administratively costly for the asset managers and/or distributors to verify or enforce the application of such a 10% limit. The *aggregate* 10% limit on retail investors with portfolios below EUR 500,000 is thereby banning retail investors from getting exposure to a specific ELTIF once a 10% portfolio allocation "quota" has been reached.

The elimination or reduction of the EUR 10,000 minimum investment threshold would provide an opportunity to those retail investors willing and able to diversify their portfolios with lower amounts than EUR 10,000. Consideration could also be given to reducing the threshold to a lower amount. This option would increase the potential overall volumes of the funds that could be invested by retail investors into ELTIFs. In addition, the elimination of the 10% aggregate investment threshold would no longer limit the exposure of retail investors whose financial portfolios are below EUR 500,000. However, given the proposal to align with the MiFID II suitability tests, it is questionable what added value this additional ELTIF only restrictions bring in terms of investor protection. In reality, the tests are generally ineffective and force retail investors to hold larger single exposure in ELTIFs instead of allowing them the possibility to invest smaller amounts across more funds. These barriers are not applied to any other fund type and are discriminatory towards retail investors. It is on this basis that the preferred option is to eliminate the additional retail investor restrictions.

From the perspective of restrictions to the participation of retail investors, it would also be appropriate to replace the ELTIF suitability test with the MiFID II suitability framework[59]. This would ensure that the full range of investor protection measures in MiFID II would continue to apply, including the suitability assessment which takes into account clients' experience, wealth, risk profile and investment horizon. It should be noted that this clarification and alignment of the ELTIF suitability test will maintain an adequate level of protection under the ELTIF regime.

Combining the MIFID II requirements with the other proposed changes presents a balanced package of measures that ensures continued investor protection while opening up ELTIFs to a wider range of retail investors, particularly those who may have longer-term investment needs that can be met by ELTIFs but may not want to invest larger amounts up-front. These changes will grant ELTIF managers the discretion to set their

[59] Article 28(1) of the ELTIF Regulation, i.e. ad-hoc ELTIF suitability test, may be deemed as redundant with provisions in Article 30. Some stakeholders have also citied unclear terms in ELTIF current rules (e.g. what is considered to be "offering" or "placing" in Article 28. Against this background, MIFID regulatory frame provide a comprehensive set of provisions. These rules are enforceable (not the case in ELTIF if the suitability test is insufficient).

own minimum subscription limits which would facilitate the development of more retail accessible funds in response to investor demands.

5.2.3. Options assessing the redemption policy and life-cycle of ELTIFs

The following options were considered:

Table 4 – Policy options assessing the redemption policy and life-cycle of ELTIFs

Policy options	**Description**
1. No policy action	No action, i.e. preserving closed-end nature during fund's life-cycle, subject to exceptional redemptions
2. Introducing regularity (periodicity) into the ELTIF redemptions regime	Introducing a possibility for regular (periodic) redemption policy (such as mid-term, annual or quarterly redemptions, or periodic redemptions, or "evergreen" structures)
3. Allowing limited redemptions through optional liquidity windows regime	Allowing an optional redemptions "liquidity window", such as a redemption mechanism matching the subscriptions via a secondary trading mechanism

Option 1 – No policy action

ELTIFs could generally be characterised as closed-end funds which only allow redemptions at the end of the life of the fund, except in limited circumstances set out by the ELTIF manager in the ELTIF fund documentation in clearly pre-defined exceptional cases. This fundamental rule of the lock-up during the life of a fund has been justified by the illiquid nature of the assets which an ELTIF is invested in, as well as the fact that the valuation of illiquid assets, taking into account the absence of a market able to provide a fair value on a continuous basis, may be assessed only at the time of the disinvestment (at the end of the life-cycle of the fund)[60].

Under Option 1, ELTIFs would remain essentially close-ended with very limited (or exceptional) possibilities for redemption set out in the ELTIF Regulation. This would provide stability to the ELTIFs (since redemptions would be very limited) and provide an ELTIF manager an opportunity to safely execute upon the chosen strategy with almost no outflows from the fund. On the other hand, Option 1 would not be an adequate response to the calls from a large number of stakeholders that have advocated for the need for more readily redeemable ELTIF structure that would provide for broader redemptions opportunities.

Option 2 – Facilitating a more flexible redemptions regime

Option 2 would imply an opportunity (or an entitlement) for investors for more regular or periodic redemptions (on a monthly, or quarterly, or bi-annual basis[61] or even so-called

[60] It should be noted in the context of the versatility of the eligible assets framework of the ELTIF regime that ELTIFs may encompasses a broad range of asset classes (e.g. small listed firms, real assets, private equity/infrastructure with diverse durations, fixed income instruments) with different durations, risk profiles and standardisation levels. As a result, some narrow category of long-term assets may have a secondary market (such as certain real assets or listed SME or liquid fixed income securities) that may be compatible with, say, quarterly/semi-annual NAV liquidity (but naturally not with daily/weekly redemptions due to the absence of the NAV calculations), whilst a large portion of ELTIF eligible long-term assets may be outright incompatible with regular/periodic redemptions depending on the specific portfolio composition, investor base etc.

[61] The periodicity and regularity of redemptions could depend, among other things, on the availability of liquidity management tools, gates and notice period, and be subject to NCAs approval given the aforementioned

"evergreen" or a readily available redemption structure that would imply that ELTIFs redemption regime could resemble that of an open-ended fund). Option 2 was advocated by market participants seeking for a possibility to exit from the ELTIF before the end of the life of the fund to address the concern of (predominantly retail) investors who may perceive that they would be locked in their investments for an excessively long period of time.

Option 3 – Allowing limited redemptions through optional liquidity windows

Under option 3, the ELTIF would remain essentially closed-ended but updated rules would allow additional flexibility for liquidity based on a matching mechanism – voluntary for asset managers – for matching the supply and demand of transfer requests by exiting ELTIF investors and subscription requests by new ELTIF investors. According to this option, the revised ELTIF Regulation would contain a secondary trading liquidity matching mechanism, once the ELTIF has ramped up, for expressing an open interest, with a few weeks or months advance notice, in new subscriptions for the units or shares of an ELTIF. Transfers of shares or units of ELTIFs by exiting investors would only be permitted, at the discretion of the asset manager and solely if the liquidity window mechanism is set out in the fund documentation and the prospectus, to the extent that a corresponding subscription interest was available to match the existing investors' units or shares in an ELTIF.

This liquidity window mechanism could satisfy the demand from distributors who expressed their concern about the ELTIF's limited redemption options for retail investors. Since ELTIF would remain essentially closed-ended, option 3 would facilitate secondary trading and provide extra liquidity during the life of the ELTIF[62]. It would also ultimately be up to the fund manager to decide if it is appropriate to introduce this mechanism and decide the frequency to be offered to investors. This liquidity window mechanism could be predefined in the fund documents. There are various possibilities to implement option 3. The following description could give broad parameters, whilst the technical implementation could be worked out.[63] In particular, one would foresee a clarification of how the percentage of ELTIF's liquid assets should be established.[64]

Despite the fact that options 2 and 3 may resemble each other, they are fundamentally distinct. The key difference is that under option 3 the investors' shares or units would not

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criteria: nature of eligible assets (e.g. existence of a secondary market (e.g. real estate, listed SME)), asset life cycle, fund composition (e.g. cash buffer, size of the liquid part of the ELTIF), investor base, result of stress tests, etc.

62 It should be noted that this voluntary liquidity window mechanism may imply some burden in operating it and exchange of documentation, but this would be there only for those who choose to voluntarily use this mechanism. In addition, the voluntary nature of the redemptions window would allow asset managers to weigh the benefits for attracting higher volumes of investment commitments and larger AuM, which would off-set the additional incremental costs associated to serving the redemption requests by virtue of matching subscriptions and redemptions.

63 In general, under Option 3, the number of fund shares will remain the same (no new shares will be created). The process could be similar to the current subscription/redemption process of any fund, which is performed generally by the fund administrator. Therefore, the incurred costs should be aligned to those of an open-ended fund that offer quarterly redemptions. It could even be less costly because the volume of orders to manage should be lower. Under Option 3, investors would send their subscription or withdrawal form to the fund administrator before the NAV is published. The fund administrator will note the orders and have discretion to impose an appropriate notice period to receive the subscription and redemption orders to facilitate the administration process. If a match is possible (both, subscription and redemption orders are received) orders will be executed on the dealing day at the published NAV. Pro-rata mechanisms and other practicalities could be put in place.

64 An obvious manner to do this would be to establish a percentage of liquid assets to cap redemptions served. This percentage should take into consideration the volatility of the liquid assets (or be restricted to the cash held by the fund) as well as the expected future cash flows in order to ensure that ELTIF can meet all of its future payments and that its cash pocket could be replenished by the foreseeable cash-flows.

be withdrawn from the capital of the ELTIF but matched with the funds deposited by the subscribing investors who would receive the corresponding amounts of units or shares of ELTIFs. Under option 3, the possibility to exchange units or shares of ELTIFs could be an opportunity when offered by the ELTIF rules and approved by the fund manager, as opposed to option 2 which would rather be a general entitlement of investors to redeem their units or shares.

5.3. Options discarded at an early stage

This section s describes which options have been discarded at an early stage and why. Discarded options enjoying significant support among (certain groups of) stakeholders would include – limiting the scope of eligible investors, reducing access to ELTIFs for retail investors and other policy approaches that are *ex ante* inconsistent with the purpose of the legal framework and the objectives of this initiative and CMU Action Plan to increase retail investor participation.

Repeal of the ELTIF Regulation

Repealing the ELTIF Regulation was considered but discarded as disproportionate and not supported by relevant stakeholder groups Rather, extensive stakeholder feedback indicates that there is a market demand for ELTIFs but that take-up could be further improved by allowing more flexibility for fund managers to better structure their funds and investment strategies. ELTIFs can play an important role in the market by providing investors with a well-regulated long-term investment product. ELTIF is also an important part of the CMU (as recognised by the HLF in its report) and encouraging greater participation in capital markets and directing investment into long-term real economy projects across Europe. They can be an important source of financing as the European economy moves into the post-pandemic recovery and transitions to the 'new normal'.

Two further options were considered based on stakeholder suggestions, but discarded:

Introducing a "third category" of "semi-professional" investors

Some stakeholders have called for potentially introducing a third (intermediary) category of a "semi-professional" investor in the expectation of increased inflows of funds from high-net-worth individuals. Introducing a separate third category of a "semi-professional" investor would require a profound reengineering of the AIFMD and the MiFIDII/MiFIR rules and definitions. This is an impracticable solution falls outside the scope of the current initiative.

Providing for carve-outs or facilitating the listing of ELTIFs

Some stakeholders have called for the regime allowing an ELTIF of indefinite duration, e.g. if admitted to trading on a regulated market and provided minimum liquidity conditions are met. Such policy proposals would only prove workable in so far as all ELTIFs are traded on a regulated market (currently no shares or units of ELTIFs are being publicly traded). It is also impracticable and legally impossible to provide explicit incentives via the ELTIF Regulation for the public listing of ELTIFs since that would require a potential change in the Prospectus Regulation, the Market Abuse Regulation, Transparency Directive and other EU legal acts.

6. HOW DO THE OPTIONS COMPARE?

6.1. Greater flexibility in the ELTIF regime for professionals-only ELTIFs

In its advice to the Commission dated 3 February 2021, ESMA explicitly recognised the underlying conflict of the ELTIF framework, i.e. trying to serve the needs of both professional and retail investors with the blanket one-size-fits-all approach[65]. ESMA recommended a clearer separation between those ELTIFs that are marketed solely to professional investors and those ELTIFs that can be marketed to retail investors.

More specifically, according to ESMA "*If it is considered relevant to create a specific type of ELTIFs for professional investors only, these ELTIFs could benefit e.g. from a higher level of leverage and more flexibility in terms of portfolio diversification and composition*." [66]

ESMA's advice to create a clearer distinction between these two different types of ELTIFs would allow managers to tailor more appropriate fund rules, *on the one hand*, for those ELTIFs that can be marketed exclusively to professional investors with less prescriptive fund rules as regards the scope of eligible assets and investments, be far less prescriptive in terms of the diversification, concentration rules, leverage etc. and, *on the other hand*, those ELTIFs that can be marketed to retail investors.

Comparison of options

Option 1 (no action) will have no impacts or effects.

Option 2 would have a generally positive effect on the development of a wider range of ELTIFs. At the same time, some funds may not be suitable for retail investors due to the illiquidity and the nature of the underlying assets and investment strategies pursued. This option would also imply that marketing of ELTIFs to retail investors, in the presence of professional investors, would still introduce restrictions and costs related to the marketing of ELTIFs to retail investors (such as the requirement to prepare the KID, the 2-weeks withdrawal period, the requirement to have facilities and arrangements to deal with complaints with retail investors, etc.). Such costs would likely be spread among all investors (including professional investors of ELTIFs) due to the requirement of an equal treatment of investors.

It could be argued that easing of the ELTIF fund rules for ELTIFs irrespective of the investor category (investor base) to which ELTIFs are being marketed will undermine the

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65 ESMA noted "In this context, it should also be noted that Article 30(4) of the ELTIF Regulation (equal treatment of all investors), if interpreted strictly, could imply that no specific share classes can be launched within an ELTIF opened to retail investors. In that case, professional investors would be dissuaded to invest in an ELTIF opened to retail investors as they would have to pay the same percentage/amount of fees than retail investors although their subscriptions are generally much higher. It could therefore be necessary to further specify/clarify this requirement". Under ESMA's proposal, both legally and substantially ELTIFs would still have the same label (i.e. no separate category will be created), but with different rules depending on whether it is marketed solely to professional investors or can also be purchased by retail investors. In the latter case, such ELTIFs would still need to observe more conservative fund rules than those funds marketed only to professionals.

66 *See* Footnote 18.

effective protection of investors by triggering mis-selling of financial products, which are not appropriate to retail investors due to their illiquidity and risk-profile. In addition, this might, in turn, create opposition from the NCAs which are responsible for the effective oversight of the market. In this regard, ESMA has emphasised in its advice that these two types of investors (professional and retail) do not have necessarily the same needs.

Some NCAs and ESMA, and some market participants have also noted that Article 30(4) of the ELTIF Regulation (equal treatment of all investors), if interpreted strictly, could imply that no specific share classes could be launched within an ELTIF opened to retail investors. In that case, professional investors would be dissuaded to invest in an ELTIF opened to retail investors as they would have to pay the same percentage/amount of fees than retail investors although their subscriptions are generally much higher.

To the contrary, Option 3 would have the advantages of Option 2 without suffering from the flaws of Option 2. Notably, Option 3 would promote a more tailored approach whereby ELTIFs marketed solely to professional investors could benefit from additional flexibility, which would facilitate a fund structure and an investment strategy tailored to the needs of their professional clients. Among such differentiated fund rules, where ELTIFs marketed solely to professional investors could have more flexibility (would be diversification and portfolio composition rules, concentration limits, threshold of eligible investments and borrowing of cash provisions.

Option 3 has been endorsed by ESMA, which in its technical advice has advocated in favour of creation on a specific type of ELTIFs for professional investors only. In its assessment "these ELTIFs could benefit e.g. from a higher level of leverage and more flexibility in terms of portfolio diversification and composition"[67].

Some market participants have questioned the introduction of the ELTIF for professional investors only citing the existing AIFMD framework and warned against the possibility that the ELTIFs for retail investors could be treated less favourably than the current ELTIF regime (see Annex 2). In addition, some stakeholders have expressed concerns regarding the introduction of professional only funds as they attach particular value to the participation of retail investors in their funds. However, other stakeholders have indicated their support for this additional flexibility to design funds tailored to meet the needs of their professional and high net worth clients. These clients are interested in investing ELTIFs given that they are viewed as a well regulated product that can provide a safer pathway to access riskier investments such as private equity. However, the restrictions in the ELTIF make it difficult to design a fund and investment strategy that meets their exact needs. The proposal will grant managers this additional flexibility and allow ELTIFs to tap into this new source of high net worth investors that have a different risk profile and appetite to the average retail investor.

In this light, it has been concluded that Option 3 would grant additional limited flexibility (degree of flexibility of retail rules is discussed below) that would improve retail investor access and product offering suitable for retail investors. Ultimately, Option 3 would enable additional flexibility appropriate to both types of investors and cater for a more tailored value proposition.

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67 Footnote 18, page 9.

Comparison of options:

Objective	More permissive fund rules for all ELTIFs	Differentiation between ELTIFs marketed to professional and/or retail investors
Improve the attractiveness of the ELTIF regime for asset managers	+ Fund managers would have a broader investment universe for their ELTIFs allowing them more flexibility when designing investment strategies and respond to investor needs	++ Investment rules would be significantly more flexible for managers targeting professional clients while ELTIFs with retail investors would still be subject to specific fund rules
Facilitate access for retail investors while preserving investor protection	+ More ELTIFs with a broader range of strategies would make it easier for investors to find funds that meet their investment needs	+ More ELTIFs with a broader range of strategies would make it easier for investors to find funds that meet their investment needs.
Increase the size of the ELTIF market and overall funding channelled via ELTIFs	+ More flexible fund rules could attract more managers to establish ELTIFs	++ More flexible fund rules could attract more managers to establish ELTIFs and allow the development of ELTIFs targeting professional investors with larger investment capacities that demand specific strategies
Efficiency (cost-effectiveness)	+ Managers will be subject to less stringent rules that would improve the efficiency of their portfolio management. There would be no additional compliance costs.	+ Managers will be subject to less stringent rules that would improve the efficiency of their portfolio management. There would be no additional compliance costs.
Impact on SMEs	+ More investors and funds would lead to more investment in SMEs	+ More investors and funds would lead to more investment in SMEs
Other economic, environmental, social and fundamental rights impacts	+ More investors and availability of ELTIFs on the market will lead to increased investment in social and environmental projects	+ More investors and availability of ELTIFs on the market will lead to increased investment in social and environmental projects
Coherence with EU policy objectives	+ Aligned with overall CMU strategy to continue building internal market for financial services and ensure strategic independence of the EU	+ Aligned with overall CMU strategy

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect
0 = no effect - = Slightly negative -- = Negative --- = very negative

Summary of impacts:

Table 5 - Greater flexibility in the ELTIF regime for funds marketed only to professional investors (summary of impacts)

Policy option	Impact on retail investors	Impact on professional investors	Effectiveness
No action	0	0	0
Option 2 – More permissive fund rules for all ELTIFs	+/- Would allow the development of a wider range of ELTIF products but some funds may not be suitable for retail investors	+ Would allow the development of a wider range of ELTIF products but presence of retail investors would still impose some restrictions	+ Stakeholder feedback indicates that any additional flexibility would improve the framework
Option 3 – Clearer separation between retail and professional investors	+ Additional limited flexibility would improve retail investor access and product offering suitable for retail investors	++ Fund managers could design fund structures that are tailored to the needs of their professional clients	++ This approach allows additional flexibility appropriate to both types of investor

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect - = Slightly negative -- = Negative --- = very negative

6.2. Removing the restrictions for the access by retail investors

From the initial stakeholders feedback, as well as the history of the negotiations of the current ELTIF Regulation (i.e. the EUR 10,000 entry ticket and the 10% of the financial portfolio threshold were inserted by the Member States), Option 2 may be opposed by some Member States who may consider that these changes could pose an increased risk to retail investors. Some stakeholders could view this option as allowing retail investors to take higher risks in comparison to their financial capacity.

However, when taken together, the ELTIF Regulation's UCITS-inspired diversification requirements set out in Article 13 and those related to retail distribution and target market identification, as well as the requirement to have in place a depositary, the fact that a suitability assessment will be performed when an ELTIF is marketed to retail investor, offer effective investor protection without the need for the additional restrictions.

Hence, the full range of investor protection measures in MiFID II would continue to apply, including the suitability assessment which takes into account clients' experience, wealth, risk profile and investment horizon. Given these existing regulatory requirements, the additional constraints related to minimum investment amounts and thresholds do not add substantively to the protection of retail investors. While at the same time they preclude retail investors for whom an ELTIF investment is suitable and appropriate.

Comparison of options

Option 1 would offer no difference in terms of the current sub-scale operation of the ELTIF regime.

Option 2 proposes to reduce the barriers to entry for retail investors and offers distinct advantages by facilitating an increased access of retail investors to ELTIFs to benefit the growth of the ELTIF market.

At the same time, care would have to be taken in making such changes to ensure that adequate levels of investor protection are maintained and measures taken to prevent the mis-selling of ELTIF products.

In general, there has been an overwhelming support by market participants for the deletion of both the EUR 10,000 minimum investment and the 10% aggregate threshold, as well as in favour of the streamlining of the ELTIF's suitability test (and removing the requirement of the "appropriate investment advice") with the MiFID II framework in order to avoid duplications. The High-Level Report on the CMU report has explicitly called for an amendment of Articles 27 and 28 of the ELTIF Regulation to reflect such a change.[68] This option was also endorsed by several large asset management industry associations and asset managers which have cited detrimental effects such restrictions have on the participation of retail investors.

Despite the fact that ESMA has not recommended explicitly to remove the abovementioned hurdles, a large number of NCAs have shown openness to considering such amendments. Only a very small number of NCAs have cited risks to the protection of retail investors stemming from excessive exposures to ELTIFs.

On balance, it is considered that Option 2, to reduce or eliminate the barriers should not detract from the effectiveness of the existing safeguards and the protection measures for retail investors. That is because when taken together, the ELTIF Regulation's UCITS-inspired diversification requirements set out in Article 13 and those related to retail distribution and target market identification, as well as the requirement to have in place a depositary (i.e. no depositary obligation exists for EuVECAs and EuSEFs), may be deemed to offer effective investor protections. There is also a requirement for a prospectus and a KID for retail investors, as well as the possibility for a 2-weeks withdrawal period, which provide for additional safeguards for retail investors.

In summary, the abovementioned options of deleting both the 10% aggregate investment threshold and the EUR 10,000 minimum investment ticket, whilst aligning the suitability assessment requirements with those under MiFID II would not weaken the retail investor protection. On the contrary, they would reduce complexity for retail investors and managers and ensure greater clarity and certainty due to the closer alignment with MiFID II distribution rules. This would also strengthen the visibility and inception of ELTIFs, reduce administrative costs and overall benefit retail investors, who would only access these products after having completed a suitability assessment.

Comparison of options:

Objective	Reducing or eliminating both barriers to entry for retail investors
Improve the attractiveness of the ELTIF regime for asset managers	+ Reduces the administrative burden of carrying out ineffective assessments of retail investors

[68] Footnote 7, page 39.

Facilitate access for retail investors while preserving investor protection	+ Easier for retail investors to invest in ELTIFs
Increase the size of the ELTIF market and overall funding channelled via ELTIFs	+ Greater retail participation will increase size of the market
Efficiency (cost-effectiveness)	+ Reduces the administrative burden of carrying out ineffective assessments of retail investors
Impact on SMEs	+ More investors and funds would lead to more investment in SMEs
Other economic, environmental, social and fundamental rights impacts	+ More investors and availability of ELTIFs on the market will lead to increased investment in social and environmental projects
Coherence with EU policy objectives	+ Aligned with overall CMU strategy to continue building internal market for financial services and ensure strategic independence of the EU

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect - = Slightly negative -- = Negative --- = very negative

Summary of impacts:

Table 6 - Removing the restrictions for the access by retail investors (summary of impacts)

Policy option	Impact on retail investors	Impacts on project owners/SMEs	Impacts on managers	Effectiveness
No action	0	0	0	0
Option 2 – Reduce each of the barriers to entry	++ Improved access to retail investors with barriers significantly reduced	+ Improved capital flows from new inward investment/demand for ELTIFs	+ Improved capital flows from retail investors/ increased demand for ELTIFs and revenues from operating ELTIFs	+ Adjusting each of the barriers would allow retail investors to more easily access ELTIFs

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect - = Slightly negative -- = Negative --- = very negative

6.3. Comparison of options on the redemption regime

A significant number of investors are advocating in favour of easing the redemptions policy of ELTIFs and introduce an opportunity for regular (periodic) redemptions by ELTIFs. For instance, a High-Level Forum on the CMU report has recommended to amend the rules on redemption policy and life of ELTIFs by adding appropriate

flexibility for investors to redeem their investment before the end of the closed-end fund's lifetime, bearing in mind the liquidity of the underlying investments.[69]

As such, the proposal by certain market participants to introduce regular (periodic) redemptions fails to fully take account of the interests of the redeeming and the remaining investors, as well as impacts on the financial stability. Readily available redemptions come, as explained below, at a high cost and often happen to the detriment of exiting investors, asset managers and remaining non-redeeming investors. Furthermore, limitations to redemptions were cited as beneficial by some asset managers due to ELTIFs' ability to withstand the volatility and market cycles and allow for a sufficient time for the execution of an investment strategy.

Stakeholder feedback, and policy work, as well as specific inputs by some national regulators have suggested to explore the development of a secondary market for ELTIFs, which has, in turn, introduced regulatory merits of a "liquidity window" mechanism to allow potential investors to express an open interest that can be submitted after at least one year of the operation of the fund and with a one month advance notice to subscribe for the units of an ELTIF. Such open interest and possible subscription would *only be permitted in so far as and to the extent* of a matching corresponding interest in redeeming the existing investors' units in an ELTIF (see Annex 7).

The advantage of this approach is that it would allow those investors that wish to exit, albeit with no guarantee of doing so, while protecting the interests of the remaining investors. The optional redemptions window approach could be implemented irrespective of the categories of investors to whom ELTIFs are marketed.

Comparison of options:

If applied to all ELTIFs regardless of the underlying assets, funds composition and liquidity set up (e.g. existence of liquidity management tools such as gate arrangements) and investor base, Option 2 would fall short on delivering equitable outcomes for both the exiting and remaining investors, as well as the asset managers.[70] Furthermore, the cash and cash-like instruments that remain un-invested in the liquidity pocket due to the need to meet redemption requests would result in a drag on performance, further exacerbating suboptimal[71] outcomes for the asset managers and remaining investors.

Option 2 would imply more flexibility in the ELTIF redemptions regime. Notably, this Option would mean that investors could redeem their investments (with substantially fewer conditions than currently allowed by the ELTIF regime).

Option 3, however, will be focused on creating liquidity via an optional liquidity mechanism. Option 3 would pursue a mechanism which would facilitate a netting of redemption/subscription orders which leads to an exchange in the ownership of units or

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69 Ibid.

70 Notably, the redemption from intrinsically illiquid funds with highly illiquid idiosyncratic portfolio could yield suboptimal outcomes for both exiting investors (fees, valuation of illiquid assets, etc.), for the remaining investors (liquidation of a part of the portfolio's assets would damage the interests of such remaining investors), for the asset managers (dealing with regular or constant redemptions is costly and detracts the manager from its focus on the execution of the strategy).

71 The presence of cash and cash-equivalent instruments should not per se be judged as negative. An investment of a part of the portfolio in liquid assets may be seen to provide some diversification to the fund.

shares in ELTIFs and respective cash-flows, and as a major advantage, does not lead to a reduction of the ELTIF's capital.

In this respect, the High-Level Forum on the CMU, in its report, has advocated in favour of amending the rules on redemption policy and life of ELTIFs (Art. 18 of the ELTIF Regulation) by adding appropriate flexibility for investors to redeem their investment *before* the end of the closed-end fund's lifetime[72].

The views of market participants in this area were partially mixed. A large portion of asset managers (predominantly pursuing equity and diversified strategies, as well as strategies pursuing investments in real assets) were in favour of more flexible redemptions regime bearing in mind the liquidity of the underlying investments. On the contrary, representatives of the private equity have consistently cited problems of illiquidity and the difficulties of the valuation.

Some of these concerns were also voiced in ESMA's technical advice. Notably, ESMA has noted that ELTIFs are closed-end funds which, except in very limited circumstances, only allow redemptions at the end of the life of the fund. This fundamental rule is, in ESMA's view, justified by the illiquid nature of the assets which an ELTIF is invested in.[73]

ESMA's feedback in this area, as per its technical advice, was not conclusive. According to ESMA, "a possible option would be to develop a regime allowing an ELTIF of indefinite duration, e.g. if admitted to trading on a regulated market9 and provided minimum liquidity conditions are met. In case of listed ELTIF, it should be clarified that the disinvestment from the ELTIF would be possible only on the *secondary market*."

Whilst the main strength of Option 3 is that it avoids the pitfalls of periodic redemptions described under Option 2, Option 3 would not always give a guarantee or assurance that the redemption would be possible. Essentially, Option 3 would facilitate the creation of the secondary market for the trading of units or shares of ELTIFs in a manner that would not undermine the liquidity profile of ELTIFs.

Nevertheless, Option 3 would have an advantage for remaining investors and project owners whose interests would not be prejudiced by outflows from ELTIFs that could diminish the capital available to the asset manager for the execution of the ELTIF strategy. The optional liquidity windows mechanism under Option 3 could be applied both by those ELTIFs marketed to exclusively professional investors and those that can be marketed to retail investors.

Comparison of options:

Objective	Introducing regularity (periodicity) into the ELTIF redemptions regime	Allowing limited redemptions through optional liquidity windows regime
Improve the attractiveness of	- This would increase the administrative	0 This would allow managers to effectively

[72] Footnote 7, page 39.

[73] In addition, ESMA has expressed concerns with the valuation of assets related to the redemptions: "*indeed, the valuation of illiquid assets, taking into account the absence of a market able to provide a fair value on a continuous basis, may be assessed only at the time of the disinvestment. Accordingly, the valuation is a crucial step and a pre-condition to redeem the units of a closed-ended fund, and the availability of liquidity management tools might not be enough to meet these requirements*". See Footnote 18, page 7.

the ELTIF regime for asset managers	costs and burdens for asset managers and require additional liquidity management	manage redemption requests without maintaining an additional liquidity pocket but may still lead to increased administrative costs/burden
Facilitate access for retail investors while preserving investor protection	+ Increased redemption channels would increase the utility and attractiveness of ELTIFs for retail investors as they could exit their investment more easily	+ While there would be certain requirements to be met in order to redeem their investment, investors would still have the possibility to exit earlier
Increase the size of the ELTIF market and overall funding channelled via ELTIFs	0 No significant impact on the overall market is predicted as only a limited number of managers would implement more frequent redemptions	0 No significant impact on the overall market is predicted as only a limited number of managers would implement more frequent redemptions
Efficiency (cost-effectiveness)	-- Increased redemption frequencies will lead to increased costs for investors and managers with the additional cost of maintaining a liquidity pocket	- Increased redemption frequencies will lead to increased costs for investors and managers but there is no additional liquidity pocket needed
Impact on SMEs	+ Increased redemption flexibility may encourage more retail investors to purchase ELTIFs	+/0 While redemption would be possible this approach would be less flexible than option 2. Retail investors would have the possibility to exit their investment under certain conditions
Other economic, environmental, social and fundamental rights impacts	+/0 More investors and availability of ELTIFs on the market will lead to increased investment in social and environmental projects	+ More investors and availability of ELTIFs on the market will lead to increased investment in social and environmental projects
Coherence with EU policy objectives	+ Aligned with overall CMU strategy to continue building internal market for financial services and ensure strategic independence of the EU	+ Aligned with overall CMU strategy

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect - = Slightly negative -- = Negative --- = very negative

Summary of impacts:

Table 7 - Optional liquidity windows redemption mechanism

Policy option	Impact on redeeming investors	Impacts on remaining investors	Impacts on project owners/SMEs	Impacts on asset managers	Effectiveness
No action	0	0	0	0	0
Option 2 More flexible redemptions regime	++ Investors can more easily redeem their holdings	- Fund managers would have to maintain a liquidity	+/- Reduced availability of capital to invest due to need to	- Additional administrative costs to process redemptions and maintain	- On balance while this would allow easier redemptions, overall it would

		pocket leading to a drag on the funds returns or sell assets to meet the redemption requests[74]	maintain liquidity which may be outweighed by ELTIF fund inflows	liquidity	have a negative outcome for managers and investors
Option 3 Optional liquidity window mechanism	+/- Investors have possibility to redeem but need to match with new entrants	+ Ensures there is no requirement to sell assets and limited liquidity drag on fund returns	+ Ensures maximum available capital for investment; overall higher funds channelled through ELTIFs as these become more attractive	- May impose additional administrative or marketing costs on managers	+ Balance between investor interests and flexibility to redeem offsets additional burden on managers

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect **-** = Slightly negative **--** = Negative **---** = very negative

7. PREFERRED OPTIONS AND IMPACTS OF THE PROPOSED POLICY OPTIONS

7.1. Preferred options

7.1.1. Providing clearer separation of ELTIF fund rules when marketed solely to professional investors

The preferred option is Option 3, i.e. differentiation between ELTIFs marketed to professional investors and ELTIFs to which retail investors can have access. The preferred option will envisage more flexibility for those ELTIFs marketed solely to professional investors.

In particular, the key changes that will be introduced in connection with the need for a greater flexibility for professional investors only ELTIFs, are provisions of the ELTIF Regulation that would allow for greater leverage, greater leeway in terms of portfolio composition rules and asset diversification requirements (essentially allowing for more concentrated portfolios), and reduce the currently high threshold of those eligible assets that is currently required by the ELTIF Regulation. In addition, the ELTIFs that would solely be marketed to professional investors would no longer be required to have in place a 2-weeks withdrawal period and the KID applicable for retail investors, and the arrangements and procedures in place to process complaints by retail investors.

[74] In certain cases, such as ELTIFs that are focused on certain types of portfolio strategies (transport infrastructure or real assets), the adverse effects on the remaining investors may be less severe due to the capacity of some ELTIFs to generate free cash flows which, in certain circumstances, may be used to honour redemption requests. This nuance may also be relevant in the context of the analysis of Option 2 for "project owners" and "the efficiency" assessment considering the impact of having more readily redeemable on the possibility to raise more capital.

Due to the existing restrictions and additional limitations, it is important maintain the proportionality of requirements regarding the diversification requirements and concentration limits.

7.1.2. Removing demand-side limitations for investments in ELTIFs by retail investors

Option 2 is considered preferred. This option would introduce two main changes in ELTIF regime. The first is the deletion of the EUR 10,000 minimum initial investment (the so-called "entry ticket") required by the ELTIF Regulation. Easing such restrictions by allowing retail investors to commit lower amounts to an ELTIF is expected to speed-up ELTIFs' uptake and funding channelled through ELTIFs. The second change would delete the limitation of 10% aggregate investment amount for those retail investors whose portfolio does not exceed EUR 500,000. The purpose of this amendment would be to eliminate the threshold that is judged by the industry participants as subjective and essentially unenforceable.

ELTIF requirements pertaining to the assessment of retail investor's knowledge and experience should be further clarified. Current provisions of the ELTIF Regulation oblige that ELTIF manager to assess whether the ELTIF is suitable for marketing to retail investors, and conduct a suitability test assessing the retail investor's knowledge and experience, financial situation and investor's investment objectives.[75] Stakeholders appear to overwhelmingly prefer MiFID II framework to a self-standing sectoral and partially duplicative ELTIF suitability framework.[76] As the ELTIF will remain a "complex" investment product even if marketed to a retail investor audience, the necessary suitability test – to be amended and aligned with that under MiFID II – could remove any degree of uncertainty and further reinforce the investor protection, accompanied by all relevant risk disclosure documents (including sustainability), etc.

7.1.3. Optional liquidity window mechanism for redemptions

The preferred approach is to introduce additional optional liquidity windows mechanism that would allow for the exit of the ELTIF investors without compromising the liquidity position of the fund. Redemptions would only be permitted, at the discretion of the asset manager and solely if the liquidity window mechanism is set out in the fund documentation and the prospectus, to the extent that a corresponding subscription interest was available to match the redeeming existing investors' units or shares in an ELTIF (see Annex 7 for more details).[77]

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[75] In this connection, it should be noted that Article 30(1) of the ELTIF Regulation sets out that "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". Stakeholders have called for an explicit amendment of the rules for internal assessment process for ELTIFs marketed to retail investors (Articles 27 and 28 of the ELTIF Regulation by streamlining suitability test requirements and avoid duplications with MIFID II (Articles 16(3) and 25(2)). *See* High-Level Forum Report on the CMU, page 39.

[76] *Ibid*, page 39. MiFIDII has often been cited by stakeholders as a well-understood and mainstream suitability assessment test. Even if and when the MiFIDII framework were to change, by virtue of the review, a cross-reference to the MiFIDII framework would ensure the stability and predictability of the suitability assessment, as well as have a benefit of regulatory consistency across financial products.

[77] The revised ELTIF Regulation would contain provisions that would regulate the process of subscriptions, matching mechanism, redemptions, possible proration and pay-outs. In terms of subscriptions, there could be an option to open the fund for subscriptions and redemptions once every quarter, when the NAV is published, subject to a month notice period. These subscription requests could fund redemption requests from existing investors and, if the total

The following table compares the options against the objectives listed in section 4. In addition, it assess the efficiency and their impact on SMEs. The economic, environmental, social and fundamental rights impacts and their coherence with EU policy objectives are also considered.

Table 8 – Aggregate comparison of options

Objective	**Differentiation between professional and retail ELTIFS**	**Removing barriers to retail investor access to ELTIFs**	**Introducing a liquidity window redemption mechanism**
Improve the attractiveness of the ELTIF regime for asset managers	++ Allowing more flexibility in the funds rules will increase the usability and attractiveness of ELTIFs	+ Reducing barriers to retail entry will widen the available investor base and encourage more fund managers to establish ELTIFs	+ More flexible redemption options will encourage more investors to consider ELTIFs as an investment product thereby increasing business opportunities for fund managers. At the same fund managers may choose not to incorporate the mechanism into their fund rules
Facilitate access for retail investors while preserving investor protection	0 Retail ELTIFs will still be subject to more stringent fund rules for investor protection than professional funds.	++ Reducing barriers to entry will make it easier for retail investors to participate in ELTIFs	+ More flexible redemptions will allow more retail investors to invest in ELTIFs as they may be able to exit earlier than the funds maturity
Increase the size of the ELTIF market and overall funding channelled via ELTIFs	++ More flexible fund rules will allow managers to implement more diverse portfolio and investment strategies increasing the product offering for all investors	+ Allowing more retail investors to access ELTIFs will increase the investor base and investments	+ More flexible redemptions will encourage greater investor participation in ELTIFs
Efficiency (cost-effectiveness)	+ Reduced compliance costs for managers particularly those establishing professional only ELTIFs	+ Removing entry tests will reduce compliance costs for both managers and investors	- The additional redemption mechanism may lead to increased admin costs for managers
Impact on SMEs	+ Greater availability of ELTIF funds for investment in SMEs	+/0 More retail investors' capital could be channelled into SMEs through ELTIFs	+ More investors will increase the flow of capital to ELTIFs for investment in SMEs
Other economic, environmental, social and fundamental rights impacts	+/0 More investors and availability of ELTIFs on the market will lead to increased investment in social and	+ More investors and availability of ELTIFs on the market will lead to increased investment in social and	0 More investors and availability of ELTIFs on the market will lead to increased investment in social and

amount of new subscriptions is insufficient to meet the volume of redemption requests, redemption orders would be reduced on a pro-rata basis. To be clear, any such redemptions would not come at the cost of the remaining investors of the fund (i.e. where an asset manager would have to liquidate assets or deplete the cash cushion, or borrow cash at expense of the remaining investors), but only on account of the funds raised from the new subscribing investors.

	environmental projects	environmental projects	environmental projects
Coherence with EU policy objectives	++ Aligned with overall CMU strategy to continue building internal market for financial services and ensure strategic independence of the EU	+ Aligned with overall CMU strategy to encourage retail investment participation while ensuring adequate investor protection	0 The redemption mechanism is only relevant for ELTIFs

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect - = Slightly negative -- = Negative --- = very negative

7.2. Estimated impacts

Stakeholder groups directly affected by the lack of uptake of ELTIFs are asset managers, investors and qualifying undertakings (such as unlisted SMEs, listed small-cap companies or investee companies that own respective projects or long-term assets) in which ELTIFs invest. The proposed changes aim to revert this trend and to scale up ELTIF market to reap its potential.

At the same time, it is important to note the relatively limited size of the ELTIF market and that even with the proposed amendments improving the utility and attractiveness of the ELTIF, it will still take time for the market to increase in size from its current low level.

However, the original objectives remain valid and the ELTIF framework still has distinct advantages over standard AIFs that make it particularly relevant to support the real economy and meet investors' long term investment and saving needs.

7.2.1. Economic impacts

ELTIFs provide long-term financing to infrastructure projects, unlisted companies, or listed SMEs that issue equity or debt instruments. ELTIFs can complement or replace bank financing in addition to other investment funds (such as AIFs, EuSEFs and EuVECAs). The cost of funding is fundamental for undertaking new development projects. If the cost of funding decreases, companies will be able to undertake new projects with positive consequences for the broader economy.

While ELTIFs alone cannot address all of the financing challenges, developing the market will complement the CMU Action Plan and support further development of this sector. Since ELTIF eligible investment assets, such as infrastructure, intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property, generate an economic and social benefit, higher investments channelled through ELTIFs are expected to contribute to smart, sustainable and inclusive growth and to the Union's energy, regional and cohesion policies.

In terms of the economic segments, regardless of whether ELTIFs target or specialise in infrastructure investment, investments in unlisted SMEs or in airplane or marine financing, the ELTIF regime has a broad range of applications. For example, the envisaged rules on investment policies (portfolio composition and diversification, concentration limits, limits on cash borrowing – see for further detail Annex 7) or the envisaged rules on redemption policies are designed to apply to all categories of ELTIFs,

whether they specialise in providing equity participations for infrastructure or whether they invest in real assets directly (airplane or ship finance). In light of the above, ELTIFs provide a useful investment structure with well-regulated fund rules that facilitate and complement existing funding sources and strategies and the achievement of the CMU objectives.

7.2.2. Social impacts

The review of the ELTIF legal framework is unlikely to have a direct impact on social issues. An indirect impact might however relate to the financing of long-term investments, such as social housing projects or infrastructure spending. Social housing, for instance, is included in the scope of eligible assets as part of the real estate category. Investment funds can provide financing to social housing projects or associations responsible for managing social housing properties. Investment funds appear to be well-placed to offer solutions to substitute or complement bank financing and the preferred option is expected to lead to increased funding available to such projects through ELTIFs. Another indirect impact might be on the employment in the companies that attract investment from ELTIFs.

By providing financing to these companies, they could secure existing jobs or create new employment opportunities, as well as promote regional development. Measuring precise social impacts might prove difficult due to substitution effects (understanding the origins of investment inflows and a recourse to an alternative fund structures) and lack of transparency on detailed holdings of ELTIFs.

There are also other indirect social impacts arising from better transport and social infrastructure and the positive externalities (both in terms of employment, energy efficiency and sustainable projects, etc.) related or stemming from such long-term investments. However, such indirect social impacts cannot be quantified with high certainty.

7.2.3. Impacts on SMEs

Further uptake in the ELTIF sector is expected to have positive indirect impacts for the financing of SMEs. SMEs represent one of the core assets in which ELTIFs can invest. This can be achieved either by providing loans or by acquiring equity participations in such companies. SME financing varies by phase of development. Typically these companies rely on private financing for driving growth and expansion, given the costs or barriers to public financing. While banks remain a main source of such financing, investment funds and other market-based funding vehicles have an important role to play as well.

Access to funding for a SME is fundamental for undertaking new development projects. Should the access to funding decrease, SMEs will be less able to undertake new projects. ELTIFs will not address all of the challenges SMEs face in accessing financing, but it can contribute to a wider range and depth of alternative sources of financing, alongside banks. ELTIFs have the potential to increase the overall amount of funds going into long-term assets. Should the money invested in ELTIFs increase, it is likely that SMEs would benefit from more available financing possibilities. This is particularly the case given that investments into SMEs loans and equity are two of the main asset classes targeted by funds.

7.2.4. Environmental impacts

The ELTIF framework has potential to contribute promoting the green and resilient energy transition in the Union and can complement EU policy initiatives in this field. Increasing funding options for long-term projects can be expected to aid the development of environmental projects and sustainable growth given the inclusion of sustainability criteria for certain eligible assets.[78] This would complement the investments in green, smart and sustainable growth. It is difficult to measure the exact impact that ELTIFs could have but as an example the ELTIFs could represent an added value for helping to finance environmental projects where, for example, bonds issuance or bank financing are excessively costly or impracticable.

7.2.5. Impacts on fundamental rights

The ELTIF framework would be applied in accordance with those rights and principles, and the targeted amendments in the ELTIF regime would not have any consequences or adverse effects on the exercise of fundamental rights or consumer protection rights.

7.2.6. Impacts on simplification and/or administrative burden

The contemplated changes to the ELTIF framework aim at addressing existing pain point in the framework and expected to make it more attractive for ELTIF fund managers to start and operate ELTIFs. Overall, the review is not expected to lead to an increase in regulatory or administrative burdens. On the contrary, the revised ELTIF legal framework should lead to a more efficient regulatory regime with lower administrative burdens (e.g. less rules to comply with for retail investors). Compliance costs and regulatory burdens are ultimately expected to be lower. The review of the ELTIF framework will not have any material impact on public administrations.

7.2.7. Impact on financial stability

Overall, there are reduced financial stability risks associated with ELTIFs. This is explained by a number of factors, including by the fact that ELTIFs are and would likely remain essentially closed-ended long-term funds with limited redemption opportunities. In addition, ELTIFs have a very modest size (EUR 2.4 billion out of multi-trillion euros EU AIF industry). Further, the use of depositaries has a clear mitigating factor in assessing financial stability implications. Against this background, the balance sheet of the depositaries in the Member States concerned could be deemed respectable to allow them honouring their duties in taking up the role and tasks of a depositary for investment funds with a much more sizeable AuM.

Furthermore, given that all ELTIFs are AIFs by definition, and given the links with the AIFMD it is appropriate to consider the application of financial-stability related provisions of the latter to the ELTIFs. The AIFMD contains extensive tools for improved macro-prudential monitoring and supervision. AIFMs are required to report on the main AIF exposures, its liquidity profile and leverage. While the granularity of the reported

[78] This would nevertheless not apply to and thus not limit investments in assets that are already eligible.

data could be increased, the information sharing supports effective macro-prudential supervision and can help identify and mitigate potential financial stability risks[79].

Importantly, as per the existing AIFMD requirements, potential risks arising from the use of leverage should be addressed by managing leverage appropriately with respect to the investment and any potential maturity or currency mismatches in the portfolio. It would be, as per the AIFMD, the requirement of the asset manager to take into consideration the potential risks that high leverage could pose, including to financial stability, as per the applicable AIFMD provisions.

7.2.8. Impact on third countries

The asset management sector is a global market, managers and investors are located all around the globe and investments are made on a cross border basis inside but also outside the Union. As far as AIF managers are concerned, third countries play an important role. The ELTIF Regulation explicitly sets out that such investments should not be prevented. Long- term investments in projects, undertakings, and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy.

As such, third country qualifying undertakings are explicitly recognised as eligible investments within the meaning of the ELTIF Regulation.[80] The review of the ELTIF product rules represents an opportunity for AIF managers, for foreign undertakings, as well as for European investors alike. Should third country undertakings and their respective jurisdictions of establishment comply with all provisions set out in the ELTIF Regulation, they will be able to benefit from the inclusion in the asset portfolios of ELTIFs under the conditions set out in the ELTIF Regulation.

From this perspective, the ELTIF framework also represents an added value for potential investment targets domiciled in third countries. Should the focus on long term assets increase, it is to be expected that long term assets domiciled in third countries may also benefit from an increased demand. Investments in third country undertakings might bring distinct benefits to the ELTIF managers and investors in terms of broader availability of eligible assets and the "thematic" funding exposure of European investors to the economic and sustainable growth of third countries.

7.2.9. Substitution effects

Should and once there is a successful uptake in ELTIFs substitution effects (i.e. where do investment inflows come from) might arise. Notably, the revised ELTIF regime may draw investments from those currently investing in AIFs and from those currently investing in other existing long-term instruments, including national funds. It would also,

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79 . The European Securities and Markets Authority (ESMA) publishes an Annual Statistical Report on EU AIFs, which aggregates supervisory reporting data and provides market participants and investors, as well as supervisors and policy makers, with information on market developments. ESMA Annual Statistical Report EU Alternative Investment Funds 2019, 21.01.2019, ESMA 50-165-748.

80 Article 11 of the ELTIF Regulation also conditions such investments to those third countries that are not a high-risk and non-cooperative jurisdiction identified by the Financial Action Task Force and that have 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 ensure an effective exchange of information in tax matters, including any multilateral tax agreements.

as a new fund opportunity for investors unable currently to target ELTIFs, generate additional investments.

It is difficult to assess the balance between these different elements. Substitution for investments by retail investors is not likely to be great, as the investment profile of ELTIFs may be significantly different across AIFs (especially given the fact that the availability of AIFs to retail investors is subject to national law of the Member States). Given that ELTIFs would channel investments to long term assets, and these other vehicles are rather more diffuse and varied in their asset allocations, increased allocations to ELTIFs would be expected to increase overall funding available to long-term assets.[81]

7.2.10. Distributional effects (between different fund markets)

In addition to the above-mentioned substitution effects, distributional effects (i.e. which fund managers or jurisdictions will benefit the most, and who might be impacted negatively) might also arise. From the perspective of the investment target, deeper capital pools (taken from across the EU), would likely permit further specialisation and differentiation in fund offerings, including vehicles targeting markets so far underdeveloped due to the collective impact of market fragmentation. From the perspective of the investor, an ELTIF framework equipped with the passporting rights could make such investments available to all investors across the EU. This would replace a situation in which options for such investments are only available in certain markets for certain investors.

Benefits for the core markets in the EU might be expected to be less prominent, to the extent that these markets already have access to national fund regimes. However fragmentation in these regimes and patchy focus on long-term investments means that even in these core markets, increased capital flows to ELTIFs would be expected to increase funding for long term assets compared to existing national funds. A deeper capital pool for ELTIFs would, as noted, permit deeper differentiation and specialisation in that fund market, thereby permitting investment types that are currently most constrained to develop further.[82]

8. REFIT (SIMPLIFICATION AND IMPROVED EFFICIENCY)

The initiative aims, in part, to reduce regulatory costs ELTIF managers and ELTIFs associated with restrictive fund rules and the hurdles for investors in accessing ELTIFs.

Overall, the proposed amendments to the ELTIF regime are expected to introduce additional flexibility and alleviate the burden on fund managers that provide products

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81 For institutional investors currently not holding long term assets or where such assets are under-represented on their portfolios, a well-functioning ELTIF market would make such investments easier, more transparent and cheaper. Asymmetries of information would be reduced. The availability of transparent vehicles targeting long-term funds that are known to be well regulated can therefore be expected to increase institutional allocations to long term assets. This might see a minor redistribution move away from shorter-term liquid assets (short term bonds, and to a lesser extent equities), towards longer-term assets. Even small shifts in institutional portfolio allocations could have strong impacts on the ELTIF market given the scale of these portfolios.

82 Better economies of scale and benefits for existing players, driven by new market opportunities, could benefit dominant EU fund domiciliation jurisdictions (Luxembourg, Ireland, France and Germany). However, the regime might also be expected to permit new entrants to the market, thereby increasing competition.

tailored to the needs of professional clients, while reducing hurdles of accessing ELTIFs for investors (while maintaining existing investors protections) will reduce administrative burdens and improve its attractiveness of ELTIFs for asset managers and investors alike.

At the same time it is important to note that it would prove challenging to precisely quantify regulatory cost reductions of the preferred options due to several factors. Given the limited size of the ELTIF universe and the confidential nature of fund level cost data, it would be required to make a set of assumptions and extrapolate the effects of possible cost reductions of the proposed measures by relying on a set of quantitative and qualitative assessments of the proposed measures.

In addition, it should be recalled that the ELTIF is a voluntary legal regime. Notably, there is no obligation for asset managers to choose the ELTIF as a fund structure. Instead, asset managers can choose to "opt in" establishing an ELTIF. Instead, they would be free to establish the fund as a standard AIF under the AIFMD[83] or any alternative national fund structures, or structuring their long-term investments through other means (such as private equity investments). Given those substitution and distributional effects (see Section 7.2.9. and 7.2.10.), it would prove challenging to authoritatively substantiate any potential or implied cost savings of preferred policy options with a sufficient level of conviction.

Finally, the open public consultation has explicitly inquired public stakeholders on a number of occasions about the costs and burdens of certain provisions and requirements of the ELTIF regime[84]. Nevertheless, despite various attempts to collect numeric information on the costs and cost savings of certain policy choices, little information was provided, which could partially be explained by the abovementioned inherent limitations of the ELTIF regime (limited fund sample, opaqueness of the sector, confidentiality constraints and the voluntary nature of the ELTIF framework). This, however, implicitly indicates that cost of compliance with ELTIF rules is not such a pain point for relevant stakeholders as their restrictive nature.

9. MONITORING AND EVALUATION

Robust monitoring and evaluation mechanism is crucial to monitor the effectiveness of the ELTIF regime and to track the progress of the uptake of the ELTIF regime. Proper monitoring is also crucial in ensuring that the regulatory actions undertaken are effective in achieving their respective objectives and that market participants comply with them. At the same time, such system has to be proportionate and avoid unnecessary burdens for the regulated entities, notably given the limited size of ELTIF market so far

It should be acknowledged that the existing ELTIF regime already has in place a system of monitoring and evaluation. Competent authorities shall monitor collective investment

[83] In this context, it should be recalled that in parallel with the ELTIF review the Commission is carrying out a review of the AIFMD framework. European Commission. Source: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12648-Financial-services-review-of-EU-rules-on-alternative-investment-fund-managers_en (18 May 2021).

[84] The term "costs" was used 10 times throughout 42 questions of the questionnaire. A dedicated question targeting stakeholders feedback on identifying the provisions of the ELTIF framework that could be amended, and if so how, in order to lower costs and reduce compliance, administrative or other burdens was included in the open public consultation.

undertakings established or marketed in their territories. In addition, a system of checks and controls exists 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, the ELTIF Regulation. In addition, the ELTIF register which is maintained by ESMA and compiled upon the information and notifications by NCAs is, in itself, a robust monitoring and evaluation mechanism. This register gives access to a ranger of information on each authorised ELTIF, including the ELTIF manager, the date of authorisation, the Member State of the domicile (together with the respective NCA), the Member States in which an ELTIF is being marketed, as well as an LEI number.

Full granular information is (readily) available to NCAs. The ELTIF framework is focused on gathering data necessary for effective supervisory oversight of activity in the sector. Such data is distinct from broader market data such as costs that is more relevant from a policy making perspective. While funds may voluntarily offer such information, in practice it is regarded as business sensitive and confidential. This limits the ability to carry out a full quantitative cost analysis of the initiative. However, the preferred policy options are designed to alleviate the ELTIF rules and increase the flexibility for fund managers.

NCAs are, as a matter of their authorisation mandate and oversight functions, fully aware of the identity of the ELTIF manager (i.e. all the information on the manager and internal rules and procedures related to the authorised manager) and an ELTIF for which authorisations are being filed with NCAs.[85] In addition to that, NCAs have complete up-to-date access to fund-related quantitative data, i.e. identification of underlying assets, current and historic data on net asset values of such assets, full accounting information, portfolio composition data, adherence to concentration requirements, level of leverage applied at both fund and asset level, and key changes that can take place at both fund or asset manager level. Such oversight functions are available and are actively exercised by NCAs at the entire life of ELTIFs from authorisation throughout the life cycle of ELTIFs. This also involves the reporting duties by ELTIF managers arising from the ELTIF Regulation and from the AIFMD. The data collected through the reporting requirements is enabling the NCAs to continue effectively supervising the ELTIF market.

Proportionality needs to be ensured: Robust monitoring and evaluation mechanism is crucial to monitor the effectiveness of the ELTIF regime and to track the progress of the uptake of the ELTIF regime. Proper monitoring is also crucial in ensuring that the regulatory actions undertaken are effective in achieving their respective objectives and that market participants comply with them. At the same time, such system has to be proportionate and avoid unnecessary burdens for the regulated entities, notably given the limited size of ELTIF market so far.[86]

Enhancements to the ELTIF register are being envisaged: Currently the constitution of the ELTIF register by ESMA is based on self-reporting by the NCAs which has

[85] Such information includes information on the statutory documentation (prospectus, key information document, incorporation documentation, financial projections and business plan, types of investors to whom ELTIF would be marketed, jurisdictions in which ELTIFs will be marketed per each ELTIF share class), all key policies and procedures (such as leverage related guidelines, conflict of interest related guidelines, remuneration-related guidelines, written agreement with the depositary, information on delegation arrangements, if any, and information about the investment strategies, the risk profile and other characteristics of AIFs that the EU AIFM is authorised to manage).

[86] It should be considered that exposing ELTIFs to additional reporting requirements, on the top of already those reporting requirements to which they are subject by virtue of the AIFMD, could prove disproportionate. Even more, that could be seen as effectively a detractor from the appeal of ELTIFs for asset managers.

exposed a number of transparency problems and inefficiencies. ELTIF Regulation's provisions regarding the ELTIF register will mandate that updates to the register are carried out with higher frequency, transparency and more granularity. This will ensure more transparency and higher visibility of the ELTIF regime.[87] It is contemplated to give ELTIF register a higher visibility (a self-standing searchable database as opposed to an Excel file at ESMA's website), timeliness (updates to be introduced on a rolling basis as opposed to quarterly basis) and granularity.

Commission services will continue monitoring the ELTIF market: While the Commission will be responsible for monitoring the take up of the legislation according to EU law, the proposed indicators will require the input and assistance of Member States, NCAs, ESMA and market participants. In addition to available public sources and licenced databases (such as Morningstar and Refinitiv), these are unlikely to satisfy the requirements and will not provide a full coverage of all ELTIFs. As part of a wider effort to monitor the uptake of ELTIFs, the Commission services will continue monitoring development of the ELTIF market in general, as well as the specific impacts of the regulatory adjustments put forward in this initiative but also to observe the developments of the ELTIF market more widely. This will help to also evaluate the impact of the regulatory and non-regulatory measures that form the contribution of the ELTIF review to the overall CMU Action Plan package.

Against this background, and given the focus of this review initiative to boost the ELTIF sector, it is therefore appropriate to complement the evaluation programme in terms of monitoring the outputs, results and impacts of this initiative. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence will be collected. It shall also specify the action to be taken by the Commission, by the Member States and by ESMA in collecting and analysing the data and other evidence.

At the same time, such system has to be proportionate and avoid unnecessary burdens for the regulated entities, notably given the limited size of ELTIF market so far.

In terms of indicators and sources of information that could be used during the evaluation, the data provided from the national competent authorities (NCAs) will be used. Since NCAs are responsible for granting authorisation to ELTIFs and to the managers of ELTIFs, NCAs are in the possession of the information on the number of ELTIFs, their domiciles, and jurisdictions where the funds would be marketed, the information on the pursued strategies and underlying assets, key fund documentation (including the prospectuses), etc.[88]

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87 More particularly, it would be appropriate to request that the ELTIF register includes information on the size of net assets, portfolio compositions, availability of ELTIFs to distinct categories of investors (marketing of ELTIFs to retail and professional investors), date of authorisation and date of withdrawal of authorisation (to cater for survivorship bias), and other metrics and characteristics (size and structure of fees, performance, etc. which can be collected on the basis of the analysis of prospectuses and certain fund documentation, such as funds' annual reports).

88 Furthermore, according to the ELTIF Regulation, the NCAs of the ELTIFs shall, on a quarterly basis, inform ESMA of granted or withdrawn ELTIF authorisations. Based on this information, ESMA should keep a central public register identifying each authorised ELTIF, the manager of the ELTIF and the competent authority of the ELTIF. Certain information from trade associations and data providers (Morningstar, etc.) can constitute another important source of information that can be used.

As part of a wider effort to monitor the uptake of ELTIFs, the Commission services will continue monitoring the effects of the preferred policy options on the basis of the following non-exhaustive list of indicators:

- Number of authorised ELTIFs;
- Size of net assets of ELTIFs;
- Jurisdictions where ELTIFs are domiciled and jurisdictions in which ELTIFs are marketed;
- Portfolio compositions (i.e. overall diversification and allocation to distinct asset classes eligible under the ELTIF regime, such as equity, debt, real assets, etc.);
- Availability of ELTIFs to distinct categories of investors (marketing of ELTIFs to retail and professional investors);
- Leverage employed (leverage at both fund level and overall leverage level achieved via encumbrances of assets);
- Date of authorisation and date of withdrawal of authorisation;
- Other metrics and characteristics (size and structure of fees, performance, etc. which can be collected on the basis of the analysis of prospectuses and certain fund documentation, such as funds' annual reports).

The above list of non-exhaustive indicators is designed to not only monitor the specific impacts of the regulatory adjustments put forward in this initiative but also to observe the developments of the ELTIF market more widely. This will help to also evaluate the impact of the regulatory and non-regulatory measures that form the contribution of the ELTIF review to the overall CMU Action Plan package.

While the Commission will be in charge of monitoring the take up of the legislation according to EU law, many of the indicators set out would require input and assistance of Member States, NCAs, the European Securities and Markets Authority and market participants. Many data requirements for these indicators can only be fully met via respective inputs from NCAs and ESMA. While the Commission may be able to collect parts of the data via public sources and licenced databases (such as Morningstar and Refinitiv), these are unlikely to satisfy the requirements and will not provide a full coverage of all ELTIFs.

ANNEX 1: PROCEDURAL INFORMATION

1. Lead DG, Decide Planning and CWP references

Directorate-General for Financial Stability, Financial Services and Capital Markets Union.

Agenda planning reference: PLAN-2020-8416

2. Organisation and timing

The initiative is included in the Commission Work Programme 2021.

3. Inter-Service Steering Group

Work on the Impact Assessment started in mid-2019 with the legal and policy evaluation of the ELTIF framework, the analysis of the ELTIF market and a series of meetings with market participants. On 4 February 2020, the Commission services have also participated in the ELTIF colloquium with a broad range of market participants (asset managers, product manufacturers, legal and auditing professionals, credit institutions, etc.).

The Inter-Service Steering Group was formed by representatives of the Directorates General Competition (COMP), Economic and Financial Affairs (ECFIN), Internal market Industry Entrepreneurship and SMEs (GROW), Justice (JUST), Communications Networks Content and Technology (CONNECT), Taxation and Customs Union (TAXUD), ENER, CLIMA, the Legal Service (LS) and the Secretariat General (SG).

The 1st ISSG meeting took place on 29 July 2020. The meeting was attended by representatives of DGs FISMA, COMP, ECFIN, GROW, JUST, TAXUD, CLIMA and SG.

The 2nd ISSG meeting took place on 30 November 2020. The meeting was attended by representatives of DGs COMP, FISMA, ECFIN, GROW, JUST, CONNECT, TAXUD, ENER, CLIMA, LS and SG.

The 3rd ISSG meeting took place on 7 May 2021. The meeting was attended by representatives of DGs FISMA, ECFIN, TAXUD, CLIMA, LS and SG. Based on the presentation of the ELTIF review and the submitted documentation to the ISSG, the participating DGs have given an overall support to the review initiative and ongoing policy work.

The 4th ISSG meeting took place on 3 June 2021. The meeting was attended by representatives of DGs FISMA, ECFIN, GROW, JUST, TAXUD, CLIMA and SG. Following the update on the progress of the drafting of the Impact Assessment document and a short overview of the structure and key policy areas of the Impact Assessment, ISSG members were invited to provide their feedback. Main comments raised during the discussion were as follows:

- **Impacts on SMEs and administrative burdens of the optional redemptions liquidity window:** Substantial improvements were made to the draft Impact

Assessment. DGs welcomed the fact that the impact on SMEs was spelled out in the options comparisons. Regarding the third option on the optional redemption policy that indicated that investors may send a withdrawal notice to fund administrator, it was also suggested to specify that the redemption mechanics might prove complicated for some (retail) investors. This could be achieved by adding more nuanced considerations in the comparison table.

- **Targeted improvements on the structuring and format:** SG noted an overall improvement in the quality of the drafting. However, the drafting could further be improved in certain areas. It was recommended to include more detailed on the specific fund rules for investor categories. In addition, a section of the Impact Assessment regarding the redemption policy cited some stakeholders' views. However, it would be preferable to describe stakeholders' input more extensively to better understand industry's views on this topic. Finally, certain sections of the Impact Assessment could be shortened (e.g. fundamental rights). It was also recommended to add a paragraph on financial stability and respective implications on financial stability.

- **Taxation and economic factors in the ELTIF regime:** Citing a section of the Impact Assessment regarding an example of discrimination in the tax area, it was suggested to refrain from assessing Member States' tax incentive schemes as those schemes can also be liable for other regulatory issues, such as state aid, discrimination, etc.

DG FISMA commented on each issue raised during the roundtable of comments and has committed to reflecting respective remarks in the revised draft of the Impact Assessment. The deadline for written comments was set to 7 June 2021.

4. Consultation of the Regulatory Scrutiny Board

The Upstream Regulatory Scrutiny Board (RSB) meeting took place on 4 December 2020. The RSB delivered a **positive opinion** with recommendations to further improve the outline of the Impact Assessment. More specifically, the Board raised the issue of the problem analysis and questioned the possibilities of other regulatory responses. Furthermore, the Board provided remarks on the outline of the problem tree and questioned the specifics of the ELTID industry given that most long-term projects were structured via other vehicles. The Board has also recommended to further substantiate problems surrounding the limited amount of market data available on ELTIF funds.

The draft Impact Assessment report was submitted to the RSB on 11 June 2021. The RSB hearing took place on 7 July 2021.

Based on the additional information provided ahead of the hearing, the RSB issued a **positive opinion**. The Board's recommendations on the Impact Assessment are summarised below:

- To show the growth potential of ELTIFs, the report should present information on the recent increase in their uptake. It should clarify the relative importance of the problems identified in the report and of national taxation for their future growth.

- The report should better describe the link with parallel initiatives and should incorporate relevant evolutions in the baseline. Options should reflect more clearly the problems and their relative importance. The report should analyse options on the protection of retail investors in a more granular way. In particular, it should elaborate the minimum required investment for retail investors. It should clarify how fund rules will be diversified between professional and retail investors, without legal separation.

- The report should distinguish views of different stakeholder groups more clearly throughout the report, including in the annexed presentation of stakeholder input and the evaluation.

- The comparison of options should use the standard assessment criteria (effectiveness, efficiency and coherence) and more systematically identify all affected groups in the summary of impacts.

- The report should clarify the reasons for the data gaps in the report. In view of the limited evidence base of the annexed evaluation, it should explore how to improve future monitoring.

The Board requested that these recommendations were into account before launching the interservice consultation.

In order to address the Board's comments additional information and analysis, including on recent uptake of ELTIFs, was incorporated into the Impact Assessment. Relative importance of the identified problems was clarified. In Annex 5 the links with the AIFMD, MIFID II and Solvency reviews were explained in greater detail.

The practical implementation of the proposed distinction between retail and professional only ELTIFs was also expanded. Annex 2 was revised with additional information on the public consultation and stakeholder feedback and further clarification of the data gaps inserted.

5. Sources and evidence used in the impact assessment

The Commission held an open public consultation related to this initiative. The consultation was an opportunity for all stakeholders (EU citizens, Member States, ESMA, NCAs, financial institutions, asset managers, investors etc.) to provide their views on the risks and opportunities related to the review of the ELTIF framework and the need for action. It also presented a range of possible solutions to address the issues raised by stakeholders. The answers to the public consultation were published on the EUSurvey portal. Annex 2 provides further information on the outcome of the open public consultation.

This impact assessment is based primarily on stakeholder consultations and additional desk research of the Commission services. In line with the general principles in the Better Regulation guidelines on the need for evidence-based impact assessments, the Commission will collect evidence through several sources.

The Commission has notably relied on:

- "A New Vision for Europe's Capital Markets: Final Report of the High Level Forum on the Capital Markets Union", dated 10 June 2020[89], which has called for a targeted review of the ELTIF Regulation with a view to strengthen the ELTIF passport, encourage more participation from retail investors through more flexibility in redemptions or tax incentives, as well as broaden the scope of eligible assets and investments while taking into due account investor protection.
- Analysis of the existing legislative framework, in particular the ELTIF Regulation, the Commission Delegated Regulation (EU) 2018/480, Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), the Prospectus Regulation (EU) 2017/1129 and the PRIIPS Regulation (EU) 1286/2014 (where marketing of the ELTIFs also to retail investors within the meaning of the ELTIF Regulation takes place), as well as ESMA's work in developing draft RTS[90] to determine the costs disclosure requirements applicable to ELTIF managers.
- The proposal for a Regulation on European Long-term Investment Funds (COM(2013) 462 final) dated 26 June 2013[91], as well as the Commission Staff Working Document - Impact Assessment accompanying the proposal for a Regulation on European Long-term Investment Funds (COM(2013) 462 final)[92].
- The content of the European Commission's 2012 public consultation on investment funds[93] with a dedicated section on long-term investments, as well as a dedicated informal questionnaire of 2013[94], which the Commission services circulated amongst professional stakeholders to gather further input, including the analysis of over 50 responses by private and public entity stakeholders on the subject-matter
- The content, feedback and the respective documentation surrounding the public consultation on cross-borders marketing of investment funds[95] (UCITS, AIF, ELTIF, EuVECA and EuSEF) across the European Union, as well as follow-up legislative proposals and policy actions.
- Excerpt from the ESMA fact-finding questionnaire on EU ELTIFs, with breakdowns on the name of the NCAs, name of the ELTIF manager, name of the ELTIF, Member State of the domicile and Member States in which ELTIFs are marketed.
- Analysis of the ESMA alternative investment funds register[96], ESMA central database of European Social Entrepreneurship Funds (EuSEF) managers[97] and

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89 Source: https://ec.europa.eu/info/sites/info/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf (3 March 2021).

90 Source: https://www.esma.europa.eu/sites/default/files/library/esma-34-46-89_-_cpcost_on_eltif_rts_3.pdf (3 March 2021).

91 Source: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0462&from=EN (3 March 2021).

92 Source: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0230&from=EN (3 March 2021).

93 Source: https://ec.europa.eu/commission/presscorner/detail/en/IP_12_853 (3 March 2021).

94 Source: https://ec.europa.eu/info/law/european-long-term-investment-funds-eltifs-regulation-eu-2015-760/legislative-history_en (3 March 2021).

95 Source: https://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/docs/consultation-document_en.pdf (3 March 2021).

96 Source: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg (3 March 2021).

97 Source: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_eusef (3 March 2021).

ESMA central database of European Venture Capital Funds (EuVECA) managers.[98]

- European Commission's report dated 10 June 2020 assessing the scope and the functioning of the AIFMD (COM(2020) 232 final)[99] and respective Commission Staff Working Document (SWD(2020) 110 final)[100] assessing the application and the scope of the AIFMD.
- Analysis of the scope of the European Green Deal (Communication, COM(2019) 640 final, dated 11 December 2019[101]) and the extent to which ELTIF structure and financial tools could be employed as a pass-through vehicle to facilitate the funding in the green transition in the public and the private sector.
- Documentation surrounding the CMU Action Plan, including the Communication from the Commission on "Capital Markets Union: Progress on Building a Single Market for Capital for a Strong Economic and Monetary Union"[102] dated 15 March 2019.
- Publications and position papers by the EIB and EIF in the area of SME funding and long-term growth.
- Publicly available documentation on some existing ELTIFs, such as prospectuses, Key Investment Documents (KID), annual reports and other related documents.
- Analysis of academic and commercial publications on the topic of the practical issues pertaining to the functioning of the ELTIF framework, long-term investments in the EU, and policy aspects in the area of SME, infrastructure financing, real estate and lending.
- Analysis of policy and regulatory approaches to facilitate growth and long-term investments, including the legislation put in place in other jurisdictions, such as the UK Investment Trust legislation and the U.S. Business Development Company (BDC) model to finance small business.
- Market data on the size, asset flows and respective stakeholders in the field of long-term investments by using Morningstar and Refinitiv (Eikon) databases.
- Publicly available reports, studies, surveys, position papers and other relevant documents drawn up by private and public stakeholders;
- Input from workshops, bilateral meetings and consultation with Member States and industry stakeholders, including asset managers, product manufacturers, retail investors representatives and investment funds active in the field of long-term investments;
- The results of the public consultation targeting all interested parties.

In addition to the abovementioned sources, the Commission services have used recourse to a serious of consultations:

- The Commission has consulted the Expert Group of the European Securities Committee (EGESC) on two occasions, i.e. 27 November 2020 and on 19 July 2021. The Commission has also liaised with the EIB given the role of ELTIFs as an

[98] Source: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_euveca (3 March 2021).
[99] Source: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0232&from=EN (3 March 2021).
[100] Source: https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200610-aifmd-application-scope-working-document_en.pdf (3 March 2021).
[101] Source: https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf (3 March 2021).
[102] Source: https://ec.europa.eu/finance/docs/policy/190315-cmu-communication_en.pdf (3 March 2021).

investment vehicle through which the EIB Group may channel its European infrastructure or SME financing.

- Following the consultations of ESMA, the Commission services continued to liaise with NCAs, as well as the ESMA Investment Management Standing Committee.
- Stakeholders' colloquium on European long-term investment funds (ELTIFs) entitled "ELTIF - Challenges and Opportunities in 2020" held on 4 February 2020 (over 40 participants primarily from Luxembourg's and European industry participants).
- ELTIF workshop organised by the French Asset Management Association held on 7 December 2020 (over 60 participants across a broad spectre of stakeholders).
- ELTIF workshop organised by AIMA on 2 February 2021 regarding the regulatory experience of the functioning of the U.S. Business Development Corporations (BDCs) and their similarities with ELTIFs (around 15 participants).
- ELTIF workshop organised by EuropeInvest with the representatives of the private equity industry on 27 May 2021 (around 20 participants).

7. Implementation plan

Article 37(2) of the ELTIF Regulation mandates that the Commission's report to the European Parliament and to the Council should be accompanied, where appropriate, by a legislative proposal.

Since the ELTIF Regulation is a directly applicable and legally binding piece of secondary EU legislation, an amended ELTIF Regulation and respective Level 2 regulations would not *per se* require implementation beyond those implementation measures (i.e. mainly competences of NCAs and sanctions) already being put in place.

ANNEX 2: STAKEHOLDER CONSULTATION

1. Background

In order to collect further evidence, the Commission was seeking for the main reasons behind the slow uptake in ELTIFs across the Union, as well as stakeholder suggestions for an improved functioning of the ELTIF regime. Reasonable efforts have been undertaken to collect and analyse available evidence both through the public consultation, bilateral stakeholder feedback and the review of industry research papers.

Public stakeholder consultation: the ELTIF public consultation has attracted 54 formal responses.

- **The Impact Assessment has incorporated and taken into account** the feedback of different stakeholder groups, including fund managers, investor representatives, NCAs and wider public (academics, citizens, etc.).
- **There is a broad agreement among fund managers** (small nuances arise depending on the specialisation, jurisdiction of domicile and specific investment strategy pursued) that key deficiencies of ELTIFs lie in the limited scope of eligible assets and investments and tangible barriers to the effective access of investors to ELTIFs. Both these areas are effectively targeted in the Impact Assessment and the ELTIF initiative at large.
- **There is a broad consensus among NCAs about the key topics which need to be revised** (eligible assets, numeric thresholds, conflict of interest provisions, etc.). This consensus has been reflected in the ESMA's technical advice which close to fully coincides with the policy proposals set out in the Impact Assessment.[103] The alignment of the investor protection measures is however aligned with the broader retail investment strategy, which is currently being prepared by the Commission Services. NCA's have so far broadly supported its objectives of ensuring consistency between the frameworks by eliminating gaps, overlaps and inconsistencies.
- **Selected representatives of investors** (e.g. representatives of retail investors, representatives of institutional investors acting in real assets space and representatives of insurance and pension funds associations) have advocated for similar targeted improvements of the ELTIF framework.

Follow-up consultation directed at existing ELTIF managers: In total, 54 formal responses were received via the Commission's Better Regulation portal. Several responses to the open public consultation were provided outside the formal submission channels and some submissions were made after the deadline. Several of such submissions (or ex post consultations) were made by representative of ELTIF managers.

Limitations of regulatory data: Ideally, the Commission services would have liked to analyse a wide range of data pertaining to the registered ELTIFs, including their granular portfolio breakdowns, performance, total effect of costs (regulatory fees, compliance

[103] The key area where the Impact Assessment goes beyond ESMA's technical advice is the area of dismantling barriers to access for retail investors (on which certain concerns may be raised by Italy, France and Sweden, whilst some other Member States – Germany, Ireland, Luxembourg, etc) were supportive of the removal of the barriers to access by retail investors.

costs, search and administrative costs), fees and charges, as well as other information related to the operation of ELTIFs. Due to the fact that a large portion of this information is only available to the NCAs supervising the ELTIF manager, there has been certain reluctance to request the ELTIF managers to disclose this information in its entirety citing confidentiality and business secrecy concerns (even if anonymised the small population size would make it easy to know the identity of an ELTIF), as well as the fact that such a request for non-mandatory data would expose the ELTIFs and their managers to unwanted and undue administrative burden.

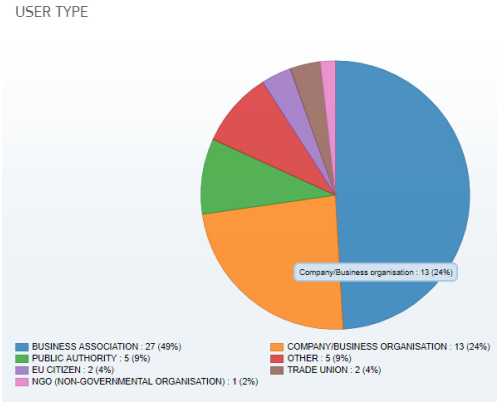
This Annex 2 provides an overview of the following stakeholders consultation activities based on the short version of the questionnaire of the open public consultation organised by the Commission services pending between 19 October 2020 and 1 February 2021.

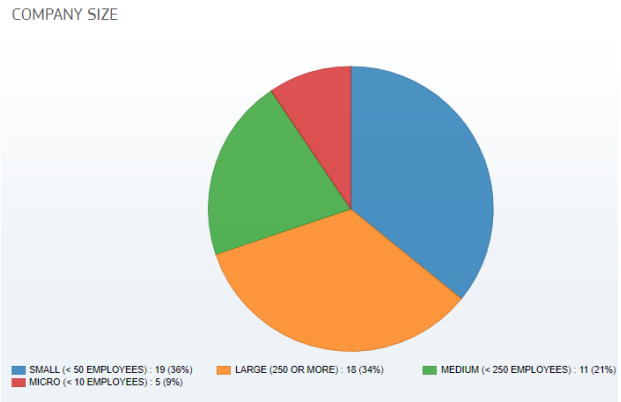
2. Description of the respondents and the questionnaire

The consultation was pending between 19 October 2020 and 1 February 2021. In total, 54 responses were submitted. Some respondents provided feedback in a different format and channels other than that required by the official public questionnaire, which may slightly distort the statistics visible at the website of the Better Regulation Portal.

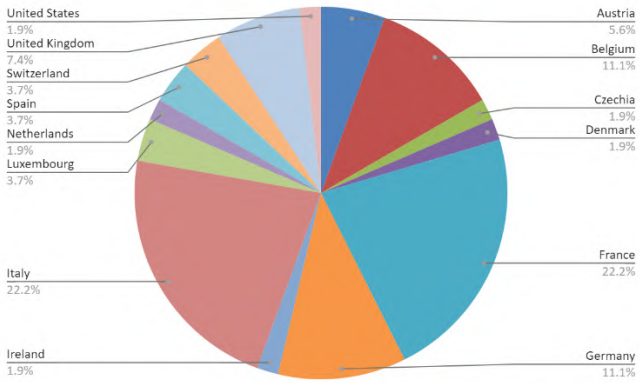
The questionnaire consisted of two parts – the first 8 questions were predominantly open-ended questions with limited selection choices, whilst the full questionnaire consisted of 42 questions targeting the technical and specific ELTIF fund rules.

The majority of respondents (49%) were business associations with specific companies or business organisations representing the second largest group of respondents (24%). There were 5 public authorities who responded to the public consultation, which represented 9% of all respondents. In terms of size, there was a fair mix of large stakeholders (over 250 employees), medium (below 250) and small-size stakeholders (respectively 34%, 21% and 36%).





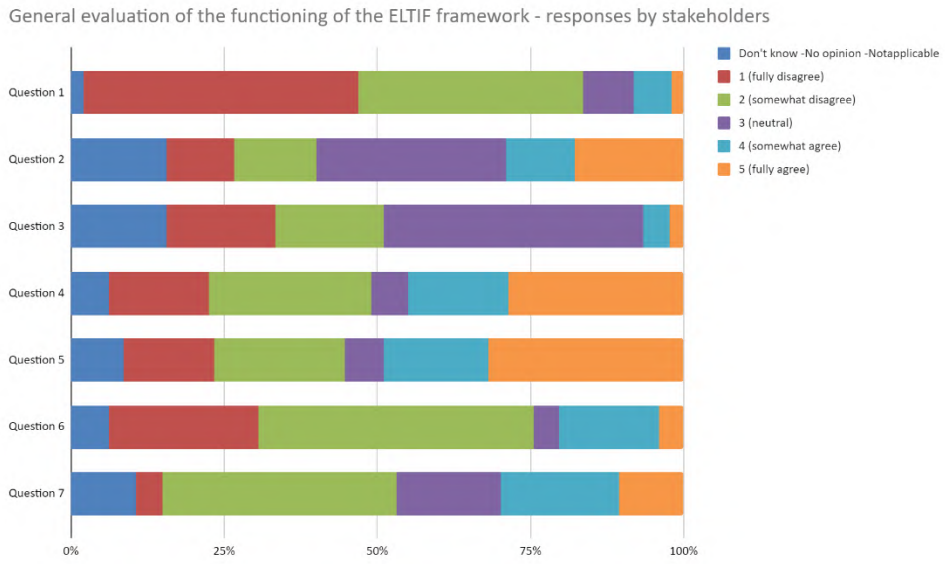
Most respondents had international mandate (80%), as opposed to national scope mandate (20%). In addition, there was a rich diversity in the country of origin of stakeholders, as exemplified by the graph below. The majority were stakeholders from France and Italy (22.2% each), Germany and Belgium (11.1% each) and the UK (7.4%).



3. Respondents' feedback to the short questionnaire and on eligible assets

The feedback provided by stakeholders to the short ELTIF questionnaire on the functioning of the ELTIF regime could broadly be summarised through the following graphs:

Graph 1: Respondents' feedback on the overall functioning of the ELTIF regime



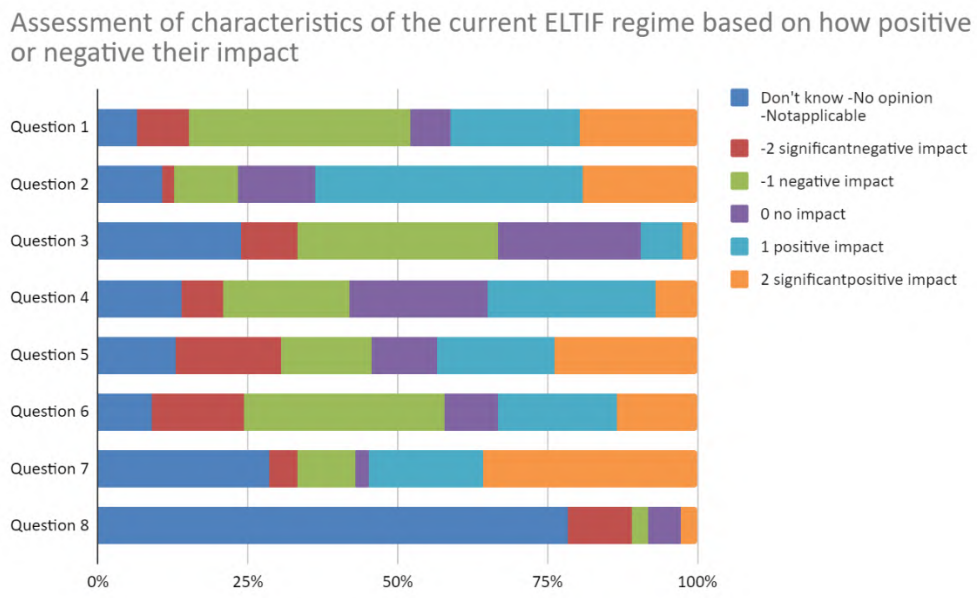
Legend:
Question 1. The ELTIF framework has been successful in achieving its objective of raising and channelling capital towards European long-term investments in the real economy
Question 2. The scope of the ELTIF authorisation is appropriate
Question 3: The costs of launching and operating an ELTIF, and the regulatory and administrative burdens are appropriate
Question 4. The ELTIF regime is relevant to the needs and challenges in EU asset management
Question 5. The existing ELTIF regime is consistent with the CMU objectives
Question 6. The ELTIF regime has brought added value to investors in and the financing of long-term projects
Question 7. The ELTIF investor protection framework is appropriate

Graph 2: Respondents' feedback on the functioning of ELTIF rules – per area



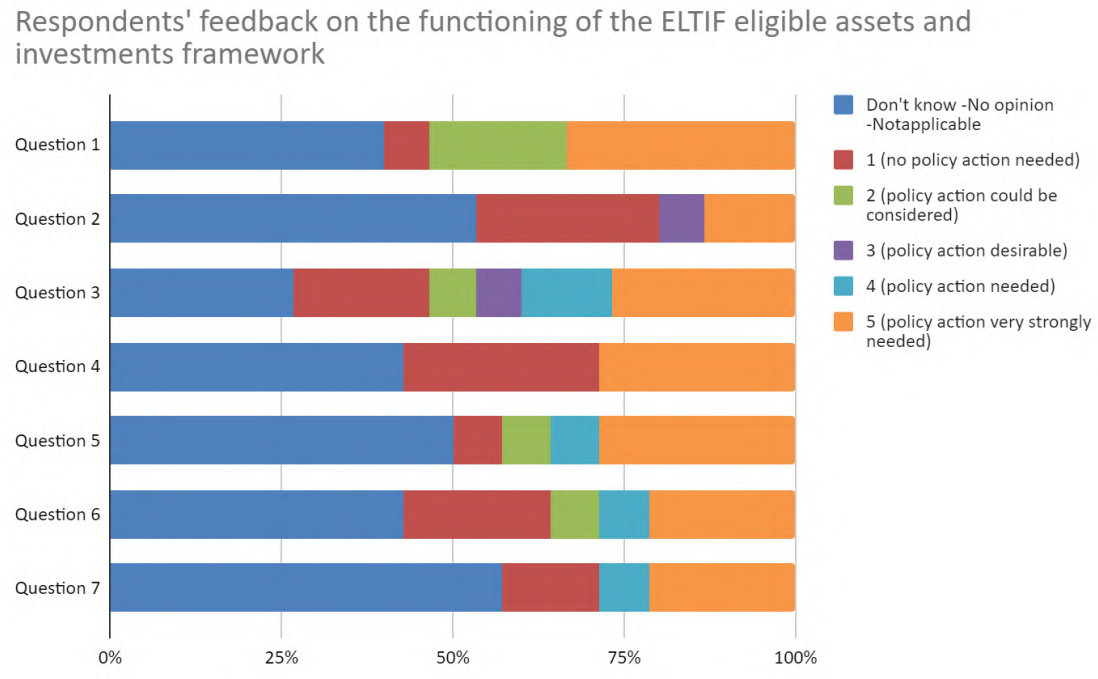
Legend:
Question 1. General princinples and definitions used in the ELTIF Regulation
Question 2. Market capitalisation threshold defining an SME equity or debt issuer
Question 3. Authorisation requirements
Question 4. Operational conditions
Question 5. Passportability of ELTIFs
Question 6. Rules pertaining to eligible investments
Question 7. Clarification and/or practical guidance on the eligibility requirements, notably in relation to investments in real assets
Question 8. Rules pertaining to the prohibition to undertake certain activities
Question 9. Rules concerning the qualifying portfolio undertakings
Question 10. Conflict of interests related rules, including the ban on co-investment
Question 11. Portfolio composition and diversification rules and their application
Question 12. Concentration limits
Question 13. Rules and limitations related to the borrowing of cash
Question 14. Redemption related rules and life-cycle of ELTIFs
Question 15. Rules concerning the disposal of ELTIF assets
Question 16. Transparency requirements
Question 17. Prospectus-related provisions
Question 18. Cost disclosure related rules
Question 19. Rules pertaining to the facilities available to investors for making subscriptions
Question 20. Requirements concerning the marketing and distribution of ELTIFs to investors
Question 21. Specific provisions concerning the depositary of an ELTIF marketed to retail investors
Question 22. Provisions and rules pertaining to the marketing of ELTIFs to retail investors
Question 23. Provisions integrating the EU Taxonomy for sustainable activities into the ELTIF framework
Question 24. Inconsistent or duplicative application of the ELTIF related requirements by Member States
Question 25. Issues arising from the supervisory practices within Member States
Question 26. Cross-border marketing related challenges
Question 27. Excessive reliance on distribution networks to market ELTIFs
Question 28. Excessive costs of setting up and operating ELTIFs
Question 29. Competition from existing national fund structures
Question 30. Taxation related issues
Question 31. Other aspects

Graph 3: Respondents' assessment of the current ELTIF regime based on their impact



Legend:
Question 1. Broad scope of eligible assets under the ELTIF regime
Question 2. Long-term and illiquid nature of the investments of an ELTIF
Question 3. Operational conditions
Question 4. Transparency requirements
Question 5. Availability of ELTIFs to retail investors
Question 6. Requirements and safeguards for marketing of ELTIFs to retail investors
Question 7. Validity of an authorisation as an ELTIF for all Member States
Question 8. Other aspects

Graph 4: Respondents' assessment of ELTIF framework on eligible assets and investments



Legend:
Question 1. A minimum size eligibility requirement for real assets investments

Question 2. A condition for an exposure to real estate through a direct holding or indirect holding through qualifying portfolio undertakings of individual real assets
Question 3. Limitation on eligible investment assets to ELTIFs, EuVECAs and EuSEFs
Question 4. Inability to invest in a "financial undertaking"
Question 5. EUR 500 000 000 threshold for investing in listed issuers
Question 6. Rules related to investments in third-country undertakings
Question 7. Other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings

4. Types of investors and effective investor protection

Questions 10 and 11. Please describe key barriers to the development of the ELTIF market, whether regulatory or of another nature, if any, to institutional investments that you consider reduce the attractiveness of the ELTIFs for institutional investors?
Question 11. Should any of the following provisions of the ELTIF legal framework be amended, and if so how, to improve the participation and access of retail investors to ELTIFs? Please explain which of the following provisions should be amended and give specific examples where possible and explain the benefits and disadvantages of your suggested approach, as well as potential effects and costs of the proposed changes.

The majority of respondents indicated that the size of the initial minimum amount for retail investors, and net worth requirements constituted a substantial barrier to the development of the ELTIF market (62% as opposed to 24% who did not think so); approximately 50% and 53% of the respondents respectively referred to specific requirements concerning the marketing of ELTIFs to retail investors (suitability test) and the possibility to allow more frequent redemptions for retail investors as constituting barriers. A minority of stakeholders expressed the view that the current minimum investment size is appropriate given the nature of ELTIF products and their investment universe; however further guidance around the monitoring and ongoing applicability of the net worth/portfolio requirements was necessary. That was attributed to the fact that, in practice these can be challenging to monitor given fluctuations in portfolio size over time and diverse nature of an individual's holdings. In addition, the asset managers and the ELTIF distributor would not necessarily have a consolidated overview of all the individual investor's holdings. The analysis of responses indicated that these two requirements, including the 10% threshold requirement for those investors whose financial portfolios were below EUR 500,000 constituted a major barriers for the uptake of ELTIFs. Overall, the stakeholders have called for the removal or "easing" of such thresholds (the entry ticket to be lowered to EUR 1,000) and cited their detrimental effect, especially when combined. Such stakeholders also argued that the ELTIF Regulation's UCITS-inspired diversification requirements (Article 13) and those related to retail marketing and target market identification described above already offered an adequate degree of investor protection, such that the additional constraints on minimum investment amounts appears superfluous. Easing such restrictions by allowing retail investors to commit lower amounts to an ELTIF will definitely speed-up funding and – where accompanied by tax incentives – also overcome their reluctance to "lock-up" their savings in a long-term investment vehicle. The 10% limit was called "artificial" and unenforceable and there were several calls for removing the 10% limit. In terms of a suitability test for fund distributors to administer to their retail clients, the majority of respondents called for the Commission to aligning the present Article 28(1) requirements with the relevant provisions (Article 25) of the MiFID II regime, as the general standard for (non-complex) fund marketing in the Union.
The two-weeks notice period was described as a barrier only 32% of the respondents, whilst the other third either did not viewed it as such or did not have firm views. Procedures and arrangements to deal with retail investors complaints triggered even less

controversy (only 14% of respondents viewed them as barriers); whereby f) provisions related to the marketing of ELTIFs were qualified as problematic by 56% of respondents.

Question 12. Which safeguards, if any, should be introduced to or removed from the ELTIF framework to ensure appropriate suitability assessment and effective investor protection, while considering the specific risk and liquidity profile of ELTIFs, including sustainability risks, investment time horizon and risk-adjusted performance?

The majority of stakeholders viewed the current safeguards as appropriate and sufficient. In several instances, respondents observed that some the current safeguards appeared to be duplicative, and have the effect of severely, and unduly, limiting access by investors to ELTIFs. Several stakeholders went beyond and argued that, on the contrary, no additional safeguards were required and that such safeguards cold detract from the appeal of ELTIFs. In the view of such respondents, the investor protection regime should be tailored to the specific needs of the clients. Were changes to be introduced to the ELTIF liquidity profile, it would prove essential that no additional requirements are introduced for those ELTIFs that are set up as closed-ended funds with limited redemptions rights.

5. Conflict of interests related questions

Question 13. Are mandatory disclosures under the ELTIF framework sufficient for investors to make informed investment decisions?

Almost 80% of those respondents who provided input to this question opined that those mandatory disclosures are indeed sufficient for taking informed investment decisions. Around 15% responded "Don't know / no opinion / not relevant". The prevailing view expressed by respondents was that the imposition of additional disclosure requirements on ELTIF managers beyond those already required under existing rules would not be either necessary or desirable given the additional burdens and the capacity to detract from the appeal of the ELTIF regime.

Question 14. Which elements of mandatory disclosure requirements, if any, should be tailored to the specific type of investor?

The response rate and the level of argumentation on this question were comparatively low, which exposed the fact that the issue of mandatory disclosure requirements was not deemed problematic by the respondents. There were several cross-links to the previous question 13. Overall, it was emphasised that asset managers spend a considerable amount of time and resource preparing suitable disclosures for fund investors based on the features of the fund. Generally, there was no appetite among stakeholders to impose additional disclosure requirements on ELTIF managers beyond those already required under existing rules or to tailor-make such disclosure requirements to different types of investors.

Question 15. Are the ELTIF rules on conflicts of interest appropriate and proportionate? Please explain how you think how should such rules on conflicts of interest be amended. Please explain the benefits and disadvantages of the potential changes as well as costs, as well as how specifically such amendments could facilitate the effective management of conflicts of interests, co-investment strategies and indirect investment strategies:

Overall, over 30 stakeholders provided feedback on this question; 52% of respondents opined that the rules on conflicts of interest were not appropriate and proportionate, 16% deemed them appropriate and proportionate, whilst around 20% expressed no firm views ("Don't know / no opinion / not relevant"). The majority of respondents focused on a range of concerns identified in the functioning of the conflict of interest rules (notably Article 12) of the ELTIF regime. Predominantly their concerns were focused on the lack of coherent solution for the co-investment strategies (at both fund level and the level of senior personnel) and the limitations of the ELTIF fund rules relating thereto. Several such stakeholder provided reasons and illustrations (examples) and advocated for the refining and clarifying the provisions of Article 12 to provide a more flexible, principles-based approach that ensures fair treatment of investors while also providing asset managers with greater certainty on how the conflict-of-interest provisions apply. It was admitted by some stakeholders that should there be any policy objectives or scenarios which require more specific consideration, they could better addressed in Level 2 or 3 measures.
The minority of those stakeholder (16%) who opined that ELTIF rules set out in Article 12 were appropriate did not provide for extensive explanation or argumentation.

6. Borrowing of cash and leverage

Question 16. Which of the following policy choices related to the leverage of the ELTIF funds do you find most appropriate: Increasing total allowed leverage, decreasing total allowed leverage, maintaining the current leverage-related rules set out in the ELTIF regime intact, other, don't know / no opinion / not relevant. Please explain your response to question 16 with the description of the advantages and disadvantages of your proposed approach, including its implications for ELTIF managers, the performance and risk and liquidity profile of the fund, the risk-adjusted returns of investors and the attractiveness of the ELTIF regime.

Out of 29 stakeholders who provided responses to this question, there was an equal split (28% and 28%) among those who preferred to maintain the current leverage-related rules set out in the ELTIF regime intact and those who advocated for an increase in total allowed leverage. The remaining response categories "Don't know / no opinion / not relevant" and "Other" represented 24% and 21% respectively.

The prevailing arguments by those respondents advocating for an increased leverage, or an overall deletion of the 30% leverage threshold thus aligning the ELTIF regime with that of the AIFMD was that, overall, increased flexibility in terms of leverage will enhance an ELTIF's capability to better support the financing of assets (in particular those of SMEs) and improve a fund's return profile, render the structuring more attractive and provide more flexibility for the launch of an ELTIF. It has been argued that the 30% restriction of borrowing compared unfavourably with other retail funds (even such as the highly product-regulated UCITS, which can borrow up to 100% of their assets). The total allowed leverage should, in the opinion of the respondents in this group, therefore be increased at least up to 100%, and a specific option for certain ELTIFs available only for institutional investors to exceed this subject to conditions being met around investment strategy, governance, investor base and oversight. Some of the stakeholders advocating for views also participated in the work on the recommendations by the High-Level Forum.

Importantly, the stakeholders also noted that as per the existing AIFMD requirements, potential risks arising from the use of leverage should continuously be addressed by managing leverage appropriately with respect to the investment and any potential maturity or currency mismatches in the portfolio.

An important perspective was provided by some private equity industry participants, who noted that private equity funds are essentially closed-ended funds, which are often structured as limited partnerships and, as such, private equity funds are not typically leveraged and do not use leverage. As a result, in general, there was less inclination from private equity stakeholders to advocate for much higher leverage thresholds. Besides, ELTIF managers are AIFMs, subject to the AIFMD, which includes provisions on leverage.

It was an opinion of several stakeholders that even if the borrowing limits were increased, such an increased borrowing does not automatically equate to increased risks for investors. Notably, increasing the borrowing limits do not create any additional systemic risk as the ELTIF has a long term investment strategy and should not offer the possibility for investors mentioned above to benefit for an early redemption.

Question 17. What should be the optimal maximum allowed net leverage allowed for ELTIF funds?

There were several cross-reference to responses to question 16 in which stakeholders set out a more qualitative assessment of this issue. Those stakeholders (minority view) who argued that the leverage rules were appropriate indicated 30%; those stakeholders who advocated for more leverage suggested at least a 100% borrowing limit for those ELTIFs which could be marketed to retail investors, and up to 200% (or removing the threshold altogether) for those ELTIFs that can solely be available to professional investors (citing the applicable AIFMD framework).

Question 18. How should regulation of leverage for ELTIFs marketed to retail investors be different from that of the ELTIFs marketed solely to professional investors? Which safeguards are particularly relevant and appropriate, and why?

In total, only 18 respondents provided feedback on this issue, which is less than 40% of all respondents to the public consultation. Out of these respondents, only a few have provided a specific estimate of the potential threshold. Such stakeholders recommended that consideration is given to tiering depending on the type of investor i.e. professional or retail. As regards those ELTIFs that could be marketed to retail investors, a minimum borrowing limits for ELTIF should, in the opinion of such respondents, be brought in line with UCITS (i.e. 100%). Some respondents argued that the current leverage-related rules set out in the ELTIF Regulation could be maintained for ELTIFs marketed to retail investors; whilst managers should however have the possibility to set a higher leverage threshold for ELTIFs marketed solely to professional investors (the recommended higher leverage limit, subject to conditions and supported by appropriate governance, was ranging from of 100% of NAV or, under certain conditions, up to 200% of NAV of the fund).

The abovementioned tiering approach was questioned by a minority of respondents who argued that the risk tolerance of institutional investors was not higher by definition (the

understanding of the risk is generally higher) but should be assessed taking into account a generally higher tolerance for liquidity risk and longer duration.

Question 19. Do the requirements related to the "contracting in the same currency" as the assets to be acquired with borrowed cash, maturity-related rules and other limits on the borrowing of cash constitute significant limitations to the operations and leverage strategy of ELTIFs?

Despite the fact that less than a third of stakeholders provided substantive feedback, the predominant and closely unanimous view was that the requirement of the ELTIF regime pertaining contracting in "the same currency" was deemed both ineffective in managing risk, as well as contributed to unnecessary complexity. Some stakeholders provided examples of assets that could be denominated in one currency, and/or located in a country with one currency, but would be traded in another currency. Similarly, assets denominated in one currency would likely generate revenue streams in another currency. From an EU perspective, the stakeholders qualified the currency related requirement as potentially creating problems and frictions with relation to investments in non-euro area countries. There was a call by some respondents to allow the possibility to borrow in a different currency and opting for a more effective solution without compromising on the adequacy of the investor protection safeguards.

Question 20. Please explain which regulatory safeguards, if any, you deem appropriate to ensure the effective management of liquidity, subscriptions and the financing of assets in the investment portfolio. In addition, please explain if you consider it appropriate to provide for any alternative regulatory approach for the borrowing of cash rules specifically during the ramp-up period in the ELTIFs' life.

Only around a third of stakeholders provided submissions on this topic, with the majority of respondents providing no input or indicating that they have no opinion or no experience in this area. Two key positions seemed to prevail: a large share of respondents who provided their input argued in favour of loosening some of the current restrictions on borrowing under Article 16 of the Regulation. Although not all stakeholders were capable to provide a better calibration for the present 30% threshold (there was a range of proposals targeting up to 50%), such stakeholders also expressed the view that an ELTIF's borrowing limit could temporarily exceed this threshold during the fund's initial ramp-up phase. Another substantial portion of those stakeholders who provided input argued that no additional regulatory safeguards would be required to ensure the effective management of liquidity, subscriptions and the financing of assets in the investment portfolio.

7. Rules on portfolio composition and diversification

Question 21. Which of the following policy choices pertaining to the ELTIF rules on diversification do you consider most appropriate? Please explain your response with the description of the advantages and drawbacks of your preferred policy approach. In particular, should you consider that the diversification and portfolio composition related rules under the ELTIF Regulation need to be amended, please explain, to what extent and why?

A total of 30 respondents (over 60% of all stakeholders) provided submissions in response to this question. 60% of those respondents indicated their preference in favour

of "fewer regulatory requirements and more flexibility by ELTIF managers with respect to portfolio composition and diversification". There was an even split (13% and 13% respectively) for those stakeholders who required "greater diversification" and indicated "other" as a preferred policy option. Only 7% suggested to maintain the current rules pertaining to the portfolio composition and diversification set out in the ELTIF regime intact. There was a notable degree of homogeneity (and possibly coordination of submissions) among those respondents advocating for a the reduction of regulatory requirements and increased flexibility y ELTIFs in terms of portfolio composition and diversification. In general, there was a general and strong pushback against the requirement to invest more than 10% of ELTIF capital in other any single ELTIF, EuVECA or EuSEF preventing the execution by ELTIFs fund of funds strategies. Such stakeholders strongly argued that investing through a fund of funds can provide investors with higher levels of diversification, lower volatility and an additional layer of screening and diversification resulting in tangible benefits to retail investors. Further, such stakeholders strongly advocated in favour of removing the concentration limits in relation to fund of fund structures so as to promote broader set of investment styles for investors to choose from, without diminishing diversification of the underlying assets. There was a recurring topic whereby 10% capital limitation was deemed challenging, especially during the ramp-up period. Importantly, the industry participants explicitly insisted on having no specific diversification requirements imposed on ELTIFs exclusively sold to professional investors. Whilst there were different arguments pertaining to the nature of diversification, the common denominator for the majority view was that the 10% diversification limit is deemed too low to create an efficient investment portfolio and deliver potential superior returns to investors. As such, the majority of respondents proposed to increase the diversification limits in Article 13 (a), (b) and (c) to 20%. Furthermore, the 25% concentration ratio was also deemed too restrictive as sometimes asset managers adopt structures under which they might be the sole or anchor investor in another fund. In addition, there was a range of arguments brought up to support funds of funds strategies and providing critical account of the ELTIFs regime's appropriateness in that respect.

In general, the majority of arguments elaborated on why the current portfolio composition criteria were regarded as too narrow and made it generally unappealing or unviable for fund managers, and particularly fund-of-funds managers, to set up ELTIFs. Overall, the removal or increasing the minimum thresholds was proposed as a plausible solution going forward.

The minority of stakeholders opined that the Current diversification rules are appropriate for ELTIFs marketed to retail investors, except with regards to the ramp-up period (see answer to question 28). Yet, they appear to be too stringent compared to other AIFs marketed to professional investors. These provisions could in particular prevent the fund from implementing specific investment strategies though in line with the aspirations of the Capital Market Union agenda – like growth capital, which can require to bring extra-financing to portfolio companies at new stages of their development. These rules should therefore be significantly relaxed for ELTIFs marketed to professional vehicles only, leaving greater flexibility to the ELTIFs' managers.

Question 22. Do you consider the minimum threshold of 70% of eligible assets laid down in Article 13(1) of the ELTIF Regulation to be appropriate: requiring greater diversification; requiring less diversification; fewer regulatory requirements and more flexibility by ELTIF managers with respect to portfolio composition and diversification;

maintaining the current rules pertaining to the portfolio composition and diversification set out in the ELTIF regime intact; other. Please explain your position on your response by assessing the advantages and drawbacks of your preferred policy option pertaining to asset diversification rules.

In total, 30 responses were provided with the majority (43%) replying that the 70% of eligible assets threshold was not appropriate and a third (33%) approving 70% as the appropriate threshold (responding "yes"). The remaining stakeholders responded "Don't know / no opinion / not relevant" and "other" (respectively 10% and 13% or responses).
The overwhelming number of respondents who were not approving the 70% threshold were of the view that the threshold was excessively high, and that the minimum investment threshold of 70 % for eligible investment assets should be decreased (a minority of such respondents advocated for a complete removal or "significant" reduction). This would, in the view of those stakeholders, help to allow differentiated investment strategies. Some stakeholders went on to suggest lowering the threshold (from 70 % up to 50%). One stakeholder brought up an explanation for the 50% proposed threshold and cited OPCIs (French real estate collective investment undertakings) which have to reach a quota of 51% of non-listed real estate assets, as well as FCPR (French venture capital mutual investment funds) that are subject to a minimum investment quota of 50%.

Indeed, it seems necessary to request ELTIF to hold a sufficient amount of liquid assets to be able to meet redemption requests when they offer regular possibilities to disinvest, up to 30 % of net asset value. From that perspective, a 70% minimum threshold may not be appropriate as it would significantly restrict the ability of the ELTIF's manager to hold enough liquid assets. An interesting and useful nuance was brought up by some stakeholders that argued that institutional investors are less in need of protection in this respect than retail investors because they control their risk/return requirements across their entire portfolio. Such stakeholders implied that the reduction of the threshold for solely institutional investors oriented ELTIFs could be more substantial than that where the target investor base would comprise retail investors.

A minority view put forward by the respondents was that the current eligible assets threshold was appropriate. In the view of such respondents, the objective of the ELTIF framework is to promote long-term investment, focusing on illiquid assets. It is therefore necessary to maintain a high minimum threshold of eligible assets to be fulfilled by ELTIF managers, so as to preserve the identity of this vehicle.

8. Redemption rules and life of ELTIFs

Question 23. Please provide a critical assessment of the impacts of the ELTIF Regulation rules on redemption policy and the life-cycle of ELTIFs, including the appropriateness of the ELTIF Regulation for the structuring of the ELTIF funds, taking into account the legitimate interests of the investors and achieving the stated investment objective of ELTIFs.

Slightly over a half of all respondents provided feedback to this question. The prevailing view expressed by respondents (predominantly asset managers associations) was that fixed end date of an ELTIF, and the inability for investors to be redeemed before the end date, represented weaknesses of the ELTIF framework. In the opinion of such respondents, the inability for investors to redeem their parts in an ELTIF is a constraint

for investors, both institutional and retail. They deemed it appropriate to create some possibilities for early redemption during the life-cycle of an ELTIF with a view to increase the attractiveness of the ELTIF as an investment vehicle. In the view of such stakeholders (asset managers or their representatives) expressed the view that the provisions under Article 18(1) and (3) of the ELTIF Regulation – as further specified under Article 2 of the Delegated Regulation (EU) 2018/480 – should be amended by removing the limited life feature of the ELTIF and introducing a harmonized redemption terms (e.g. quarterly, semi-annually or even annually). Several respondents acknowledged that appropriate liquidity management tools should complement these amendments.

A more nuanced variation to this majority view was a more pronounced recognition of the potential issues arising in connection with the increased redemption access by investors. In the view of such stakeholders, allowing an ELTIF to be set up as a permanent capital vehicle (i.e., with no fixed maturity or opting for an "evergreen structure") would overcome this issue. Such a structure would permit asset managers to focus on long-term capital appreciation for investors, while also accommodating the preference of some investors and asset managers to establish these structures for their investments.

In general, private equity industry representatives were less inclined to advocate for outright redeemability. This could be attributed to the fact that private equity ELTIFs are mainly closed ended funds. In general, these funds have a life cycle limited in time, between 10 to 15 years. In this context, investors would not have any redemption rights during the life cycle of the funds. The investors in such funds are well aware that their investments are locked over this period and do not seem to require liquidity. In addition, such respondents have implied certain flexibility already provided by the ELTIF regime (akin to the French retail private equity and venture capital funds that provide redemption rights in exceptional circumstances.

Finally, a minority view was that the current rules on redemption policy and the life-cycle of ELTIFs are fully appropriate. To that end, it was argued that excessive liquidity transformation should be avoided, in line with current provisions set out in Article 18 of the ELTIF Regulation. Individual stakeholders have also argued in favour of introducing additional safeguards in the ELTIF regulation or its delegated acts, to avoid regulatory arbitrage. Examples of safeguards could be minimum proportion of liquid assets to address redemption requests (which might require to relax the 70 % threshold); initial lock-up period; liquidity management tools; stress tests to demonstrate the ability to face redemption requests in stress conditions.

Question 24. If longer-term investments were to be limited only to those with certain maturities, what threshold might be considered appropriate: shorter maturity of between 5 to 10 years Maturity of 5 years and more; only investments with a maturity +10 years; only investments with a maturity +15 years; other possible maturity; don't know / no opinion / not relevant; please specify what other threshold might be considered appropriate.

The views on this question were provided solely by a half of the respondents to the open consultation (27 responses in total), and out of them the vast majority (over 50%) of respondents indicated "don't know / no opinion / not relevant" as an answer. The remaining 30% of respondents indicated "other possibly maturity", and around 10% of

stakeholders opting in favour of "shorter maturity of between 5 to 10 years". Only 4% of respondents chose "Maturity of 5 years and more". The answers to the question exposed the prevailing view that it does not appear relevant to set a general threshold as maturities would need to be adapted to the nature of the investments considered. Such stakeholders seemed to prefer a flexible mandate whereby ELTIFs would maintain a long-term duration of the investment portfolio. As a result, such stakeholders expressed the view that there should be no prescriptive one-size-fits-all approach since the maturity of a fund would ultimately depend on the asset class, the investment strategy and the exit strategy (e.g. private equity and debt assets can have a shorter maturity, while real assets and notably infrastructure may have a very long maturity). It was recommended to leave the determination of the adequate maturity to the ELTIF manager and maintain sufficient flexibility in the ELTIF Regulation to capture various types of long-term assets, rather than imposing any strict maturities in the ELTIF Regulation, which would restrict the possible per se of the ELTIF Regulation rather than enlarging it.

Question 25. If shorter-term investments were allowed to be included into the portfolio, what proportion of the portfolio should be permitted: 0% to 15%; 15% to 30%; above 30%; other options; don't know / no opinion / not relevant. Please specify what other proportion of the portfolio should be permitted.

This question is related (and is partially an inverse supplementary question) to question 22 on the appropriate weight of eligible assets. The views on this question were provided solely by a half of the respondents to the open consultation (27 responses in total), and out of them the vast majority (52%) has marked "don't know / no opinion / not relevant" as a response. The remaining 19% of respondents indicated "15% to 30%", and an even split of 7.5% choosing "0% to 15%" and 7.5% opting in favour of "above 30%". Whilst the views expressed could not be deemed conclusive, some stakeholders demonstrated openness to lowering of the 70% threshold for ELTIFs, as it would have the advantage of opening more than 30% to assets eligible for UCITS. Contrary to that, several stakeholders noted that if the aim was to create funds investing in long-term duration assets, the part of short-term investments should act just as a risk buffer and this should not lead to the lowering of the 70% eligible assets threshold; doing so could, in the words of one stakeholder "jeopardise the character of the ELTIF". At least two respondents noted that special rules have to apply in the beginning and end of the ELTIFS lifetime (see analysis of responses regarding the ramp-up stage).

Question 26. Do you consider that "mid-term" redemption should be allowed? Please explain your position on your responses and provide for advantages and disadvantages of your policy choice from the perspective of ELTIF managers, ELTIF liquidity and risk profile, returns of investors, and other regulatory aspects.

Only around a third of respondents who provided input to the open public consultation have clarified their position pertaining to the "mid-term" redemptions approach. Th feedback was somewhat inconclusive and was approximately evenly split between those who viewed "mid-term" redemptions as a viable option, those who preferred alternative redemption approaches and those respondents who cited increased risks relating thereto. Several stakeholder generally supported the view that "mid-term" redemption option would make an ELTIF more attractive to investors. They noted admitted it would potentially create liquidity management issues for the ELTIF manager and that liquidity management measures would need to be put in place to address such risks.

In turn, some asset managers argued that – rather than offering a possibility for a one-time right to redeem their investments "at a mid-point", as proposed by the HLF in its report on the CMU – the revised ELTIF regime should offer investors the possibility of regular or periodic redemptions (references were also made to "evergreen" structures). In the view of such stakeholders, "mid-term" redemptions wouldn't provide sufficient flexibility and would expose ELTIFs and their investors to a number of risks (which has been also acknowledged by the first group of respondents).

A minority of views expressed warned explicitly against the introduction of "mid-term" redemptions and cited the risks (including to investors) related thereto. Notably, in the view of such stakeholders, in case of a mid-term redemption, the fund manager would be forced to liquidate portfolio assets in market conditions which may not be necessarily favourable to investors (which could increase the risk of run as redemptions would be possible only over a short period of time), hence not maximizing the return for them due to exogenous factors. In addition, stakeholders cited in a general manner that it would prove extremely difficult to allow for any form of redemption at the election of investors within a closed ended vehicle targeting illiquid investments (common arguments on the requirement to carry significant balances of liquid assets in order to manage the liquidity, cash drag on performance, illiquidity concerns, etc.). To mitigate such risks, and to ensure proper investor protection and liquidity management, it was suggested to offer regular redemption possibilities combined with specific requirements on the liquidity profile of the vehicle (i.e. minimum proportion of the fund invested in liquid assets, liquidity management tools, etc.) or to retain the close-ended nature of the fund with possibilities to disinvest thanks to the secondary market (this option was deemed viable by at least two respondents).

Question 27. Do you consider it appropriate to allow for regular redemptions or an "evergreen" vehicle approach (no maturity)? Please specify what you mean by other in your response. How frequent should ELTIF redemptions be, and if so, which additional safeguards would you consider necessary to cater for the illiquidity, redemptions and other fund cycle related aspects of the ELTIF framework?

In total 17 responses to this question were provided; with the majority of respondents being or representing asset management associations. The majority of respondents expressed the view that there is a high appetite for "evergreen" ELTIF structures, and that structures are deemed very attractive by managers. Given the high cost and administrative burden to create ELTIFs, sponsors would welcome the possibility to structure ELTIFs as an evergreen vehicle with regular redemption windows. That, in the view of the majority of respondents would allow investors to benefit from a long-term alternative vehicle with adequate exit possibilities, without increasing the costs by having to wind-up and re-launch a new ELTIF after the end of life. Some respondents explicitly noted that the fixed maturity of the ELTIF structure has made it of limited appeal, especially where the product is intended to also target retail investors. The latter, in the view of such stakeholders, seem to be more familiar with an unlimited ("evergreen") structure, which typically allows for more frequent redemption periods.

Another group of stakeholders have expressed that in terms of redemption frequency for the open-end ELTIF structures, this should depend on the nature of the underlying assets and on the investor type. In other words, stakeholders have supported periodic or regular redemptions (in conjunction with rather than a substitute of evergreen structures). As a minimum, such stakeholders seemed to consider appropriate a monthly redemption

frequency for the more liquid structures, allowing other less-liquid funds to adopt longer redemptions terms (i.e. quarterly, bi-annually or even annually). The common theme was that it would be up to the investment manager to dispose of adequate liquidity management mechanisms.

Very few respondents have commented on the disadvantages or potential drawbacks of the "evergreen" (or regular/periodic redemptions) approach. Only a minority of stakeholders observed specific risks to evergreen structures. One respondent has proposed to address such risks by introducing several safeguards and requirements in terms of the frequency of redemptions, setting up robust liquidity management tools and conducting challenging stress tests on a regular basis, requirement to hold a minimum amount of liquid assets (including shares of listed companies) to meet redemptions (for instance 30 % of the net asset of the fund but possibly smaller depending on commitments made by institutional investor sponsors) or setting this mandatory liquidity pocket may require to reduce the investment quota in non-liquid assets in parallel (for instance from 70 % to 50 %); requirement of an initial lock-up period and minimum notice periods. In addition, another stakeholder noted that ELTIF "evergreen" redemptions should be managed by putting in place gates, at the discretion of the management company but depending on the assets/liabilities.

Question 28. Is it appropriate to provide for any alternative regulatory approach with respect to the redemption rules or portfolio composition, diversification rules, etc. for ELTIFs during the ramp-up period in the ELTIFs' life-cycle? Please explain your position and provide for advantages and disadvantages of your policy choice.

Less than a half of stakeholders provided input to this question. Out of the those market participants who provided responses the majority of responses (over 60%) confirmed that it would indeed be appropriate to provide for alternative regulatory approaches to the areas set out in the question; however very few respondents actually provided detailed and well-justified feedback on the way of *how* such alternative regulatory approaches should be changed. There was a certain degree of homogeneity among the areas addressed with the primary focus on the rules during the ELTIF ramp-up period. The majority of stakeholders called for modifying the rules for the ramp-up period (as the crucial period for ELTIFs) so as to facilitate the establishment of an ELTIF with respect to the requirements for portfolio composition as well as for diversification (loans granted to a single borrower cannot exceed 10% of the net capital of the ELTIF that is available for investment). Such stakeholders opined that during the ramp-up period, especially during the ramp-up period when initial investments are made, diversification requirements constitute tangible challenges for ELTIF AIFMs. In this regard, such stakeholders called for more clarity with regard to investor disclosure requirements and answers to the question how to apply the composition and diversification requirements during the (initial) ramp-up period. The stakeholders called for the nuancing of Article 17 of the ELTIF Regulation with a view to ensure that the investment limit (70 % quota) only apply after the end of the ramp-up period of the fund and introducing a similar provision regarding diversification rules. In terms of the proposed amendments, the stakeholders seemed to advocate for an extension of the Article 13(1) carve-out provisions relating to the ramp-up period also to Articles 13(2) and 15 of the ELTIF Regulation. In the opinion of such stakeholders, sufficient time is needed for careful investment decisions, taking into account the time needed to complete transactions, particularly regarding illiquid assets. For these reasons, diversification rules are very difficult to apply during the ramp-up period. This flexibility would be granted without

distinction between ELTIFs marketed to retail investors and professional ELTIFs. To that end, one stakeholder provided an example of a private equity transaction whereby the manager of the ELTIF, which after having identified the potential issuers, would face difficulties in carrying out the legal and financial due diligence due to the inability to accurately assess the valuation of the target.

At least three respondents noted that during the ramp-up period by definition ELTIF is not supposed to redeem investors. The manager should be permitted to dis-apply diversification and concentration limits during ramp-up, and create lock-in periods where no liquidity is offered. This would, in the opinion of such stakeholders, allow for more considered and effective portfolio construction. Some stakeholder noted that, in terms of the regulatory changes, they would not support any prescriptive approach the ramp-up phase.

Question 29. Are the provisions of the ELTIF Regulation pertaining to the admission to the secondary market and the publication of "periodical reports" clear and appropriate?

Only 10 respondents provided feedback to this question with the majority opining that the provisions referred to in the question are adequate and clear, and that there was no need to propose any enhancement to these provisions. A possible explanation for this position, which appears to be coherent in the context of the ELTIF rules, is that an exchange-listed ELTIF would need to comply with the reporting requirements of the relevant listing authority, as a result of which the ELTIF Regulation would need to continue to be non-prescriptive in this respect. This feedback is consistent with the evaluation given to this question by other stakeholders whereby there has been no public listing of shares of ELTIFs partially due to listing requirements and structural valuation haircuts, partially due to costs and compliance burdens.

A minority of stakeholders opined that the respective provisions of the ELTIF Regulation are not clear and appropriate but provided no detailed explanations for their position. Such stakeholders seemed to advocate for the easing of the admission to the secondary market for ELTIFs to make them more appealing for investors; periods for an early redemption could, in the view of one stakeholder, be set specifying the progressive cancellation fees eventually applied (view echoed by another respondent who suggested to clarify what is considered to constitute a "material change" in the value of an asset to be disclosed in the periodic report).

Question 30. Are the limitations of the ELTIF Regulation regarding the issuance of the 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 clear and appropriate?

A small number of respondents (around 10%) provided feedback with the remaining leaving no feedback or indicating that they had no experience with the issuance of the new units or shares by ELTIFs. A few responding stakeholders opined (predominant view) that the ELTIF provisions in this area are sufficiently clear and adequate. There was no justification or illustration for the views expressed by such stakeholders.

Question 31. Should the provisions in the ELTIF framework related to the issuance of new units or shares be amended, and if so how?

Only a minority (around 10%) of the respondents provided feedback to this question. The remaining majority either provided no input or marked that they have no opinion on the question raised. Of those respondents who replied the views were (almost evenly) split between those who opined that there is no particular need to modify shares or units issuance provisions and those respondents who advocated amendments of such provisions. Additional nuanced views were presented on the need for a clarification on the preferential subscription right, which is arguably not adapted to AIFs, and that all ELTIFs must be unitised. Other amendment suggestions the clarification that ELTIFs should be capable of not only issuing shares or units but also bonds and that the ELTIFs regime should lay down specific provisions relating to the pre-emptive rights for previous ELTIFs' underwriters.

9. Marketing strategy for ELTIFs and distribution related aspects

Question 32. What are the key limitations stemming from the ELTIF framework that you consider reduce the attractiveness of the ELTIF fund structure or the cross-border marketing and distribution of ELTIFs across the Union? Please explain.

Less than a fifth of all respondents have provided feedback to this question. There were certain commonalities in the responses. The key limitations brought up in the responses included investment ratios and limits to eligible assets (seen as barriers to retail investors; suitability assessments requirements and ongoing monitoring of investor eligibility (substantial limitations for marketing ELTIFs); satisfying multiple cross-jurisdictional marketing registration and notification procedures (substantially increases time to market and ramps up costs for investors and burden on the fund sponsor). To tackle such limitations, one stakeholder has explicitly invited the Commission to consider surveying, or alternatively through ESMA, the varying NCA practices responsible for operationalising the above provisions ahead of its amendment proposal.

Question 33. Do you consider that review of the ELTIF rules related to the equal treatment of investors is warranted?

There responses to this question were not conclusive; the response rate was very low and there was an approximate even split between negative and no-opinion answers, and a few affirmative answers. Those respondents who opined (slightly more predominant view) that no changes to the equal treatment of investors provisions was warranted expressed the view that the existing allocation policies and conflict of interest frameworks which ensure fair treatment of investors met all needs related to equal treatment of investor; and as a result, no further changes were necessary. A more nuanced view in support of this position was that ELTIF managers are already subject to the full range of AIFMD rules in relation to treating investors fairly, and these are subject to investor and supervisory oversight. Nevertheless, some nuanced positions were presented, which targeted different aspects of the ELTIFs operation. Notably, it was argued that the notion of equal treatment should be clarified in a context where investors – especially in an amended ELTIF "evergreen" structure – may not all be "equal", i.e. in terms of financial education, investment knowledge and capacity, risk tolerance, investment horizons, etc. That stakeholder was of the view that it is within each share class where the equal treatment of investors deserved to be warranted. Another stakeholder noted that the rules for equal treatment should not be read to prohibit existing market standards and in particular share class features that permit differing cost structures e.g. for retail and professional investors or for high volume or early bird investors. That stakeholder argued

that Article 30(4) ELTIF Regulation in respect of „equal treatment of investors“ should be clarified to make clear that this does not prevent share classes with differing cost structures in these quite usual scenarios. This view was echoed by another respondent that has explicitly referred to Article 23 provisions which are currently required to be applied both to retail and non-retail investors, and that should be allowed to be skipped if professional investors ask for opting them out - while obviously being kept in all cases for retail investors.

Question 34. Is it necessary to clarify the ELTIF framework with regard to the application of the principle of equal treatment of investors at the level of individual share classes, and any other specific arrangements for individual investors/group of investors.

Question 34 is intimately linked to the previous question and is specifically targeting the application of the "equal treatment" of investors and the categories of investors (share classes, legal categorisation, etc.). Like in the case of a prior question 33, very few respondents have provided their feedback. The equal treatment principle was generally upheld. Equal treatment of similarly situated investors was deemed important for investor confidence. With reference to the prior question, it was noted, however, that in institutional funds, it is not unusual for cornerstone investors to receive preference in fees or other terms in side letters that must be disclosed under AIFMD. One stakeholder went on to describe a multitude of ways in which ELTIF structures could offer investors a variety of different share classes, and each share class within a compartment could have different features such as the fee structure, a minimum subscription or holding amounts, currency, different hedging techniques or distribution policy or other distinctive features, or be offered or reserved to different types of investors. Investors would be able to choose the share class with the features most suitable to their individual circumstances; and such situations, where appropriately disclosed, would in the view of the respondents not fall short of the "equal" treatment purported by the ELTIF Regulation. In general, the prevailing view was that ELTIF funds should continue to be allowed to issue categories of shares with different rules regarding entrance and exit fees, and gates (and other conditions) applied to different classes/categories of investors.

10. Miscellaneous areas

Question 35. Is the effectiveness of the ELTIF framework impaired by national legislation or existing market practices? Please provide any examples you may have of "goldplating" or wrong application of the EU acquis.

Despite the fact that the existence of national "gold-plating" practices and other issues preventing the cross-border marketing of ELTIFs was raised as an important issue, this question regrettably yielded no specific examples of the incorrect application of the EU acquis. Some of the responses to this question 35 could be partially relevant in the context of the responses to question 36 below.

Question 36. Are you aware of any national practices or local facility requirements for ELTIF managers or distributors of ELTIFs that require a local presence or otherwise prevent the marketing of ELTIFs on a cross-border basis? Please explain and provide specific examples.

Despite the fact that the existence of national practices and other issues preventing the cross-border marketing of ELTIFs was raised as an important issue, this question

regrettably yielded no specific examples of national practices or local facility requirements. The majority of respondents were not aware of any such national practices or local facility requirements as raised in the question. One respondent clarified, albeit in a general manner, that policy action desirable here to remove the requirement for ELTIF managers to set up local facilities in each Member State where it intends to market the ELTIF. In the view of that respondent, the requirement has also been interpreted and applied in different ways as between Member States, increasing the operational and compliance burden on the ELTIF manager. This onerous requirement for certain local investor facilities has recently been removed for UCITS funds. Removing this requirement in the ELTIF regulation would, in the view of that respondent, therefore bring the regime in line with broader policy towards retail funds in Europe. Three other respondents echoed this contribution and lamented the existence of local facility requirements given the adoption and the implementation of the cross-border distribution of investment funds package, and has, to that end, proposed to explicitly clarifying this in the context of this review and level 2/3 measures. One respondent has further provided an example of the distribution-related problem, where Members who have launched ELTIFs have noticed some confusion regarding the distribution of roles between home/host regulators and experienced additional local rules regarding marketing material which causes to considerably slow down the marketing of ELTIFs to retail investors. In the opinion of that stakeholder, it should be desirable therefore to go one step further and consider (given the detailed operational and marketing rules which apply to ELTIFs and it pan-European nature) whether a single home Member State filing and authorisation should validate the right to market ELTIFs across the EU. This European passport could be underpinned by a pan-European marketing regime for ELTIFs to address divergent Member State approaches (e.g. financial promotions, advertisements, investor letters).

Question 37. Which features of the current ELTIF framework, if any, should be defined in more detail and which should be left to contractual arrangements? Please explain.

This question has attracted very few responses. However, those few responses that were provided, shed some interesting insights and exhibited a lot of commonalities. Overall, respondents seemed to recommend that, where possible, the characteristics of the ELTIF should be set out in contractual agreements between investors and ELTIF managers, unless there is a demonstrable need to prescribe them under the ELTIF policy. This view was echoed in different formulations in the overall submissions starting point that features of the ELTIF should be determined in contractual arrangements between investors and ELTIF managers *unless* there is a demonstrable need for these to be prescribed in the ELTIF policy framework. Interestingly, this contractual freedom arrangement principle should be reinforced where an ELTIF is solely marketed to institutional investors only. Two stakeholders (an NCA and a large European industry association) supported the clarification of the conditions prescribed under Article 18.2, in particular, paragraph b) in relation to the management of liquidity risk. Another stakeholder, also referred to diversification requirements (in addition to redemption policy for ELTIFs) that only admit institutional investors should be abolished; such rules should in the view of such a stakeholder left to contractual arrangements.

Question 38. Which specific provisions in the ELTIF framework could be amended, and how, in order to lower costs and reduce compliance, administrative or other burdens in a manner that would not lead to an increase in material risks from the perspective of effective supervision or investor protection?

This question has not attracted many targeted responses. The majority of responses were generic, or expressed no opinion, and avoided the purpose of the question to identify "specific provisions in the ELTIF framework" and reduction of "compliance, administrative and other burdens". In addition, no response provided any quantitative illustration or substantiation, in one-off costs or ongoing costs, of such compliance, administrative or other types of burdens incurred by ELTIFs or their managers in connection with operational requirements. The most notable responses included references to Article 26 of the ELTIF Regulation (local facilities for retail investors that should instead be provided via digital channels); Article 23 of the ELTIF Regulation (on the subject of transparency to eliminate the reference to the information of the Prospectus Regulation); and the additional and specific information on the ELTIF contained in Article 23 of the ELTIF Regulation for the hypothesis of marketing the product to non-professional investors. In addition, one stakeholder claimed that one of the most important current obstacles to the development of ELTIFs, and of an eco-system supporting ELTIF creation and marketing across all member states, is the current requirement that an ELTIF appoint a depositary in the home member state of the ELTIF. That stakeholder has argued that given the specific characteristics of ELTIFs, and of the assets held within ELTIFs, providing depositary services for ELTIFs is complex and challenging. As outlined above, there was no quantitative enumeration or justification of such costs and burdens, and their respective reductions.

Question 39. Please elaborate on whether and to what extent the current ELTIF regime is appropriate for the AIFMs falling under Article 3(2) of Directive 2011/61/EU to have an incentive to market ELTIFs.

This question was included into the questionnaire of the open public consultation in connection with the fact that the Commission, in its assessment of the ELTIF framework, must report to the co-legislators whether and to what extent the current ELTIF regime is appropriate for the AIFMs falling under Article 3(2) of Directive 2011/61/EU to have an incentive to market ELTIFs. Only individual responses were provided and most respondents seemed to either have no strong opinion or not directly concerned by the rules. A handful of stakeholders opined that the ELTIF regime is *unlikely* to be appropriate for sub-threshold AIFMs as this would require them to comply with full AIFMD requirements. Some of the justifications to support that view was that the AIFMD requirements could be too onerous on these managers (e.g. reporting) who prefer to rely on national private placement regimes. Individual respondents went further to invoke investor protection rationale. Such stakeholders opined that it would be essential to restrain the ability to market ELTIFs on a cross-border basis to AIFs managers that are subject to the whole provisions of the AIFMD or choose to opt-in into this regime. They referred to the fact that EU rules on AIFMD below the Article 3(2) thresholds are not harmonised, which means that enhancing the passportability of AIFs or ELTIFs managed by AIFM below these thresholds would pose significant problems in terms of level playing field and pave the way for regulatory arbitrage. In the opinion of such stakeholders, facilitating the marketing of ELTIFs by AIFMs falling under Article 3(2) of the AIFMD should not at all be the priority. Other responses invoked costs and burdens for sub-threshold AIFMs. At least two stakeholders have, in this context, referred to the EuVECA regime. Notably, such stakeholders expressed the view that the EuVECA regime (which does not require full AIFMD compliance) was an appropriate (a more appropriate) vehicle for VC and growth managers that fall under the AIFMD threshold. Overall, and despite the small number of respondents, the prevailing feedback suggested

that given their complexity and operational requirements, protection of investors, etc. it was not considered appropriate for sub-threshold AIFMs to manage ELTIF products.

Question 40. Please provide examples of any national taxation regimes towards long-term investment funds that are either discriminatory or that you deem materially reduce the relative attractiveness of the ELTIF framework vis- à-vis other (national) fund vehicles, also taking into account the interaction with foreign tax systems? Please provide specific examples of such cases.

There was a wide degree of heterogeneity in the format, length and focus of the responses. Whilst only around a half of respondents provided feedback in response to this question, their feedback could generally be summarised as emphasising the importance of tax certainty and a favourable tax treatment (including in the context of inheritance tax) for ELTIFs. Several stakeholders' contribution shared a common theme that tax incentives (no tax on profitability generated by ELTIF e.g. dividends, capital gains, interest) across EU jurisdictions would be the best tool to boost their attractiveness. Some stakeholders went into specific disincentives pertaining to the lack of taxation-related benefits and explicitly labelled taxation is an important barrier to the cross-border marketing of ELTIFs. The issues range from a lack of access to double tax treaties, difficulties with tax reporting and unjustified tax discrimination. Such stakeholders listed the following main tax barriers that were deemed to impede cross-border distribution are:

- lack of or difficulties with access to double tax treaties;
- difficulties in obtaining the refund of withholding taxes (WHT) or relief at source;
- national requirements for income tax reporting (reporting requirements differ widely among Member States, resulting in additional complexity and costs for funds distributed on a cross-border basis);
- tax discrimination against non-resident investment funds: local tax rules make it much easier for investors to buy domestic funds rather than foreign funds. For example, in some countries, local income tax on distributions or redemptions is collected at source, by imposing a final withholding tax on any distributions, reportable income or capital gains;
- lack of harmonization of the fiscal rules for all relevant players in the investment fund market (regulatory fragmentation was cited as having the capacity to prevent investors from gaining exposure to long-term assets, thus preventing the increased pooling of capital and investment expertise that creates economies of scale for long-term investment funds).

In this context, only a few stakeholders have recognised, whilst noting that taxation is the critical point to make ELTIF a success for retail investors, that the European Commission in fact lacks the legal mandate to legislate in this area. One stakeholder explicitly acknowledged "that the EU does not have legislative powers regarding direct taxation to force EU jurisdictions to adapt their tax system to impose direct taxes in a particular way to this or to any other investment vehicle, as such legislative adaptation depends, ultimately, on the decision of the Member States involved". However, that stakeholder noted that an efficient approach to try to prevent issues like the above would be to promote by means of a Recommendation the legislative adaptation of the Member States' tax system for eliminating uncertainty about the tax regime applicable to ELTIFs.

The Union in general was criticised by some stakeholders for being unable to set a Single Market taxation regime which would ensure an equal treatment between domestic and

cross-border investments. This failure was one of the factors preventing the formation of the Single Market and retail investors to fully benefit from pan-EU funds investing in Single Market long-term investments.

Some stakeholders made specific recommendations that could provide initial solutions for the identified taxation-related issues, such creating a tax model for funds that fulfil predefined requirements, to secure and enhance the role of ELTIFs. Such framework would entail a tax upon distributions levied in the state of residence of the investment vehicle, albeit with no imposition of taxes on income or gains within the vehicle, and no withholding at source on income from the assets of the fund where the latter are located in an EU Member State.

Finally, very few respondents actually provided real *examples of national taxation regimes*. In this context, references were made to the Spanish tax framework where ELTIFs compete with Fondos de Inversión Libre (FIL), a kind of hedge funds (AIF) authorized under the Spanish CIS legislation. These institutions are subject to a reduced tax scheme (1% of yearly profits against 25% that have to pay ELTIFs). Likewise, Spanish Private Equity entities enjoy a deduction of 99% on the taxable base. Another national law example was a reference to specific German taxation rule which was arguably hindering the eligibility of ELTIFs, and notably, Section 26 of the German Investment Taxation Act ("Investmentgesetz").

Question 41. You are invited to make additional comments on this consultation if you consider that some areas have not been adequately covered. Please elaborate, more specifically, which amendments of the ELTIF framework could be beneficial in providing additional clarity and practical guidance in facilitating the pursuit of the ELTIF strategy. Please include examples and evidence on any issues, including those not explicitly covered by the questions raised in this public consultation:

Only a few respondents took an opportunity to provide additional comments. In general, there was no uniformity or common pattern in the nature or content of such additional comments, which could partially be explained by the open-ended nature of the question. Some of the notable comments by stakeholders included the following:

- Article 21 of the ELTIF Regulation regarding disposal of ELTIF assets is no longer relevant for evergreen funds, and should be amended accordingly;
- ELTIFs should be allowed to merge with other funds;
- The 1-year period for the winding down of an ELTIF if the redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied, should be extended to 3 years before the winding down begins;
- Recommendation to ensure coherence between the principles regarding disclosures on sustainable finance and those provided for by the ELTIF Regulation. It was recommended to rely on definitions and criteria defined within the relevant EU Regulations ("Disclosure" and "Taxonomy") adopted as part of the EU agenda on Sustainable Finance;
- It was observed that ELTIFs could be the tool to create public-private partnerships on systemic issues, or on regulated/regulated assets, aligning public interest and adequate remuneration for the invested private capital, in a forward-looking perspective;

- One stakeholder emphasised the need that investors should be free to choose the investments that best reflect their needs (from among the more or less risky and/or regulated).

11. Consistency and representativeness of positions

In assessing the validity of arguments and information provided by the respondents in the course of the open public consultation, substantial attention was paid to the overall consistency and the argumentation logic, as well as the qualification (and quantification) of those concerns and incentive structures invoked by the respondents. This work was carried out in connection with certain limitations stemming from the fact that technical questions of the long questionnaire (entire 42 questions) were answered only by several stakeholders (far less than the overall 54 submissions). This, in turn, has resulted in a situation that a large number of questions were responded by a low number of respondents, which has raised certain methodological difficulties in analysing with precision which groups of stakeholders (large vs small, business organisations vs public authorities, real estate vs private equity vs insurance sectors etc., analysis per jurisdictions) have expressed which positions. In many cases, it was difficult or impossible to precisely determine which group, type, size or business sector category of stakeholders expressed strong preference in each specific policy question.

One of the tools employed to that extent was to cross-compare the submissions provided during the open public consultation with those submissions and feedback statements shared with the Commission services throughout the policy work on the ELTIF review.

In particular, the Commission services have compared and analysed the results of the open public consultation in the context of the ESMA Investment Management Standing Committee and NCAs' consultation; Member States' consultations during two meetings of the Expert Group of the European Securities Committee; the report of the HLF on the Capital Markets Union; multiple submissions by asset management associations and respective stakeholders, and several multilateral workshops and meetings during which the Commission services had a chance to learn about the positions of the market participants. Such meetings comprised the stakeholders' colloquium on European long-term investment funds (ELTIFs) of February 2020; the ELTIF workshop organised by the French Asset Management Association of December; the ELTIF workshop organised by AIMA of February 2021and the ELTIF workshop organised by EuropeInvest with the representatives of the private equity industry of May 2021.

Furthermore, the Commission services have analysed selected submissions by the representatives of investors, selected academic publications, public authorities and private citizens.

Based on these interactions and information sources, it has been generally concluded that the submissions of the open public consultation are highly representative and consistent with the views provided by industry stakeholders.

ANNEX 3: WHO IS AFFECTED BY THE INITIATIVE AND HOW

1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

Fund managers would be expected to face reduced costs in both setting up and registering funds,[104] as well as marketing funds to investors. The easing of the fund rules for the professional investors and reducing the barriers for retail investors would also boost the attractiveness of the ELTIF regime which could, in turn, incentivise AIFMs to use ELTIFs as a go-to vehicle for structuring their long-term investments. It is generally expected that the initiative would be beneficial to all ELTIF managers.

Investors are expected to largely benefit from this initiative. The easing of the fund rules for the professional investors and reducing the barriers to entry for retail investors would increase the range of products available, leading to increased competition in the market. Investors are thus expected to enjoy better to access longer term investments where these are aligned with their investment needs and could provide diversification benefits. As a result, they may be more likely to choose to invest in ELTIFs compared to other types of investment, and make greater use of cross-border funds. However, this increased accessibility to ELTIFS for retail investors will not come at the expense of the current protections for retail investors in the Regulation.

National Competent Authorities may face a mild degree of additional and ongoing work in implementing minor changes in the constitution of the ELTIF register, such as receiving regular updates on the status of authorised ELTIFs. However, given the fact that the NCAs are already familiar with the regulatory requirements of the ELTIF register, minor changes to the requirements to the frequency and substance of the ELTIF register should not bring about significant costs or lead to new administrative burdens. Such costs and burdens may be deemed negligible. At the same time, the streamlining of the authorisation requirements, as per the technical advice of ESMA (see Annex 7) would partially balance out the costs and burdens on the NCAs.

ESMA may face a degree of additional involvement in more frequent updates of the ELTIF register, such as processing and following up on the NCAs' notifications regarding the status of authorised ELTIFs. It should be noted that as of Q3 2021 ESMA has not constituted a formal electronic register of ELTIFs and such register is currently maintained as an Excel file available at the website of ESMA. However, given the fact that ESMA is already familiar with the regulatory requirements of the ELTIF register, minor changes to the requirements to the frequency and substance of the ELTIF register should not bring about major costs or substantially increase administrative burdens for ESMA. Any such burdens or costs will be negligible.

SMEs Although the proposed policy options do not have a direct impact on small and medium enterprises (SMEs) more broadly, they will indirectly benefit from the initiative as increased cross-border distribution of investment funds would accelerate the growth of EU investment funds and allow them to benefit from economies of scale. This in turn,

[104] Article 5(2) of the ELTIF Regulation requires that the competent authority of the ELTIF shall give an approval to the EU authorised AIFM who intends to manage the ELTIF. The extent to which this additional authorisation, that supplements the authorisation granted under the AIFMD, is needed and useful may be unclear and may create confusion as regards the responsibilities of the two different competent authorities involved. Therefore, and with the endorsement of ESMA, these requirements are considered to be removed.

may improve the availability and cost of financing for SMEs offered through these investment funds.

2. SUMMARY OF COSTS AND BENEFITS

I. Overview of benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Reduction in compliance costs for fund managers	No estimate available.	Removal of the ad-hoc suitability test foreseen under ELTIF as it duplicates the suitability test provided for under ELTIF regulation. Reduced compliance costs for funds that target only professional investors.
Retail investors able to invest from smaller amounts	No estimate available.	Improved access to funds for retail investors will allow ELTIFs to better meet their investment goals and diversify their portfolios.
Reduced fund registration/issuance costs for fund managers	No estimate available.	Improvements in operational efficiency and any cost reductions (thanks to such adjustments as removal of local facilities and streamlining the authorisation requirements) may translate into higher profitability for asset managers.
Increased flexibility in fund rules for fund managers	No estimate available.	By increasing the flexibility of the fund rules, and therefore the size of ELTIFs, investment managers will be able to invest in a broader range of asset classes and pursue more investment strategies.
Increased redemption opportunities for investors	No estimate available.	By allowing investors to redeem their holdings before the funds maturity, the product may be more attractive to new investors increasing the flow of funds to ELTIFs.
Indirect benefits		
Increased availability of alternative sources of finance for SMEs	No estimate available as this will be driven by market uptake and investment decisions on capital allocation.	SMEs in Europe are overly reliant on traditional credit providers such as banks. However, they can face increased borrowing costs or be prevented entirely from accessing these funding channels based on the level of perceived risk and the banks capital requirements. ELTIFs can provide an alternative source of long term financing for SMEs.
Fund returns for investors	No estimate available	Improving fund returns and allowing investors to access products that are tailored to meet their investment needs.
Increased long-term investments in the real economy	No estimate available – benefit cannot be quantified.	The long term focus of ELTIFs makes them an effective vehicle for investors to invest in capital projects such as green energy, infrastructure, housing and medical facilities they would otherwise not have access to. This means ELTIFs can mobilise further savings for long-term projects. Increased use of the ELTIF vehicle could also assist in diverting funding towards long term projects supporting the recovery from the global pandemic.

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in compliance costs, administrative costs, regulatory charges, enforcement costs, etc.; see section 6 of the attached guidance).

II. Overview of costs – Preferred option							
		Investors		Fund Managers		Supervisors	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Reducing retail investor barriers to entry	Direct costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
	Indirect costs	No cost impact	No cost impact	No cost impact	Increased size of funds may allow realisation of economies of scale cost savings	No cost impact	No cost impact
Increased flexibility in fund rules	Direct costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
	Indirect costs	No cost impact	No cost impact	No cost impact	Increased size of funds may allow realisation of economies of scale cost savings	No cost impact	No cost impact
Differentiated treatment of retail and professional investors	Direct costs	May reduce search costs for professional investors	No cost impact	May reduce marketing and placement costs for professional investor funds	May reduce reporting/compliance costs for professional only funds	No cost impact	No cost impact
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
New redemption options	Direct costs	No cost impact	Ability to redeem more frequently reduces opportunity cost for investors.	May lead to additional administration costs and increased drag on fund returns to maintain liquidity pocket	May lead to additional administration costs and increased drag on fund returns to maintain liquidity pocket	No cost impact	No cost impact
	Indirect costs	No cost impact	No significant cost impact	No cost impact	No cost impact	No cost impact	No cost impact

(1) Estimates to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (compliance costs, regulatory charges, hassle costs, administrative costs, enforcement costs, indirect costs; see section 6 of the attached guidance).

The ELTIF is a specific product regulation and funds are constituted as AIFs domiciled in the EU and managed by an authorised AIFM under the AIFMD. The requirements and obligations on the fund managers are those applicable under the AIFMD which is the main driver of compliance costs.

The AIFMD is currently subject to review and potential changes to its requirements could have cost implications or introduce additional efficiencies for ELTIF managers but these cannot be estimated or precisely quantified at this time.

2.1. Cost quantification

With regard to the ELTIF itself, the proposed policy options are designed to remove some of the restrictions applied to retail investors and grant managers greater flexibility in their investment choices and strategies. Stakeholder feedback did not highlight any issues related to the costs of compliance with the ELTIF framework. The proposals made will maintain current reporting obligations and necessary investor protections and while there may be some efficiencies, the proposal is considered cost neutral when compared to the baseline. Any costs are expected to be negligible.

2.2. Costs and costs reduction for the industry

The proposed changes to the ELTIF should be cost neutral or deliver cost alleviation for fund managers, particularly those targeting only professional investors as the costs as they will not have to perform additional suitability tests anymore. The removal of the ad-hoc suitability test foreseen under ELTIF would be largely beneficial as it duplicates the suitability test set out in MiFID II.

However, the addition of new redemption mechanisms that allow investors to exit the fund prior to its maturity may lead to a reduction in the fund's performance as they may have to maintain a liquidity or cash pocket in order to meet redemption requests without having to sell assets out of the fund. Any increased administration costs related to more frequent redemptions would be only voluntary (i.e. at the discretion of the fund manager) and may be estimated as negligible. Any frictional costs are balanced against the ability of investors to redeem their holdings in a shorter time period instead of having to hold their investment until the funds maturity, which is expected to translate into greater demand for ELTIFs overall.

2.3. Costs and costs reduction for the national competent authorities

The proposed changes to the ELTIF should be cost neutral for the relevant competent authorities as no changes are proposed to the reporting requirements.

2.4. Costs and costs reduction for investors

Professional investors:

Reduced search costs, more flexible fund rules will allow managers to tailor funds to meet the specific needs of professional investors with the potential to realise increased returns from targeted investment strategies while allowing more capital finance to be directed towards longer term projects in the EU and support the pandemic recovery. More flexible redemption mechanisms will reduce the opportunity costs of investing in

ELTIFs, reduce the risks faced by investors who will no longer have to hold their full investment until the fund's maturity and allow more investors to use ELTIFs.

Retail investors:

Existing protections for retail investors will be maintained but their access to ELTIFs will be reduced. This will reduce their search costs and the hassle costs of accessing ELTIFs increasing their access to longer term investments and mobilise their capital towards investments in the real economy and the overall pandemic recovery. More flexible redemption mechanisms will reduce the opportunity costs of investing in ELTIFs, reduce the overall risks faced by investors who will no longer have to hold their full investment until the fund's maturity and allow more investors to use ELTIFs.

ANNEX 4: METHODOLOGICAL APPROACH, ANALYTICAL METHODS AND LIMITATIONS

1. Overview

The analysis underlying the impact assessment is based on three methodological approaches: desk research, qualitative analysis and quantitative analysis.

The data used stems from several different data sources. Input was collected from a wide range of stakeholders, including asset managers, ELTIFs, industry associations, trade associations representing investors, academics and citizen, including through public open consultation on the functioning of the ELTIF regime, bilateral consultations with the stakeholders, policy dialogues with the NCAs and the ESMA (including from the technical advice to the Commission in January 2021 (ESMA34-46-99), as well as follow-up survey and targeted interviews are used for the qualitative analysis.

In addition data from market databases such as Morningstar and Refinitiv were used. Morningstar data was used for the quantitative analysis. Public websites of ELTIF managers were used to study, where made available, the fund documentation, including the annual reports and the prospectuses of ELTIFs.

A few academic publications on the functioning of the ELTIF framework were also used in so far as the quality of the publications was acceptable.

2. Desk research

A literature review was performed regarding the determinants of cross border fund distribution and resulting impact on competition and consumer choice. The relevant (academic) literature was also consulted to gain an insight into fund market developments.

3. Qualitative analysis

Qualitative analysis is based on the information collected via the stakeholder consultation. The Commission services have followed the following three-fold methodological approach to the consultation of stakeholders: (i) public stakeholder consultation; and (ii) gathering targeted evidence based on dedicated follow-up interviews.

The public stakeholder consultation was conducted prior to the impact assessment. The consultation was open so the design would ensure sufficient representation of different stakeholders, maximize the number of respondents, and allow for sufficient spread in opinion (in case opinions would differ). The public consultation thus provided insight on the average opinion for each stakeholder group concerned and the level of consensus within each stakeholder group. Details on the public consultation can be retrieved in Annex 2.

The follow-up consultation ensured maximum representativeness for a given level of confidence. In addition, specific questions were introduced to obtain more information on topics for which the public consultation yielded no sufficient input. The result allowed to

further insight into the differences between ELTIFs that are marketed exclusively to professional investors and ELTIFs that could be marketed to retail investors, as well as different approaches to the life-cycle of the fund, leverage, redemptions and preferred options in modifying ELTIF fund rules.

4. Quantitative analysis

While qualitative analysis of the ELTIF market looked into a range of issues pertaining to the operation of the ELTIF regime (see Annex 5), no detailed quantitative analysis could be performed in order to examine structural factors pertaining to the functioning and uptake of the ELTIFs segment (see Section 5 on limitations). More specifically, the information provided by ESMA enabled a broad understanding of the size of the ELTIF market, an approximate portfolio composition of some ELTIFs, common strategies employed, jurisdictions of ELTIFs' domicile and jurisdictions where ELTIFs were marketed and average life duration. On the contrary, some other parameters, such as fees, performance metrics, as well as other characteristics central to the evaluation of the existing ELTIFs were not readily available. The results provide an indication regarding the extent to which regulatory measures that would increase the attractiveness of the ELTIFs. Due to some inherent limitations (see section 5 below – Limitations), including a very small sample size of ELTIFs, the quantitative analysis has exhibited certain characteristics that have prevented the Commission services from drawing firm conclusions.

5. Limitations

a. Existing limitations

All reasonable efforts have been undertaken to collect and analyse available evidence. There are nevertheless still some remaining limitations to the current approach which should be taken into consideration when interpreting the evidence.

***Public stakeholder consultation*:** the ELTIF public consultation has attracted 54 formal responses. More responses could have yielded more information regarding the extent that there was consensus among individual stakeholders on certain subject.

Follow-up consultation directed at existing ELTIF managers: manual selection was set up to be representative of the registered ELTIF managers. In total, 54 formal responses were received via the Commission's Better Regulation portal. Several responses to the open public consultation were provided outside the formal submission channels and some submissions were made after the deadline.

Limitations of regulatory data: Ideally, the Commission services would have liked to analyse a wide range of data pertaining to the registered ELTIFs, including their granular portfolio breakdowns, performance, total effect of costs (regulatory fees, compliance costs, search and administrative costs), fees and charges, as well as other information related to the operation of ELTIFs. Due to the fact that a large portion of this information is only available to the NCAs supervising the ELTIF manager, there has been certain reluctance to request the ELTIF managers to disclose this information in its entirety citing confidentiality and business secrecy concerns (even if anonymised the small population size would make it easy to know the identity of an ELTIF), as well as the fact

that such a request for non-mandatory data would expose the ELTIFs and their managers to unwanted and undue administrative burden.

***Fund databases (Morningstar) and other data sources**:* None of the available commercial databases or data sources has complete coverage. As a result, the information on the existing ELTIFs had to primarily be served by ESMA, coordinating the individual submissions by the NCAs. As a case in point, the reporting on Morningstar database is based on a voluntary reporting from asset managers. Morningstar has no self-standing classification of ELTIFs, and all the ELTIFs known to the Commission services had to be tracked and analysed separately.

Morningstar data for AIFs is far less representative, and no independent classification of ELTIF exists. Hence, AIFs and ELTIFs data from Morningstar an only be perceived as indicative and should be interpreted with caution. As data provision is not compulsory, there are also some discrepancies between the data reported by various data sources.

Granular cost data and itemisation: As indicated above, detailed information on all costs influencing the operation of ELTIFs (including regulatory fees, compliance costs, search costs, operational costs, marketing costs, etc.) is not available at a granular level. Regulatory fees are available at this level of detail, but they only constitute a small part of total costs.

Quantitative assessment on baseline scenario and effect of policy action

Due to a very small and highly idiosyncratic sample of the ELTIFs population (among others, in terms of fund sizes, strategies employed and jurisdictional domicile), it is very unlikely to come up with an accurate quantitative assessment of a baseline scenario, and any possible effects of selected policy actions.

Qualitative forecast on baseline scenario and effect of policy action

Historical data on the operation of ELTIFs and the main drivers therefor are limited due to a relatively short time of the operation of the ELTIF Regulation, as well as due to the fact that a large portion of ELTIF registrations is still very recent. As a result, the expected growth rate based on a multi-optional forecast cannot be estimated with desired accuracy.

A fund manager's decision to design and establish an ELTIF and to market it to a set of investors – possibly on a cross-border basis – will be influenced by discretionary strategic considerations on the one hand, idiosyncratic nature of the target assets, maturity profile sought after, the attractiveness of the local market, competition, taxation considerations, market conditions, and many other factors. The latter include structural factors of the local market, expected demand, expected profitability and scalability, etc.

In addition, a number of important out-of-scope drivers (e.g. taxation) were identified as summarised by the problem tree. As a result, it is not feasibility to have point estimates on cost reduction induced by option policies in view of the lack of both a representative stakeholders' sample size and the historical data on these drivers that shape the decision process of setting up and managing an ELTIF.

b. Interpretation of results and strategy to mitigate effect of limitations

***Public stakeholder consultation*:**

It is important to note that in spite of the relatively small number of responses, the coverage for the fund management industry is good nonetheless: a large portion of the European and national asset managers associations and industry trade associations representing investment managers, financial products manufacturers, as well as investors' representatives have contributed to the consultation by providing detailed submissions. Given that the majority of funds are members of a fund association, the responses from national and European associations represent a significant part of the asset manager sector. Certain stakeholders' representatives, in turn, represent national member associations, which ensures a broader EU-wide representation even given the situation where certain Member States have no national domiciled ELTIFs. For example, EFAMA, the association representing the European investment management industry, represents 28 member associations, 57 corporate members and 23 associate members (at end Q4 2020) with total net assets of European investment funds reaching EUR 18.8 trillion.

To overcome concerns about limited differentiation of opinion within stakeholder groups, the stratified randomized sampling-based survey was set up where groups were selected to allow for maximum differentiation between large and small funds and active and non-active funds (cross-border distribution), while remaining representative for the population. In addition, new questions were introduced to address limited responses to specific issues.

Further differentiation of stakeholder opinions was established by:

- Formally consulting ESMA in order to get the advice of the ESMA and the NCAs' experts on the policy options considered and their recommendations for the improvement of the ELTIF regime;
- Inviting an investor association (Better Finance) to submit its observations on the functioning of the ELTIF regime to ensure that the retail investor's protection is not diminished;
- Organising several ad-hoc conference calls and meeting with asset managers associations and asset management companies in order to evaluate the impact of the options considered (such as the ELTIF colloquium held in Luxembourg on 4 February 2020; the ELTIF-dedicated webinar organised by the French Asset Management Association with the representatives of the French and European investment management community), etc.;
- Liaising with a wide range of distinct industry representatives (such as insurance industry associations, stock exchanges, actuarial professionals, academics, legal practitioners, citizens and others) to obtain a wide spectre of views on the subject-matter.

As a result of this approach, the variation in responses in the industry stakeholder group is increased, while the extra questions completed the picture on the limitations of the functioning of the ELTIF framework.

***Fund databases (Morningstar) and other data sources**:* funds are not obliged to report data. As a result none of these databases or data sources has complete coverage. As a case in point, the reporting on Morningstar database is based on a voluntary reporting from asset managers.

The number of UCITS funds included in the Morningstar database is estimated to be about 80% of the number of UCITS reported by EFAMA. Morningstar data for AIFs is far less representative. Hence, AIF data from Morningstar is only indicative and should be interpreted with caution. As data provision is not compulsory, there are also some discrepancies between the data reported by various data sources.

Granular cost data and itemisation:

Estimates on the total costs were collected from feedback from stakeholders (see Annex 3). A general cost mapping based on a broad sample of responses was not possible.

This has been accommodated through targeted consultations.

As a result, operation of individual ELTIFs might deviate from the median metrics due to the small ELTIFs sample. Operational difficulties, costs and constrains are likely to be higher in case they deviate because smaller funds are less inclined to answer and face higher costs on a relative basis.

Quantitative forecast on baseline scenario and effect of policy action:

Historical data on the uptake and operation of ELTIFs and the drivers thereof is limited. As a result, the expected growth rate based on a multivariate forecast cannot be estimated.

Qualitative forecast on baseline scenario and effect of policy action:

A fund manager's decision to design and establish an ELTIF and to market it to a set of investors – possibly on a cross-border basis – will be influenced by discretionary strategic considerations on the one hand, idiosyncratic nature of the target assets, maturity profile sought after, the attractiveness of the local market, competition, taxation considerations, market conditions, and many other factors. The latter include structural factors of the local market, expected demand, expected profitability and scalability, etc.

In addition, a number of important out-of-scope drivers (e.g. taxation) was identified as summarised by the problem tree. As a result, it is not feasibility to have point estimates on cost reduction induced by option policies in view of the lack of both a representative stakeholders' sample size and the historical data on these drivers that shape the decision process of setting up and managing an ELTIF.

Overall, significant efforts have been undertaking to support the analysis of the operation of the ELTIFs and the evaluation of policy options based on three-fold methodological approaches. Each of them has its merits but also its limitations.

As the combined evidence stemming from the various methodological approaches provide corroborating evidence, it can be considered to be a sound basis for the impact assessment despite the inherent limitations of each of the individual approaches.

ANNEX 5: EVALUATION OF RELEVANT PROVISIONS OF THE ELTIF REGULATION

1. Introduction

1.1. Objective of the evaluation

The ELTIF is a pan-European regime for Alternative Investment Funds (AIFs) that channel capital towards long-term investments in the real economy in support of the EU's goal of smart, sustainable and inclusive growth. ELTIFs can only invest in certain types of assets in order to provide both retail and professional investors with long-term, stable returns while stimulating employment and economic growth.

There are two main reasons for the review of the framework:

1) The legal mandate under Article 37 of the ELTIF Regulation requires that Commission review the functioning of the framework; and,
2) There is a need to assess the general functioning of the framework given the low uptake by the market of ELTIFs which has not met expectations.

In this context, the purpose of the evaluation is to assess to what extent the existing EU rules on ELTIFs have met their principle objectives and in particular whether they have been efficient, effective, coherent, and relevant and have provided EU added-value. This retrospective evaluation has been conducted in parallel with the impact assessment work and is presented herein. The results of the evaluation have been incorporated in the problem definition of the impact assessment.

1.2. Scope of the evaluation

This evaluation does not constitute a full review of the ELTIF Regulation; as the regulation is still relatively new, particularly when compared to other frameworks such as UCITS, the focus has been primarily on re-calibrating specific limitations in the framework to better meet the needs of investors and managers based on the feedback received.

As such, the evaluation provides an assessment of the ELTIF Regulation focusing on the potential factors that may have prevented the wider distribution of investment funds as compared to initial expectations. To the extent possible, the evaluation assesses the rules in the context of the five evaluation criteria, as required by the Better Regulation guidelines.

2. Background to the initiative

2.1. Description of the initiative and its objectives

The ELTIF Regulation was published in the Official Journal on 19 May 2015 and allowed authorised Alternative Investment Managers (AIFMs) to market their AIFs managed as ELTIFs across the Union under an EU-wide passport subject to the notification procedure established under the AIFMD.

The Regulation sets out the rules and criteria governing the funds eligible assets, investment policies and operating conditions in order to qualify as an ELTIF. These include that the fund must be managed by an authorised AIFM; invest at least 70% of its capital in eligible

investments; comply with limits on the use of leverage and derivatives; and comply with specific redemption-related requirements.

As the ELTIF is designed as retail AIF product, it also includes a number of investor protection provisions, including a suitability test. Retail investors with portfolios of up to EUR 500,000 cannot invest in aggregate more than 10% of their portfolio in ELTIFs and must make a minimum investment of EUR 10,000.

One of the main objectives of the ELTIF Regulation was to establish a single market for ELTIFs, in particular through the creation of a marketing passport, which allows funds to be marketed across the EU without additional authorisation in each Member State.

The ELTIF Regulation was conceived with a number of objectives:

a) to channel increased capital flows to real economy investments;
b) to provide an AIF product accessible to retail investors with long-term investment needs; and
c) to establish an EU-wide passport for the marketing of ELTIFs.

In addition, the ELTIF can also support the post-pandemic recovery by increasing the availability of financing for European SMEs.

2.2. State of play

According to ESMA's register of ELTIFs, as on October 2021 there were 57 authorised ELTIFs with total assets under management of around EUR 2.4 billion. The funds are domiciled in only four Member States – Luxembourg, France, Italy and Spain.

While the ELTIF Regulation has been applicable for around 6 years, the level of market take-up has not met expectations and is sub-optimal in terms of the total AuM.

In June 2020, the CMU High Level Forum published its report on the CMU which made a number of recommendations to amend the ELTIF framework and improve its effectiveness and attractiveness for fund managers and investors. These recommendations were supported by subsequent Council conclusions that called on the Commission to review the framework.[105]

2.3. Link of the ELTIF review with other policy initiatives

AIFMD Review:

Ten years after its adoption on 8 June 2011[106], the current review of AIFMD has shown that AIFMD has met its objectives to seek a coherent supervisory approach to the risks that activities of AIFMs may generate (including stability risks) and to provide high-level investor protections while also facilitating EU AIF market integration[107]. Therefore, the AIFMD review has been focused on improving specific areas. More precisely, the AIFMD review contemplates the following key improvements:

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105 Council of the European Union Conclusions on the Commission's CMU Action Plan. Reference 12898/1/20. ECOFIN 1023. Point 19(e). Adopted 2 December 2020. Source: https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf (8 February 2021).

106 Following its transposition into the national legal systems, the AIFMD entered into application on 22 July 2013. The last Member State transposing the AIFMD completed this process by the end of 2015.

107 See Recitals 2 - 4 and 94 of the AIFMD.

1. Levelling the playing field for loan originated by AIFs.
2. Enabling cross-border access of depositary services to allow the creation of AIFs in few European markets where there is no depositaries service.
3. Clarifying and aligning the delegation regimes under AIFMD and UCITS Directive.
4. Strengthening the liquidity framework for open-ended investment funds.
5. Improving supervisory data by collecting more granular supervisory data from AIFMs and UCITS.
6. Clarifying rules related to custodians of AIFs assets

As ELTIFs are a sub-category of AIFs, they will benefit from these clarifications. While the proposals under these two reviews are compatible, a special attention should be paid to during the drafting of the new ELTIF and AIFMD rules with regard the following points:

1. **Cross-border access to depositary services:** This policy option may reduce operating costs for ELTIF managers in smaller markets that may currently be under-serviced by depositaries – which aligns with the objectives of the ELTIF review. However, it is difficult to assess and is not expected to affect existing ELTIFs as these are currently concentrated in those Member States that are unlikely to be under-serviced by depositaries.

2. **Clarifying the delegation regime under AIFM and UCITS Directive:** Depending on their organisational and fund structures, this may impact AIFMs managing ELTIFs if they have to make changes to their operating structures to meet new substance requirements related to their use of delegation. This could lead to increased operating costs for those AIFMs that are not currently adequately resourced to monitor the activity of their delegates.

3. **Clarifying custodian rules:** This policy option will have no direct impact on ELTIFs.

4. **Liquidity Management Tools:** This policy option is targeted at open-ended AIFs with illiquid assets while ELTIFs are closed-ended funds. This proposal should therefore not directly impact on ELTIFs.

5. **Improving supervisory reporting:** This policy option may impact on AIFMs managing ELTIFs that will have to provide more granular supervisory reporting data. One-off costs for AIFMs to update their reporting systems may be incurred when the ECB and ESAs update their reporting requirements.

6. **Harmonised rules for Loan Originating Funds:** This measure is intended to improve the credit risk management and supervisory oversight of AIFs that are focused on loan origination and classified as such for their primary strategy. Depending on the approach taken in the AIFMD review to classify a fund as a Loan Origination Fund and whether the additional requirements apply, these measures could potentially apply to those AIFMs managing ELTIFs that are focused on loan origination strategies. This could lead to increased costs for AIFMs.

It is important to note that the AIFMD is proposing targeted amendments to the regime as the framework is regarded as functioning effectively. Based on the current proposal certain measures may lead to increased costs for AIFMs managing ELTIFs, but these would be outweighed by the need to support adequate supervisory oversight of the AIF sector to ensure investor protection and broader financial stability, and there are no outright conflicting

proposals between the two reviews. The simultaneous review process is also ensuring ongoing coherence between the two initiatives.

Link with the MiFID:

The ELTIF Regulation is linked with the MiFID II by virtue of definitions and notions that are cross-linking to the AIFMD, and in turn, cross-linking ELTIFs to the MiFID II regime. Despite this fact, the review of the MiFIDII/MiFIR regime will have no direct implications on the ELTIF regime because the scope of the two reviews is very different. Any such links will be distant and non-immediate. That is mainly because the pursued amendments of the MiFIDII/MiFIR regime are primarily focused on the consolidated tape, and transparency, and waivers, which will have no relevance for the operation of ELTIFs or their managers.

There are no discussions or possible implications for ELTIFs in terms of investor qualification or categorisation, as such topics fall outside the current MiFID II review initiative.

Link with the Solvency II:

The ELTIF Regulation is laying down a regulation for long-term investment funds, which is very distant from the regulation of insurance companies under Solvency II Regulation.

During the open public consultation, some stakeholders advocated for a review of the Solvency II rules. In particular, the High-Level Forum on the CMU report recommended the promotion of institutional investor take up and to "consider explicit recognition of the ELTIF in relevant capital frameworks (e.g. Solvency II), and provide appropriate flexibility for investment strategies attractive to institutional investors to be addressed within the ELTIF framework".[108] At this junction no adjustment to the capital treatment of ELTIFs is being proposed as part of the Solvency II framework or its near-term review.

3. Methodology

In preparing for the ELTIF review, the Commission conducted an open public consultation. There were also a large number of bilateral consultations with representatives from the investment management industry including managers with established ELTIFs, NCAs responsible for supervising ELTIFs and a number of Member States. This evaluation was based on a full analysis of the large amount of feedback received to identify the key issues and concerns about the ELTIF framework and to develop the resulting policy options to make targeted changes.

As regards the involvement of ESMA, the outcome of the open public consultation and additional feedback received via the submissions and consultations with market participants, please refer to Annex 2.

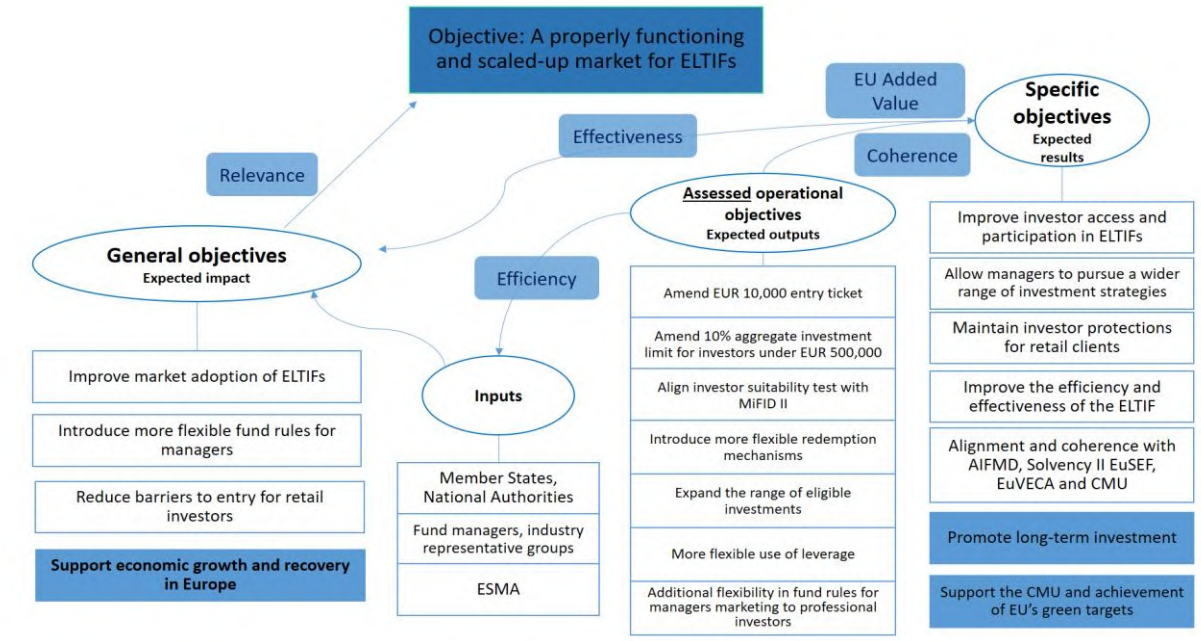
3.1. Back-to-back evaluation

The ELTIF framework is a targeted product specific regulation with specific interactions with the AIFMD. It has specific objectives to develop the market for long-term focussed retail AIF product. The proposed amendments to the ELTIF framework do not constitute a fundamental

[108] For the purpose of capital requirements, Solvency II framework already treats ELTIF by (a) using the same capital charge as for listed equity (i.e. 39% instead of 49%) and (b) having a simpler access to the preferential treatment for long-term equity investments (i.e. 22%) as the criteria to be met are assessed at the level of the ELTIF fund and not the underlying assets.

overhaul of the framework but are rather targeted changes to introduce additional flexibilities for managers and improve access for investors while maintaining the existing investor protections.

As most of the policy options are technical in nature, the evaluation is structured to build upon the findings of the consultations detailed earlier, market data and relevant studies. These sources and consultations highlighted certain common themes, weaknesses and opportunities of the ELTIF framework. These are set out in more detail in the graph below:



3.2. Limitations

The evaluation is based on the findings of a range of consultations with stakeholders including representatives from industry, industry associations, regulators and Member States. Given the relatively limited size of the ELTIF universe, the results could be prone to selection bias and the limited number of respondents with actual experience of using the ELTIF product.

The analysis targets the main issues with the framework raised by stakeholders and has attempted to assess the development of the ELTIF market in the context of its overall size as an indicator of its achievement of its objectives and contribution to the CMU.

There are particular difficulties in obtaining reliable data on the market given its limited size and concentration. In addition, detailed information on fees and costs is not publicly available and is provided only to the funds investors as it is confidential information specific to each ELTIF manager.

Despite the fact that ESMA is charged with the task to maintain an ELTIF register, it can be estimated that ESMA has faced a degree of difficulties in the constitution and updating of the ELTIF register, including the processing and following up on the NCAs' notifications regarding the status of authorised ELTIFs. It should be noted that as of Q1 2021 ESMA has not constituted a formal electronic register of ELTIFs and such register is currently maintained as an Excel file available at the website of ESMA. Information on the size of the funds, their portfolio composition, pursued strategies, as well as performance, fees and which

categories of investors is ELTIFs marketed to are not available in the ELTIF register. Furthermore, it has proved challenging to gather information on the ELTIFs fund documentation (such as prospectuses, KIDs, annual reports), and the information on fees and performance was rarely available.

Receiving such an information required ESMA to seek such an information from the representatives of the NCAs. To that end, Article 3(3) of the ELTIF Regulation sets out that the competent authorities of the ELTIFs shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn pursuant to the ELTIF Regulation. In reality, it has proved challenging to receive an up-to-date information from the NCAs, which have lamented the need to revert back to their stakeholders for the up-to-date figures and deemed burdensome.

It is also difficult to assess potential cost implications as the final outcome of the AIFMD review will also potentially introduce changes that could impact on the operating costs of AIFMs managing ELTIFs as these costs apply irrespective of the ELTIF framework and cannot be assessed as part of the ELTIF review until there is clarity on the outcome of the AIFMD review.

The measures proposed are designed to improve the flexibility for fund managers in how they operate the ELTIF funds, making the framework more adaptable to a wider range of investment strategies and are considered to be cost neutral with respect to the fund managers operating costs as they do not amend the existing reporting or disclosure requirements.

The proposed changes are closely linked and correlated making it difficult to assess their impact in quantitative terms. This has made it necessary to rely on a qualitative assessment and stakeholder's responses regarding the potential outcomes.

4. Evaluation questions

In general, the ELTIF Regulation has not met expectations in terms of market development and uptake. With only 57 funds on ESMA's register of ELTIFs and total assets under management of approximately EUR 2.4 billion the market for ELTIFs concentrated in only four Member States, the market has failed to scale up significantly and this impairs its effective contribution to the CMU and development of the real economy.

Stakeholder feedback has highlighted market concern at the overly restrictive provisions of the regulation that limit the ability to develop strategies for ELTIFs and access a sufficient range of eligible investments. The entry tests for retail investors are overly restrictive and prevent most investors from accessing ELTIF products.

Question 1: How effective has the EU intervention been?

To what extent have the objectives of the ELTIF Regulation to establish a single market for ELTIFs been achieved and what factors influenced the achievements observed?

The ELTIF Regulation, while still relatively new when compared to other frameworks such as UCITS, has not scaled up significantly and has not been widely adopted by EU investment managers as evidenced by the limited number of registered funds and concentration in a small number of Member States limiting the creation of a single market for ELTIFs.

The majority of stakeholders indicated in their response to the public consultation that the ELTIF framework has not achieved its objectives and highlighted a number of areas that should be amended.

For example, in terms of the universe of eligible assets and investments, ELTIFs contain restrictions regarding the ability of ELTIFs to invest in "financial undertakings". Further, the ELTIF Regulation contains a numeric threshold that requires that eligible investment assets should include real assets with a value of more than EUR 10 million. Next, the ELTIF Regulation contains the maximum threshold of EUR 500 million for the market capitalisation of listed qualifying portfolio undertakings, as well as a requirement that the qualifying portfolio undertaking is a "majority owned" subsidiary. Whilst there are potentially valid policy reasons for respective ELTIF provisions in channelling investments to projects with a certain size and characteristics, evidence suggests that many of those requirements are serving as tangible deterrents for the investments by ELTIFs and reduce the attractiveness of the ELTIF regime in the eyes of asset managers.

Second, as regards the borrowing of cash requirements the current ELTIF Regulation sets out that the maximum allowed leverage is 30% of the capital of ELTIFs and that the borrowing should encumber assets that represent no more than 30 % of the value of the capital of the ELTIF. Against this background, the 30% leverage restriction may constitute a genuine limitation for some ELTIF managers to pursue certain legitimate investment strategies. For instance, investment in real assets with a 30% maximum leverage could per se fall short of the capital-intensive nature of such investment strategies where higher degree of leverage may be prevalent.[109].

Third, portfolio diversification and concentration rules for ELTIFs marketed to investors are also excessively restrictive and prevent the ELTIF framework to foster the uptake among asset managers.[110] Given the nature of long-term projects it may often occur that finding a portfolio of a large number of underlying portfolio investments (especially real assets) is prohibitively expensive due to high transactional costs and thus uneconomical given the size of ELTIFs. The excessive costs of too broad diversification and portfolio composition requirements were also flagged as problematic by stakeholders during the public consultation and selected consultations.

Question 2: How efficient has the EU intervention been?

To what extent have the rules regarding establishment and the marketing of ELTIFs under the ELTIF Regulation been cost-effective? Are there significant differences in costs (or benefits) between Member States and what is causing them?

Fund level cost data is not publicly available. Based on overall market statistics the uptake of ELTIFs has not scaled up to the desired level in terms of the number of funds, their spread across Member States and total assets under management. In particular, the framework is overly restrictive in terms of its barriers to entry for retail investors.

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[109] For ELTIFs to be a credible source of funding for these projects, it is important appreciate the restrictive nature of leverage limitations as potentially handicapping the risk-adjusted returns and hence viability of certain long-term strategies. There are reduced stability risks stemming from ELTIFs: they are closed-end AIFs with diversification rules and subject to the regulatory oversight under the AIFMD. Consideration should also be given to the importance of providing profitable products for both professional investors and retail investors. Finally, under AIFM regulatory framework, NCAs supervise leverage and may impose additional limits as part of their ongoing monitoring.

[110] As recognised by ESMA in its technical advice to the Commission, "The limits of risk spreading (portfolio composition and diversification related thresholds referred to in Article 13(2)(a) to (c), generally speaking, imply to make 10 investments. In relation to investment in projects or infrastructures of large scale, the need to make 10 investments per ELTIF may be difficult to achieve, and costly in terms of capital allocation."

First, the EUR 10,000 minimum initial investment participation (the so-called "entry ticket") required by the ELTIF Regulation constitutes a tangible barrier to the access of retail investors. Whilst the ELTIF Regulation seeks to ensure that the initial amount invested in one or more ELTIFs is not less than EUR 10,000, it prevents the retail investors to get exposure to long-term investment projects and limits their capacity to earn respective risk-adjusted returns from such investments. This threshold constitutes a problem because of a strong dissuasive effect of such a threshold on the willingness of retail investors to commit at least EUR 10,000 as opposed to a potential appetite to commit smaller amounts.

Second, the limitation of 10% aggregate investment amount for those retail investors whose portfolio does not exceed EUR 500,000 represents a significant barrier to fund inflows from retail investors. This threshold is problematic and is judged by the industry participants as subjective and essentially unenforceable as the calculation is based on self-reporting by retail investors and there is no possibility for the asset managers or distributors to determine which other ELTIFs the investors may have invested in. The threshold is also arbitrary, since it imposes an *aggregate* 10% limit on retail investors with portfolios below EUR 500,000 (thus limiting the capacity to invest by less wealthy citizens) and prevents retail investors from increasing their holding in ELTIFs once a 10% portfolio allocation "quota" has been reached. The 10% aggregate investment requirement of the ELTIF Regulation constitutes a tangible barrier to the access of retail investors, especially in combination with the minimum EUR 10,000 investment ticket.

Third, the ELTIF Regulation contains distinct requirements for the assessment of retail investor's knowledge and experience.[111] Current provisions of the ELTIF Regulation essentially require ELTIF managers to assess whether the ELTIF is suitable for marketing to retail investors, and conduct a suitability test assessing the retail investor's knowledge and experience, financial situation and their investment objectives. This ELTIF-specific suitability test is seen as problematic self-standing sectoral and partially duplicative framework that is both inefficient, unknown to the industry and less effective than a more familiar MiFID II suitability test to which asset managers and product distributors commonly adhere.

A majority of stakeholders were either neutral or positive in their assessment of the cost burden of the ELTIF framework.

Question 3: How relevant is the EU intervention?

To what extent are the rules still relevant and how well do the original objectives of the ELTIF Regulation correspond to the current needs within the EU?

The majority of stakeholders indicated their agreement with the perspective that the ELTIF is consistent with the objectives of the CMU. The majority of stakeholders also support further policy action in the areas identified in this evaluation.

The ELTIF can play an important role in directing capital into long-term investments while ensuring adequate protection for investors, in particular retail clients. The Regulation does not require a fundamental re-write but its attractiveness to fund managers and investors could be

[111] Article 28(1) of the ELTIF Regulation sets forth that 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.

improved with a re-calibration of the restrictions on the fund managers and reducing the barriers to entry for retail clients.

For example, with respect to adding additional redemption mechanisms for investors. Long-term assets are typically rather illiquid because they tend to be idiosyncratic, rarely standardised and not traded on secondary markets. The value of such long-term assets often reflects the net present value of discounted cash flows generated by the underlying project which investors anticipate for a given holding period. The underlying illiquidity and poor price transparency is not common in more liquid (financial) assets which tend to be more standardised, frequently traded (for instance, financial instruments are customarily traded on trading venues) and provide readily available, market valuation-driven and transparent valuation of such assets.

The illiquidity of assets incentivises investors to adopt a longer-term investment strategy. Commonly termed 'closed-ended' funds are a commonplace approach for pooling investments into such assets. These funds rarely, if at all, have to buy and sell assets as investors enter or exit the fund, any may even be closed to redemptions for a protracted period of time during which fund managers focus on collectively managing the investments and executing upon the investment strategy. In case of such "closed-ended" funds investors' capital commitments may typically be redeemed only after a normally predetermined number of years or upon other exceptional circumstances set out in advance in the fund documentation. Limited redemption rights during the life of the fund permits the asset manager to invest in long-term assets that are illiquid without the threat of constant redemptions that could undermine the liquidity and the viability of the fund.[112]

This discussion on the liquidity profile of funds is also relevant in the context of the ELTIF review. 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 has, as a result, been intentionally structured in principle so as not to offer regular redemptions before the end of the life of the ELTIF. In this connection, ELTIF Regulation sets for that 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. Furthermore, the ELTIF Regulation sets out that redemptions to investors should (typically) be possible solely at the end of the life of the ELTIF (Article 18(1) of the ELTIF Regulation).

Introducing additional redemption mechanisms into the framework could improve its attractiveness for investors that may be discouraged from committing significant amounts of capital for extended lock-up periods. The ability to redeem prior to the funds maturity could be implemented in a way that protects the interests of the different investors (those redeeming and those remaining in the fund) while limiting the potential cash drag and costs for the fund manager.

[112] On the other hand, units or shares in a closed-ended fund may benefit from a secondary market, meaning that investors may exchange the units of the fund between themselves. This form of trading does not, however, guarantee daily liquidity because when the fund performs badly or during stressed market situations, the secondary market has a tendency to freeze, forcing the investors to remain invested.

Question 4: How coherent is the EU intervention?

To what extent are rules set out in the ELTIF Regulation coherent with other pieces of EU legislation?

The ELTIF Regulation is a product specific framework established under the AIFMD. The objectives of the ELTIF are aligned with those of the CMU.

Question 5: What is the EU-added value of the EU intervention?

To what extent have the relevant rules increased the uptake in the ELTIFs and to what extent does this matter continue to require action at EU level?

Stakeholder feedback to the public consultation identified a number of key issues with the ELTIF framework, in particular overly restrictive rules on portfolio composition and barriers to entry for retail investors.

The purpose of the ELTIF Regulation remains valid in terms of providing retail investors with long term investment products, serving as a channel for capital investment in the real economy and supporting the objectives of the CMU. Based on consultations with industry, the framework could benefit from a recalibration of these restrictions to improve the attractiveness and usability of ELTIFs for fund managers.

6. Conclusions

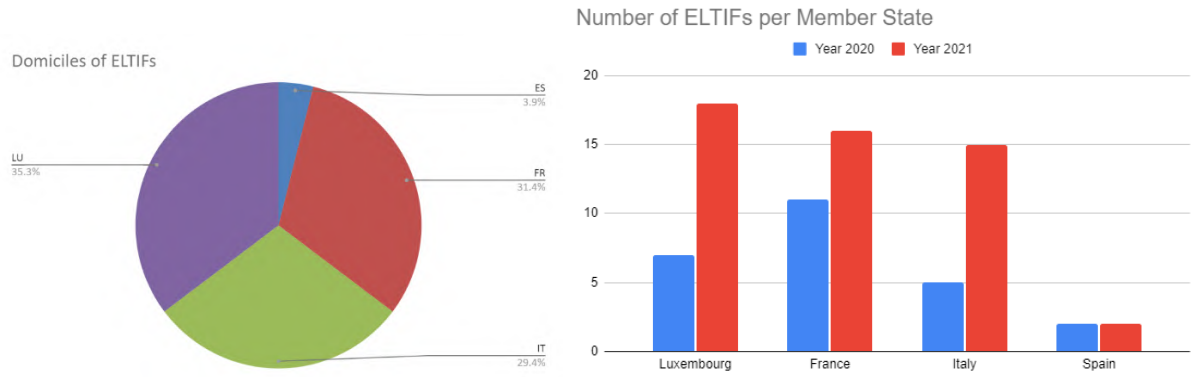
With regard to the effectiveness, the ELTIF framework seeks to establish a single market in ELTIFs. Despite some success, the evaluation indicates that the single market in ELTIFs falls short of realising its full potential in terms of scale-up and net assets and as such, the objectives of the ELTIF framework have not been completely achieved.

The analysis in this evaluation suggests that – among other factors – overly restrictive fund rules, limitations on the scope of eligible assets and investments, regulatory barriers and diverging or difficult to understand national requirements and practices, are among the factors limiting the uptake of ELTIFs.

ANNEX 6: STATISTICAL DATA ON THE ELTIFS

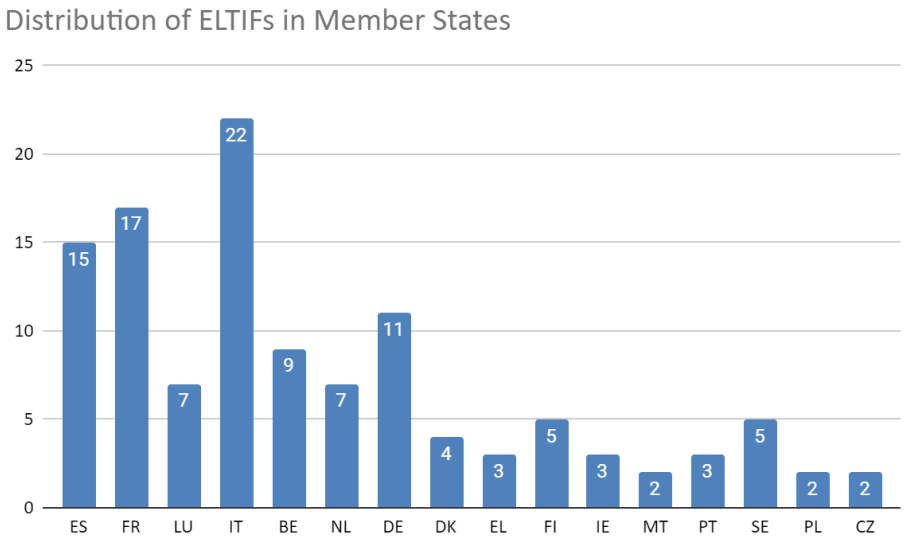
The statistical data on ELTIFs is based on the register of authorised ELTIFs published by ESMA[113]. The ELTIF register has last been updated on 27 April 2021, and may be subject to change.

1. General overview of ELTIFs per jurisdiction



National competent authorities of only four Member States (France, Italy, Luxembourg and Spain) have issued ELTIF authorisations. As presented on the graph above, in 2021 the number of ELTIFs has grown substantially, albeit from a low base, in Luxembourg, Italy and France and has remained the same in Spain.

2. Marketing of ELTIFs

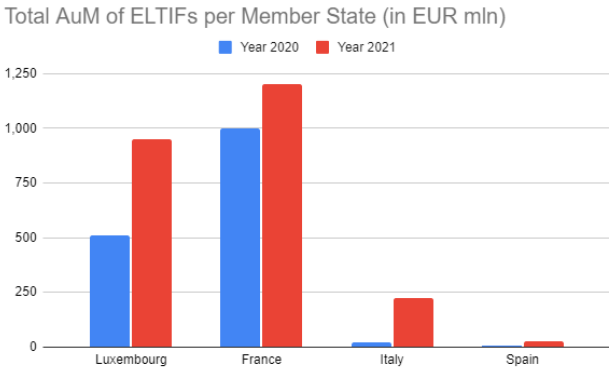


Whilst the majority of ELTIFs are solely marketed in the jurisdiction of its domicile, some ELTIFs may be marketed in several Member States. The above graph demonstrates the aggregate number of ELTIFs marketed across the Union.

113 ESMA register of authorised ELTIFs. ESMA34-46-101. Source: https://www.esma.europa.eu/document/register-authorised-european-long-term-investment-funds-eltifs (29 May 2021). In addition, certain information on the net assets, portfolio composition, etc has been sourced from the 2021 ELTIF Survey conducted by ESMA.

According to the information compiled by ESMA, out of 57 authorised ELTIFs only 39 ELTIFs are actively marketed to investors with the remaining 18 ELTIFs not yet being operational. As on April 2021, a total of 16 ELTIFs are marketed to retail investors and 11 ELTIFs are not marketed to retail investors. Due to limited information on the investor base, no historical comparison *vis-à-vis* 2020 figures is possible.

3. Net assets and portfolio composition



According to the information compiled by ESMA, the total size of the ELTIF segment (assets under management) has grown from slightly above EUR 1.5 billion in 2020 to around EUR 2.4 billion in 2021. Despite the substantial relative growth, when compared to the overall EU AIF size of EUR 6.8 trillion ELTIFs remain a very small niche segment.

As regards the portfolio composition, based on the 2020 ELTIF survey conducted by ESMA, 60% of ELTIFs' capital was invested into loans to qualifying undertakings, 11% into equities and 6% in fixed income. The 2021 ELTIF survey conducted by ESMA provides no visibility into ELTIF portfolio holdings and the historic comparison has therefore proved impossible.

4. List of ELTIFs

The list below is compiled by ESMA and demonstrates the list of authorised ELTIFs as on 29 September 2021.

	NCA	ELTIF manager	Name of the ELTIF	Home Member State	Where ELTIF is marketed	Min. investment amount
1	CNMV	SOLVENTIS, SGIIC, S.A	FONDO DE INNOVACION, FILPE	ES	ES	EUR 100,000
2	CNMV	TALDE GESTIÓN,SGEIC,S.A.	TALDE DEUDA ALTERNATIVE, FILPE	ES	ES	EUR 100,000
3	AMF	MÉRIDIAM SAS	MERIDIAM INFRASTRUCTURE EUROPE III SLP	FR	FR	EUR 20 million
4	AMF	BNP PAM	BNP PARIBAS EUROPEAN SME DEBT FUND	FR	FR, LU, BE	Could not be identified
5	AMF	AMUNDI PRIVATE EQUITY FUNDS	AMUNDI ETI MEGATENDANCES	FR	FR	EUR 3 million
6	AMF	AMUNDI PRIVATE EQUITY FUNDS	CAA ETI MEGATENDENCES	FR	FR	EUR 30 million

7	AMF	MANDARINE GESTION	NOVESS - LE FONDS ESS	FR	FR	EUR 5 million
8	AMF	TURENNE CAPITAL PARTENAIRES SA	FPCI EMERGENCE ETI	FR	FR	EUR 1 million
9	AMF	MIROVA	BTP IMPACT LOCAL	FR	FR	EUR 5 million
10	AMF	TURENNE CAPITAL PARTENAIRES SA	FPCI CAPITAL SANTE 2	FR	FR, LU, BE, NL	EUR 250,000
11	AMF	OCTOBER FACTORY	OCTOBER ITALIAN SME FUND 1	FR	FR, BE, DE, ES, IT, NL	Could not be identified
12	AMF	OCTOBER FACTORY	OCTOBER SME IV	FR	FR, BE, DE, ES, IT, NL	Could not be identified
13	AMF	TIKEHAU INVESTMENT MANAGEMENT	T2 ELTIF ENERGY TRANSITION FUND	FR	FR, ES	EUR 250,000
14	AMF	GENERALI GLOBAL INFRASTRUCTURE	GF INFRASTRUCTURES DURABLES S.L.P.	FR		EUR 1 million
15	AMF	IDINVEST PARTNERS	FCPR IDINVEST ENTREPRENEURS CLUB	FR	ES, LU	EUR 20,000
16	AMF	TIKEHAU INVESTMENT MANAGEMENT	ELTIF TIKEHAU DIRECT LENDING	FR		Umbrella
17	AMF	TIKEHAU INVESTMENT MANAGEMENT	ELTIF TIKEHAU DIRECT LENDING - COMPARTIMENT EPI	FR		4 distinct categories, min. EUR 100,000 for retail investors
18	AMF	TIKEHAU INVESTMENT MANAGEMENT	ELTIF TIKEHAU DIRECT LENDING - COMPARTIMENT DD	FR	DE, BE, ES, LU	5 distinct categories, min. EUR 100,000 for retail investors
19	Consob	AMUNDI SGR S.p.A.	AMUNDI ELTIF ITALIA 2020	IT	Not yet marketed	**
20	Consob	EURIZON CAPITAL SGR S.p.A.	EURIZON ITALIAN FUND - ELTIF	IT	IT	EUR 100,000
21	Consob	The EURIZON CAPITAL SGR S.P.A.	EURIZON PIR ITALIA - ELTIF	IT		EUR 30,000 Euro
22	Consob	ANIMA SGR S.P.A.	ANIMA ELTIF ITALIA 2026	IT	IT	EUR 10,000
23	Consob	PRAMERICA SGR S.P.A.	PRAMERICA ITEЯ ELTIF	IT	IT	EUR 10,000 *
24	Consob	HEDGE INVEST SGR S.P.A.	HI ALGEBRIS ITALIA ELTIF	IT	IT	EUR 30,000 *
25	Consob	CREDEM PRIVATE EQUITY SGR S.P.A.	ELTIFPLUS	IT	IT	EUR 10,000
26	Consob	8A+ INVESTIMENTI SGR S.P.A.	8A+ REAL ITALY - ELTIF	IT	IT	EUR 10,000 *
27	Consob	AMUNDI SGR S.P.A.	AMUNDI ELTIF AGRITALY PIR	IT	IT	EUR 10,000 *
28	Consob	ANTHILIA CAPITAL PARTNERS SGR S.P.A.	ANTHILIA ELTIF ECONOMIA REALE ITALIA	IT	IT	EUR 15.000 *

29	Consob	AZIMUT LIBERA IMPRESA SGR S.P.A.	ALI ELTIF PRIVATE EQUITY	IT		See footnote **
30	Consob	MUZINICH & CO. SGR S.P.A.	FIRSTLIGHT MULTI-STRATEGY ELTIF	IT		See footnote **
31	Consob	EQUITA CAPITAL SGR S.P.A.	EQUITA SMART CAPITAL - ELTIF	IT		EUR 10.000 *
32	CSSF***	AMUNDI LUXEMBOURG S.A.	PI SOLUTIONS - (subfund) AMUNDI ELTIF LEVERAGED LOANS EUROPE	LU	AT, DE, ES, FR, IT	share class A: EUR 10.000; share Class E: EUR 100.000; share class H: EUR 1.000.000; share class I: EUR 5.000.000;
33	CSSF	AZIMUT INVESTMENTS S.A.	AZ ELTIF - (subfund) OPHELIA	LU	IT	EUR 10.000
34	CSSF	BLACKROCK FRANCE S.A.S.	BLACKROCK ALTERNATIVE FUNDS S.C.A., SICAV-RAIF - (subfund) BLACKROCK PRIVATE EQUITY OPPORTUNITIES ELTIF	LU	BE, DE, DK, EL, ES, FI, FR, IE, IT, LU, MT, NL, PT, SE, NO	Class A1 (≥€1,000,000 <€25,000,000), Class A2 (≥€25,000,000 <€50,000,000), Class A3 (≥€50,000,000), Class B1 (≥€1,000,000 <€25,000,000), Class B2 (≥€25,000,000 <€50,000,000), Class B3 (≥€50,000,000), Classes C/D/F and X (≥€125,000)
35	CSSF	MUZINICH & CO. (IRELAND) LIMITED	MUZINICH FIRSTLIGHT MIDDLE MARKET ELTIF SICAV, S.A.	LU	AT, DE, ES, FR, IT	share Class H : EUR 5.000.000; share Class A : EUR 1.000.000; share Class R : EUR 50.000; share Class P: EUR 10.000
36	CSSF	PARTNERS GROUP (LUXEMBOURG) S.A	PARTNERS GROUP DIRECT EQUITY ELTIF S.C.A., SICAV-SIF - (subfund) PARTNERS GROUP DIRECT EQUITY 2016 (EUR) ELTIF	LU	AT, BE, CY, DE, ES, FI, FR, IE, NL, SE	EUR 125.000
37	CSSF	PARTNERS GROUP (LUXEMBOURG) S.A	PARTNERS GROUP PRIVATE MARKETS CREDIT STRATEGIES ELTIF S.C.A., SICAV- (subfund) CREDIT STRATEGIES 2017 (EUR)	LU	AT, DE, DK, ES, FI, IT, SE	share Classes R (EUR), P (EUR) : EUR 20.000; share Classes R (SEK), P (SEK) : SEK 200.000; share Class I (EUR): EUR 1.000.000
38	CSSF	KAIROS PARTNERS SGR SPA	KAIROS ALTERNATIVE INVESTMENT S.A. SICAV - (subfund) RENAISSANCE ELTIF	LU	IT	share Class D : EUR 30.000; share Class P : EUR 50.000; share Class X : EUR 1.000.000
39	CSSF	BLACKROCK FRANCE S.A.S.	BLACKROCK ALTERNATIVE FUNDS S.C.A., SICAV-RAIF - (subfund) BLACKROCK PRIVATE INFRASTRUCTURE OPPORTUNITIES ELTIF	LU	DE, DK, ES, FI, FR, IT, LU, NL, PT, SE, CZ, EL, PL, IE, BE	10 Share classes (A, B, C, D, E, F, G, H, I, J, X) The minimum subscription for an investment in the Compartment is EUR125,000, save that for Class I Shares and Class J Shares, it is EUR250,000, and for Class A Shares, it is EUR1,000,000.
40	CSSF	AZIMUT INVESTMENTS S.A.	AZ ELTIF - (subfund) PENINSULA TACTICAL OPPORTUNITY	LU	IT	EUR 10.000

41	CSSF	AZIMUT INVESTMENTS S.A.	AZ ELTIF - (subfund) CAPITAL SOLUTIONS	LU	IT	EUR 10.000
42	CSSF	COMMERZ REAL FUND MANAGEMENT S.A R.L.	KLIMAVEST ELTIF	LU	DE	EUR 10.000
43	CSSF	PARTNERS GROUP (LUXEMBOURG) S.A	PARTNERS GROUP PRIVATE MARKETS ELTIF SICAV	LU	BE, CY, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LI, MT, NL, PL, NO, PT, SE	share Classes RDR (EUR), P (EUR): EUR 20.000; share Classes RDR (USD), P (USD): USD 20.000; share class I (EUR): EUR 2.000.000; share class I (USD): USD 2.000.000; share class C (EUR): equivalent of USD 250.000.000; share class C (USD): USD 250.000.000;
44	CSSF	OQUENDO CAPITAL SGEIC S.A.	OQUENDO IV ELTIF S.C.A. SICAV-RAIF	LU	ES	Class A Shares are issued to any Shareholder of the Company committing equal or more than EUR 1,000,000; and (b) Class B Shares are reserved to Oquendo Holding. (c) Class C Shares are issued to any Shareholder of the Company committing less than EUR 1,000,000.
45	CSSF	AZIMUT INVESTMENTS S.A.	AZ ELTIF (subfund) ALICROWD	LU	IT	EUR 10.000
46	CSSF	AZIMUT INVESTMENTS S.A.	AZ ELTIF (subfund) DIGITAL LENDING	LU	IT	EUR 10.000
47	CSSF	NEUBERGER BERMAN AIFM S.À R.L.	NB ALTERNATIVE FUNDS SICAV S.A. - (sub-fund) NB DIRECT PRIVATE EQUITY FUND A ELTIF	LU	Not marketed yet	share Classes A EUR, A2 EUR, I EUR, M EUR, M2 EUR: EUR 50.000; share Class I2 EUR: EUR 50.000.000; share Class X EUR: EUR 25.000.000; share Classes M3 EUR, M4 EUR: EUR 25.000; share Classes A USD, A2 USD, I USD, M USD, M2 USD: USD 50.000; share Class I2 USD: USD 50.000.000; share Class X USD: USD 25.000.000; share Classes M3USD, M4 USD: USD 25.000; share Classes A GBP, A2 GBP, I GBP, M GBP, M2 GBP: GBP 50.000; share Class I2 GBP: GBP 50.000.000; share Class X GBP: GBP 25.000.000; share Classes M3 GBP, M4 GBP: GBP 25.000; share Classes A CHF, A2 CHF, I CHF, M CHF, M2 CHF: CHF 50.000; share Class I2 CHF: CHF 50.000.000; share Class X CHF: CHF 25.000.000; share Classes M3 CHF, M4 CHF: CHF 25.000; share Classes A HKD, A2 HKD, I HKD, M HKD, M2 HKD: HKD 50.000; share Class I2 HKD: HKD 50.000.000; share Class X HKD: HKD 25.000.000; share Classes M3 HKD, M4 HKD: HKD 25.000; share Classes A SGD, A2 SGD, I SGD, M SGD, M2 SGD: SGD 50.000; share Class I2 SGD: SGD 50.000.000; share Class X SGD: SGD 25.000.000; share Classes M3 SGD, M4 SGD: SGD 25.000;

48	CSSF	NEUBERGER BERMAN AIFM S.À R.L.	NB ALTERNATIVE FUNDS SICAV S.A. - (sub-fund) NB DIRECT PRIVATE EQUITY FUND B ELTIF	LU	Not marketed yet	share Classes A EUR, I EUR, M EUR: EUR 125.000; share Classes A2 EUR, M2 EUR, X EUR: EUR 50.000.000; share Classes I2 EUR, M3 EUR, EUR 25.000.000; share Class Z EUR: EUR 5.000.000
49	CSSF	AMUNDI ASSET MANAGEMENT SAS	AMUNDI REAL ASSETS FUNDING S.C.A., SICAV-RAIF - (subfund) AMUNDI SENIOR IMPACT DEBT IV (ELTIF)	LU	AT, BE, DE, DK, ES, FI, FR, IT, LU, NL, NO, SE	Targeted investors: institutional and professional investors only D1 = 1.000.0000 EUR D2 = 50.000.000 EUR
50	CSSF	ADEPA ASSET MANAGEMENT S.A.	THOMASLLOYD SICAV - (SUBFUND) SUSTAINABLE INFRASTRUCTURE GROWTH FUND	LU	Not yet marketed	Class R = retail investors = min EUR 10,000 Class SP = all investors = min EUR 200,000 Class I = professional investors = no minimum
51	CSSF	FONDACO LUX S.A.	THE BLOSSOM ELTIF - (subfund) THE BLOSSOM ELTIF II	LU	Not yet marketed	The Sub-Fund will not be marketed to retail investors Class A = professional investors= 125.000 EUR (waiver foreseen) Class B = well-informed investors who are also professional investors within the meaning of Annex II of the MIFID II = min commitments EUR 500.000 (waiver foreseen) Class C = management company, the investment advisor, the investment manager, their affiliates = no minimum commitment
52	CSSF	MUZINICH & CO. (IRELAND) LIMITED	MUZINICH TARGET LOANS 2025 ELTIF SICAV, S.A.	LU	IT	H shares = institutional investors = min 5.000.000 EUR A shares = 1.000.000 EUR R shares = 10.000 EUR
53	CSSF	AZIMUT INVESTMENTS S.A. (former AZ FUND MANAGEMENT S.A.)	AZ ELTIF - (subfund) PRIVATE EQUITY HIGHPOST	LU	Not yet marketed	Classes A, B C = 10.000 EUR min Class D = carried interest vehicles
54	CSSF	PICTET ALTERNATIVE ADVISORS (EUROPE) S.A.	PICTET REAL ESTATE CAPITAL ELEVATION CORE PLUS ELTIF SICAV - (subfund) PD	LU	Not yet marketed	Class R = 20.000 EUR min commitment Class I = 1.000.000 EUR min commitment
55	CSSF	PICTET ALTERNATIVE ADVISORS (EUROPE) S.A.	PICTET REAL ESTATE CAPITAL ELEVATION CORE PLUS ELTIF SICAV - (subfund) CK	LU	Not yet marketed	Class I = 1.000.000 EUR min commitment Class L = professional investors/non-EU resident eligible investors = 10.000.000 EUR min commitment Class J = professional investors/non-EU resident eligible investors = 25.000.000 EUR min commitment Class R = 20.000 EUR min commitment Class Z = institutional investors = no minimum Class S = specific employees of the manager or investment advisor who qualify as eligible investors = no minimum Eligible investors shall fulfil the eligibility criteria of the ELTIF Regulation.

56	CSSF	PICTET ALTERNATIVE ADVISORS (EUROPE) S.A.	PICTET REAL ESTATE CAPITAL ELEVATION CORE PLUS ELTIF SICAV - (subfund) CD	LU	Not yet marketed	Class I = 1.000.000 EUR min commitment Class L = professional investors/non-EU resident eligible investors = 10.000.000 EUR min commitment Class J = professional investors/non-EU resident eligible investors = 25.000.000 EUR min commitment Class R = 20.000 EUR min commitment Class Z = institutional investors = no minimum Class S = specific employees of the manager or investment advisor who qualify as eligible investors = no minimum Eligible investors shall fulfil the eligibility criteria of the ELTIF Regulation.
57	CSSF	PICTET ALTERNATIVE ADVISORS (EUROPE) S.A.	PICTET REAL ESTATE CAPITAL ELEVATION CORE PLUS ELTIF SICAV - (SUBFUND) PK	LU	Not yet marketed	Class R = 20.000 EUR min commitment Class I = 1.000.000 EUR min commitment

The information on applicable minimum investment amounts was partially provided by respective NCAs. In certain instances i) ELTIF managers have discretion to accept initial amounts that are lower than those set out in the marketing documents. In addition, the following observations apply:

** The fund includes more than one share class and, for that fund, we have reported in the table the lowest entry ticket.*

*** The ELTIF has been authorized but it has not marketed yet.*

**** Currently, Luxembourg-based ELTIFs are set up either as: SIFs (specialised investment funds), RAIFs (reserved alternative investment funds) or UCI II (Non-UCITS). UCI II can be marketed to all types of investors. The UCI law does not impose a specific entry ticket. Consequently, for ELTIFs set up under the form of a UCI II, the minimum entry ticket of EUR 10,000 set in the current ELTIF regulation applies but UCIs II are not prevented from imposing higher entry tickets. SIFs and RAIFs can only be marketed to well-informed investors, in which case a minimum of EUR 125,000 investment requirement applies.*

ANNEX 7: ANALYSIS OF FUND RULES NOT COVERED BY THE IMPACT ASSESSMENT

1. Scope of eligible investment assets, investments and qualifying portfolio undertaking

There is a broad consensus among stakeholders that the ELTIF rules pertaining to eligible assets and investments are not sufficiently flexible. Many stakeholders have been advocating for broadening the scope of eligible investment assets and investments in a manner that is both suitable for the optimal execution of investment strategies by ELTIF managers, as well as consistent with the underlying objectives of long-term sustainable growth. Most stakeholders have advocated for more legal certainty and flexibility around the facilitation of the funds-of-funds strategies, indirect investment strategies, criteria for investments in third-country undertakings, inclusion of "financial undertakings" and the calibration of certain numeric thresholds set out in the ELTIF regime.

Each asset category has been considering through the prism of the merits and drawbacks and assessing whether and to what extend the broadening of eligible assets category serves the interest of improving the attractiveness of the ELTIF framework. The issues related to the eligibility of assets and investments have been analysed in conjunction with other ELTIF rules, such as diversification and concentration limits, leverage, etc.

The following table contains an outline of issues to be addressed in the area of the eligibility of assets and investments (this list is not exhaustive and is not in the order of policy priorities):

Current ELTIF framework	Amendments to the ELTIF framework
Definitions of "real assets", "long-term", "capital", "social benefit", "debt", "sustainable", "energy, regional and cohesion policies" and "speculative investments", etc.	It is proposed to clarify the definitions of "real assets", "long-term", "capital", "social benefit", "debt", "sustainable", "energy, regional and cohesion policies" and "speculative investments" and other related notions. Where and to the extent sustainability metrics are used, they would be introduced by reference to Regulation (EU) 2020/852 (Taxonomy Regulation), including defining sustainability as per criteria set out in the respective Taxonomy Regulation delegated acts.
Restrictions on fund-of-funds strategies, whereby only ELTIFs, EuVECAs and EuSEFs are eligible	The vast majority of stakeholders advocated for the promotion of fund-of-funds investment strategies and allowing ELTIFs to invest beyond solely other ELTIFs, EuVECAs or EuSEFs in other funds. It is proposed to widen the scope of eligible fund-of-fund strategies and invest beyond ELTIFs, EuVECAs and EuSEFs provided that and in so far as a) these funds invest in the same or similar asset universe as compared to ELTIFs and b) similar investment restrictions as in the case of ELTIFs are applied in terms of target eligible assets, diversification requirements, leverage limits, etc. This, among others, would ensure the underlying funds have the same risk profile as ELTIFs and not expose ELTIF investors to undue risks. This amendment would also extend the investment base and offer an exposure to a wide variety of assets (Article 10 of the ELTIF Regulation). Respective safeguards will be introduced to prevent the lack of transparency and an excessive layering of fees.
Threshold that requires that eligible investment assets should include real assets with a value of more than EUR 10 million	It is proposed to reduce the amount of EUR 10 million in relation to the investment in direct or indirect holdings. This would extend the scope of eligible investments to real assets with a lower value, and this would allow to take into account the different sizes of national markets across Europe.
The maximum threshold of EUR	It is proposed to raise the current EUR 500 million market

500 million for the market capitalisation of listed qualifying portfolio undertakings	capitalisation threshold for listed issuers to EUR 1 billion. According to ESMA, an average market capitalisation of companies included in the MSCI Small Cap index is USD 1.2 billion. In addition, it is important to note that the market capitalisation threshold would be applicable solely at the time of the original investment without the requirement to subsequently divest in case the market capitalisation changes as a result of price volatility or other circumstances.
Requirement that the qualifying portfolio undertaking is a majority-owned subsidiary	It is proposed to ease the requirement of "majority owned subsidiary" (Article 10(a)(iii)6) of the ELTIF Regulation by allowing minority co-investments in investment opportunities.
Indirect investment strategies and the notions of "direct" investments	It is proposed to clarifying the legal notions around the eligible "indirect" investments. By "indirect" investments, it is meant situations in which the ELTIF invests indirectly (via another entity as e.g. SPVs, securitisation vehicles, aggregator vehicles, holding vehicles) into the relevant eligible target assets, which are essential for the facilitation of indirect investment strategies.
The possibility to invest in a securitisation under the ELTIF framework is unclear.	It is proposed to enable the investments in the so-called "eligible securitisations", which to date has remained either questionable or impossible due to the lack of clarity around the possibility to invest in securitised assets. It is intended to introduce a specific set of provisions that would allow to include the so-called "eligible securitisations" within the scope of eligible assets and investments.
There is a lack of clarity in the ELTIF regime around the treatment of investments in third-country undertakings.	It is proposed to provide further qualitative guidance pertaining to the treatment of investments in third-country undertakings. Notably, the extent to which investments in third countries (for all types of assets eligible under the ELTIF Regulation) are allowed will be further clarified. In addition, investments in eligible third country undertakings would further broaden the scope of eligible assets and investments base, allow for new "thematic" investment strategies and generally contribute to investment possibilities and risk-adjusted returns of European investors, and have positive externalities on eligible third-country undertakings and long-term project owners. Investment in third-country undertakings would need conform to the existing eligibility conditions of the ELTIF Regulation.

2. Assessment of portfolio composition, diversification and concentration limit requirements

Based on the analysis of relevant provisions of the ELTIF regime and the feedback of the respondents, ELTIFs' portfolio composition rules would need to be streamlined. Adjusting the diversification requirements and concentration limits would provide additional flexibility for ELTIF managers, while providing appropriate level of diversification in line with the risk-profile pursued investment strategies and the investor base.

The limits of risk spreading in line with portfolio composition and diversification related thresholds set out in the ELTIF Regulation implies that an ELTIF would make, as a minimum, a total of 10 separate investments. This requirement to make a minimum of 10 investments per ELTIF may prove difficult, costly and ultimately impractical to achieve due to the costs and hurdles to identify, analyse and select 10 distinct projects, which may translate into additional costs and complexity for the execution of the ELTIF investment strategy.[114]

[114] As an illustration, the requirement of the ELTIF Regulation that ELTIFs shall invest no more than 10% of the capital in securities issued by, or loans granted to, any single qualifying portfolio undertaking, and no more than 10% in a single real asset, and no more than 10% in any single ELTIF, EuVECA or EuSEF has been deemed to have an effect of forcing ELTIF managers to be diversified to the detriment of the asset managers and ELTIFs, and ultimately to the detriment of all investors in ELTIFs. In addition, a 25% concentration limits on fund-of-funds

It is hence appropriate to revisit the portfolio composition, diversification and concentration rules for those ELTIFs that can be marketed to retail investors and those marketed solely to professional investors. Stakeholders' feedback suggests a need for more flexibility in terms of portfolio composition and diversification rules (whereas those ELTIFs marketed solely to professional investors would arguably require even less stringent diversification requirements). As a result, the key policy choices pertaining to the portfolio composition, diversification rules and concentration rules could be summarised as follows:

Current ELTIF framework	Amendments to the ELTIF framework
Requirement to invest at least 70% of capital in eligible assets	For those ELTIFs that are marketed solely to professional investors, it is proposed to reduce the threshold to 60% of capital to be invested in eligible assets. For ELTIFs that can be marketed to retail investors, this requirement would also be lowered to 60%
Prohibition to invest more than 10% of capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 10% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be re-calibrated to 20% of the ELTIF capital.
Prohibition to invest more than 10% of its capital directly or indirectly in a single real asset	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 10% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be re-calibrated to 20% of the ELTIF capital
Prohibition to invest more than 10% of its capital in units or shares of any single ELTIF, EuVECA or EuSEF	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 10% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be calibrated to 20% of the ELTIF capital
Prohibition to invest more than 5% of its capital in eligible assets where those assets have been issued by any single body	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 5% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be re-calibrated to 10% of the ELTIF capital
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	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 20% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be re-calibrated to 40% of the capital of the ELTIF
The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC transactions, repos, or reverse repo shall not exceed 5% of the capital	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 5% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be re-calibrated to 10% of the capital of the ELTIF.
An ELTIF may acquire no more than 25 % of the units or shares of a single ELTIF, EuVECA, or EuSEF	For those ELTIFs that are marketed solely to professional investors, it is proposed to remove the 25% limitation. For ELTIFs that can be marketed to retail investors, the threshold would be increased to 40% of the capital. Importantly, the scope broadened to include investments in EU AIFs managed by EU AIFMs in so far as the funds in question have a similar risk, asset base, leverage and liquidity profile to that of ELTIFs.
The concentration limits laid down in the UCITS Directive (10% exposure to a single issuer and 25% limit exposure to a UCITS) shall apply to investments in the ELTIF eligible	For those ELTIFs that are marketed solely to professional investors and for ELTIFs that can be marketed to retail investors, it is proposed to align the exposure limits to ensure the coherence with the proposed portfolio composition and diversification rules.

strategies and UCITS-like weighing restrictions for ELTIF eligible assets are deemed to reduce the attractiveness of ELTIFs, while driving up costs ultimately borne by all investors.

investments	

The diversification of assets and portfolio composition rules, and concentration requirements, should always be analysed in conjunction with leverage and redemption requirements. The calibration of such fund rules would require further examination and feedback of stakeholders, including NCAs, ESMA, asset managers, investors and other market participants.

3. Redemptions-related provisions

3.1. Effect of fund redemptions on redeeming and remaining investors

The fact that ELTIFs redemptions structure resembles that of closed-end funds which, except in very limited circumstances, only allow redemptions at the end of the life of the fund *does not in itself constitute a significant problem*. This fundamental limitation on redemptions is both justified by the illiquid nature of the assets which an ELTIF is invested in and by the poor visibility into the fair value of the investments on a continuous basis (normally the fair value can only be determined at the time of the disinvestment).[115]

ELTIF managers are given discretion pertaining to the availability and the extent of redemption rights, according to the ELTIF's investment strategy. When a redemption rights regime is in place, those rights and their main features are clearly predefined and explicitly disclosed in the rules or instruments of incorporation of the ELTIF.

There is a negative sentiment around the lock-up for a relatively long period of time, which may dis-incentivise investments in ELTIFs given concerns that the possibility to exit from the ELTIF before the end of the life of the fund are very limited or rare. That is because, under the ELTIF Regulation redemption opportunities remain an exception and are only possible under narrowly construed exceptional circumstances (see Article 18(2) of the ELTIF Regulation).

Specifically, some (predominantly retail) investors may be unwilling to commit capital to ELTIFs (or for that matter, investments with a long-term duration) without a possibility to redeem one's investments within a short or medium-term or an exit from the ELTIF before the end of the life of the fund in order to meet certain financial objectives.

The ELTIF Regulation also contains a provision pertaining to secondary market trading.[116] The purpose of this provision is to ensure that the life cycle lock-up and the lack of redemption rights before the end of its life, do not prevent an ELTIF from seeking admission of its units or shares to a regulated market or to a multilateral trading facility, and provides investors with an opportunity to sell their units or shares before the end of the life of the ELTIF on the secondary market.[117]

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[115] ESMA supports this approach in its technical advice. *See* ESMA response to the European Commission dated 3 February 2021 on the functioning of the ELTIF regime. ESMA34-46-99, page 7. Source: https://www.esma.europa.eu/press-news/esma-news/esma-provides-input-commission-improvements-eltif (27 April 2021).

[116] Article 19(1) and (2) set out that "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". In addition, such "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".

[117] This is intended to promote secondary markets as an important venue for retail investors for the buying and selling units or shares of ELTIFs. In practice, such secondary trading provisions are largely unused as none of the

Ultimately, the manager of the ELTIF could be given the discretion to decide whether to establish ELTIFs with or without redemption rights, according to the ELTIF's pre-defined investment strategy.[118] The redemptions regime, as well as the rights and obligations of the redeeming investors and the main features and requirements of redemptions should be clearly defined and disclosed in the rules or instruments of incorporation of the ELTIF. Typically, such requirements are also disclosed in the prospectus.

3.2. Optional redemptions mechanism

There may be a risk that investors are misinformed about the lack of redemption rights when investing in a fund, or where secondary markets made available for selling investments turn out to be themselves illiquid, for instance where there is a run on a fund and there are many more sellers than buyers in the secondary market leading to spreads in the secondary market widening significantly. There may also be a risk that distributors sell investments on the basis that the distributor themselves will provide liquidity (at a price) for those wishing to redeem their holdings, yet the scale of redemption requests leaves the distributor unable to support the requests. Another problem can be that the maturity of funds might be extended in an unanticipated way and investors cannot exit the fund.

Open-ended funds, which offer regular redemption possibilities and which normally do not have a finite life, can also be used in some cases for investing in long-term assets. These funds tend to be popular in the property market. There is a risk that the liquidity of the assets would be too low to support the redemption rights offered to investors on a regular basis. Since the secondary market for the assets is not guaranteed and may freeze, the fund might be confronted with situations where it needs to suspend redemptions for an indeterminate period of time. Investors would then be forced to remain invested even where they formed the appropriate expectation – given the fund is open-ended - that they would be able to redeem.

In terms of redemptions, ELTIFs are essentially closed-end funds, except for very limited exceptions. This fundamental rule of the lock-up during the life of a fund is justified by the illiquid nature of the ELTIF underlying assets. The close-end nature of ELTIFs has provoked criticism. Notably, a large number of stakeholders have advocated for a more readily redeemable ELTIF structure that would provide for regular (say, bi-annual or quarterly) redemptions or even a so-called "evergreen" redemption structure that would make ELTIFs redeemable at any time. Essentially, these stakeholders are advocating for the possibility to exit from the ELTIF before the end of the life of the fund in order to address the concern that retail investors may wish to redeem before the maturity of the fund.

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existing ELTIFs has ever been publicly listed. Based on feedback of the industry participants, whilst the public listing on a trading venue remains a theoretical possibility, the costs of listing, admission to trading and compliance requirements are often prohibitively expensive, especially given a moderate size of the majority of authorised ELTIFs. This reduces the effectiveness of secondary trading as a means of providing for early redemption and necessitates examining other options.

[118] It could be appropriate to envisage that such a fund could opt in for this liquidity set-up once its respective supervisor has been provided evidence that the fund's management strategy, assets type, liquidity management tools, result of conservative stress tests and other circumstances provide convincing evidence that such early redemption rights in re-defined circumstances do not result in adverse consequences or risks for the fund, AIFM or investors.

Calls by some industry participants for regular redemptions fails to take account of the balance of interests between those investors that wish to redeem and those that are maintaining their investment in the fund. Readily available redemptions come, as explained below, at a high cost and are often to the detriment of exiting investors, asset managers and even remaining non-redeeming investors. The practical impossibility to redeem has been actually praised by some asset managers that were consulted as part of the review as it allows ELTIFs' ability to withstand increased market volatility and cycles while allowing sufficient time for the manager to execute their investment strategy.

Stakeholders feedback, and policy work, as well as specific inputs by some national regulators have allowed to explore the development of a secondary market for ELTIFs and the consideration of the regulatory merits of a "liquidity window" mechanism to allow potential investors to express an open interest that can be submitted after at least one year of the operation of the fund and with a one month advance notice to subscribe for the units of an ELTIF. Such open interest and possible subscription would *only be permitted in so far as and to the extent* of a matching corresponding interest in redeeming the existing investors' units in an ELTIF.

The revised ELTIF regime would provide for more details for the mechanism and process of matching subscription requests with the transfer requests by exiting (redeeming) investors, execution price, disclosure requirements, possible pro-ration conditions, time period during which the liquidity windows be available and the handling of pay-outs. In terms of subscriptions, there will be an option to open the fund for subscriptions and redemptions periodically, when the NAV is published, subject to a notice period. These subscription requests will fund requests from exiting investors and, if the total amount of new subscriptions is insufficient to meet or exceeds the volume of redemption requests, the matching mechanism would adjust respective amounts on a *pro-rata* basis. Any such transfers would not come at the cost of the remaining investors of the fund (i.e. where an asset manager would have to liquidate assets or tap into the cash and cash equivalents on the balance sheet, or borrow cash at expense of the remaining investors), but only to the extent of the funds raised from the new subscribing investors.

The mechanics of the matching of subscription and exit requests, the timing window, disclosure requirements and the mechanics of the pro-ration, as well as the valuation methods would need to be streamlined, in consultations with ESMA, with a view to their practical implementation. In terms of valuation, the quarterly NAV publication would be a good valuation proxy but can ultimately diverge from the underlying intrinsic NAV at the time of redemptions.[119]

The advantage of this approach is that it would allow redeeming investors to fully or partially exit from an ELTIF, albeit with no guarantee of doing so, while protecting the interests of the remaining investors.

4. Other ELTIF fund rules

[119] Since the liquidity window mechanism would be designed as a purely optional arrangement at the inception of an ELTIF and solely at the discretion of the asset manager, it would likely be introduced only in so far as such a redemption is overall deemed beneficial by the asset manager, say, via an increased inflows of funds or higher quality of investee companies/assets/project owners attracted by a higher liquidity profile of such an ELTIF. As a result, such benefits would be deemed to outweigh additional costs and administrative burdens associated with the offering of and servicing such a redemptions mechanism.

The ELTIF review has identified the following aspects that will require amendments, streamlining and re-calibration:

Current ELTIF framework	Amendments to the ELTIF framework
Authorisation process: Article 5(2) of the ELTIF Regulation requires that the competent authority of the ELTIF shall give an approval to the EU authorised AIFM who intends to manage the ELTIF.	According to ESMA's technical advice, the extent to which this additional authorisation, that supplements the authorisation granted under the AIFMD, is needed and useful may be unclear and may create confusion as regards the responsibilities of the two different competent authorities involved. It is therefore proposed to streamline these requirements.
Conflicts of interest: Article 12 of ELTIF Regulation foresees that 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 EuVECAs that it manages.	The application of certain conflicts of interest related provision of the ELTIF Regulation raises doubts concerning the conditions under which ELTIF managers, and their affiliated entities (for instance, asset managers that belong to the same group with the ELTIF manager), and their staff may invest in ELTIFs. Such a practice is a commonplace in many situations, where the co-investment is a standard requirement and is an integral part of the asset management mandate. It is hence proposed to clarify the requirements by aligning them to those set out in the EuVECA and EuSEF regimes which are based on the principle of identifying and avoiding conflicts of interests. Currently, the prohibition laid down in Article 12 of the ELTIF Regulation are overly restrictive and require better alignment with Recitals of the ELTIF Regulation and Article 14 of the AIFMD (e.g. if the requirements of Article 12 imply that an ELTIF and an AIF managed by the same EU AIFM cannot co-invest alongside with similar terms and conditions in the same assets, this would in particular prevent an investment in the same assets from being a tool aiming at aligning interest between the manager and its funds). Therefore, it is proposed to clarify the treatment of such co-investment strategies, both at a level of the fund and to enable certain cases where portfolio managers, entities that belong to the same group with the ELTIF manager and their staff (normally portfolio managers and senior staff) can co-invest in a fund and/or in the same asset in which ELTIFs invest by virtue of their investment mandate.
Disposal of ELTIF assets: Article 21(1) of the ELTIF Regulation indicates that the ELTIF shall disclose to the competent authority the 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.	This rule has been cited as burdensome for the ELTIF manager and might not always be fully useful or informative for the competent authority. It is therefore proposed to clarify that this disclosure is required once requested by the competent authority to obtain the schedule for the orderly disposal of the assets and to ensure an adequate execution of the supervisory activities by national competent authorities.
Local physical presence: Article 26 of the ELTIF Regulation indicates that ELTIF managers are required to set up local facilities in each Member State where they intend to market ELTIFs.	This requirement has been recently removed by Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertaking (regarding UCITS and AIFs marketed to retail investors) as it was deemed to create additional costs and the preferred method of contact has shifted to direct interaction between investors and fund managers (electronically or by telephone). It is proposed to remove this obligation from the ELTIF Regulation for all ELTIF investors so as to increase the attractiveness of ELTIFs.
Withdrawal period: ELTIF regime allows a two-weeks period for retail investors to pull out their investments	Investments in non-listed companies are difficult to reverse and the costs to disinvest could be high for retail investors and detrimental for remaining ELTIF investors. Once the commitment period has lapsed, it should no longer be possible for retail investors to withdraw their investments. It is therefore proposed to clarify that the two-weeks withdrawal period is maintained but solely until the fund is closed to subscriptions.

Leverage restrictions: current borrowing of cash restrictions are 30%	Leverage is a key element of long-term projects financing. For ELTIFs to be a credible source of funding for these projects, it is important to re-calibrate leverage limitations in light of the reduced stability risks stemming from these funds: they are closed-end AIFs with strong diversification rules. According to prevailing market practices, real estate AIFs leverage ranges usually between 100 to 200%; in addition, there is a growing importance of providing profitable products for both professional investors and retail investors. Furthermore, under the AIFMD regulatory framework, NCAs supervise leverage and may impose additional limits as part of their ongoing monitoring. Finally, it is necessary to ensure a consistent approach among AIFs (ELTIFs are AIFs with very restricted leverage, which is not consistent with the AIFMD approach). Furthermore, according to ESMA "If it is considered relevant to create a specific type of ELTIFs for professional investors only, these ELTIFs could benefit e.g. from a higher level of leverage…." These views were also shared broadly by some industry participants. Against this background, leverage restrictions will be eased. ELTIFs that are structured only for professional investors will benefit from substantial flexibility. These changes have also been strongly advocated by the asset management industry and specifically by the High-Level Forum on the CMU in its recommendations. Importantly, as per the existing AIFMD requirements, potential risks arising from the use of leverage should be addressed by managing leverage appropriately with respect to the investment and any potential maturity or currency mismatches in the portfolio. It would be, as per the AIFMD, the requirement of the asset manager to take into consideration the potential risks that high leverage could pose, including to financial stability, as per the applicable AIFMD provisions. Further, ELTIFs which can be marketed to retail investors will also be eligible to have a higher level of leverage than the current 30% of the capital of ELTIFs in the light of the market practice and reduced stability risks (ELTIFs are closed-ended long-term funds), as well as the need to provide for a better risk-adjusted performance possibility and ensuring equal opportunities of retail investors compared to professional investors. The current leverage of 30% effectively excludes retail ELTIFs from investment opportunities. Without the change, there will be a gap between retail and non-retail AIFs performances. This would reduce the chance of creating a sizeable European market to finance long-term projects. The range of the leverage increase will ultimately be calibrated based on the input by ESMA.
Borrowing of cash hedging limitation: only euros or the base currency are an eligible currency	The condition that presently allows borrowing only in the same currency as the assets which will be acquired with the borrowed cash is not the most efficient approach, as an ELTIF could borrow at more convenient rates in currencies that are not the base currency of the asset, provided that foreign currency exposures are adequately hedged. It is therefore proposed to delete the borrowing in the base currency requirement provided that respective hedging techniques are put in place or where it could be demonstrated that borrowing in another currency does not give rise to undue risks.
Master-feeder structure: Currently, the ELTIF regime contains no provisions authorising master-feeder structure	The ELTIF regime will enable the master-feeder structure based on an ELTIF feeder, below an AIF master type. This structure will grant a broader flexibility to ELTIFs and would allow to set up an infrastructure fund in one Member State, marketed mainly to one category of institutional investors, with a feeder fund in another Member State. The feeder fund would be used to attract international investors that are keener to invest in a feeder fund, allowing for more flexibility. Safeguards will be introduced to ensure due protection of investors.

ELTIF Register: Currently the constitution of the ELTIF register by ESMA is based on self-reporting by the NCAs which has exposed a number of transparency problems and inefficiencies	ELTIF Regulation's provisions regarding the ELTIF register will mandate that updates to the register are carried out with higher frequency, transparency and more granularity. This will ensure more transparency and higher visibility of the ELTIF regime.