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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

(Text with EEA relevance)

{SEC(2021) 571 final} - {SWD(2021) 342 final} - {SWD(2021) 343 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (the ‘ELTIF Regulation’) is a European framework for alternative investment funds (AIFs) that invest in long-term investments, such as social and transport infrastructure projects, real estate and SMEs. The ELTIF Regulation establishes uniform rules on the authorisation, investment policies and operating conditions and marketing of ELTIFs.

The ELTIF regulatory framework 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 Union’s economy along the path of smart, sustainable and inclusive growth.

Since the publication of the first Capital Markets Union (CMU) action plan in 2015, a number of actions have been taken to develop more long-term sources of funding in the EU¹. However, 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 the uptake of ELTIFs across the EU for the benefit of the European economy and investors. This, in turn, would support the continued development of the Capital Markets Union (CMU), which also aims to facilitate EU companies’ access to more stable, sustainable and diverse long-term financing.

Europe needs to promote more smart, sustainable and inclusive growth that creates jobs and enhance its global competitiveness. This priority was further supported by the Commission’s Mid-Term Review of the CMU action plan², which determined that the EU has been suffering from a chronic lack of long-term financing for SMEs when compared to other major economies. Furthermore, the Commission’s revised CMU action plan³ explicitly recognised the need to further support investment vehicles that channel financing to long-term investment projects⁴. In the action plan, the Commission committed to review the legislative framework for ELTIFs⁵.

¹ 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 connection with this, 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.

² 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).

³ 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).

⁴ The action plan looks at how 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.

⁵ *Ibid*, page 8 (Action 3).

This action to develop ELTIFs is also consistent with the ambition set out in the European Green Deal and more specifically in the sustainable finance strategy⁶, to address sustainability goals and climate neutrality objectives through the contribution of all economic stakeholders, particularly those having a role in the long-term financing strategies. This initiative is also an opportunity to ensure that ELTIFs' investment strategies and reporting activities are aligned with the EU's climate and environmental goals⁷.

Since the adoption of the original ELTIF legal framework in April 2015, only 57 ELTIFs (as of October 2021) 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). Such authorised ELTIFs are domiciled in only four Member States (Luxembourg, France, Italy and Spain), and the other Member States had no domestic ELTIFs.

While the ELTIF is still a relatively new framework, the available market data indicates that the market's development has not scaled up as expected, particularly given the Commission's objective of promoting long-term finance in the Union.

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 a certain eligible investment category) demonstrate the concentrated nature of the market both geographically and in terms of investment type.

Compared to alternative investment funds (AIF), the ELTIF framework has certain advantages. First, it is a fully harmonised European label for financial products, which allows for an EU-wide, passport-based distribution to both professional and retail investors. In comparison, AIFs under Directive 2011/61/EU on Alternative Investment Fund Managers (the AIFMD) can only be marketed to professional investors, while the marketing of AIFs to retail investors is subject to national rules. The ELTIF rules can also provide the capacity, in some instances, to withstand market volatility due to their closed-ended nature and long-term orientation, and in certain cases may imply preferential national tax treatments for ELTIF investors depending on the applicable national tax laws. 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.

Based on the evaluation of the functioning of the ELTIF legal framework and stakeholder feedback, 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 legal framework for managers and investors. 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.

⁶ European Commission communication on a Strategy for financing the transition to a sustainable economy. COM(2021) 390 final.

⁷ As per EU rules on the taxonomy of sustainable activities (Regulation 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation 2019/2088, OJ L 198, 22.6.2020), and the EU's disclosure framework for non-financial and financial companies (Proposal for a Directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards sustainable corporate reporting by certain undertakings, COM (2021) 189 final, 21.4.2021; Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9.12.2019, p. 1.

In this connection, the review of the ELTIF regulatory framework seeks to accelerate the acceptance and improve the attractiveness of ELTIFs as a ‘go to’ fund structure for long-term investments. To make this framework more appealing, the forthcoming proposal will make targeted changes in the fund rules. This especially means broadening the scope of eligible assets and investments, allowing more flexible fund rules that include the facilitation of fund-of-fund strategies, and reducing the unjustified barriers preventing retail investors from accessing ELTIFs, in particular the EUR 10 000 initial investment requirement and the maximum 10 % aggregate threshold requirement for those retail investors whose financial portfolios are below EUR 500 000.

Furthermore, the proposal aims to make the ELTIF structure more attractive by easing selected fund rules for ELTIFs distributed solely to professional investors. The review of the ELTIF legal framework also introduces an optional liquidity window mechanism to provide extra liquidity to ELTIF investors and newly subscribing investors without requiring a drawdown from the capital of ELTIFs. The proposal also seeks to ensure appropriate investor protection safeguards are in place.

- **Consistency with existing policy provisions in the policy area**

The Commission’s revised CMU action plan explicitly recognised the need to support investment vehicles that channel financing to long-term investment projects. In the action plan, the Commission committed to review the legal framework for ELTIFs.

The ELTIF legal framework is also closely linked to 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 in and governed by 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. Both proposals have been adopted on the same date.

- **Consistency with other Union policies**

The review of the ELTIF framework has strong links with the CMU, the European Green Deal, the European Energy Union, the Digital Single Market and other Union policy initiatives.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

In pursuit of the objective of internal market integrity, the proposed legislative measure will create a regulatory framework for ELTIFs to ensure that such funds are subject to consistent rules across the EU and that they are identifiable as such by investors throughout the EU. The target of the proposed Regulation is to create a robust, yet flexible, set of rules that specifically correspond to the long-term nature of the investments in question. The proposed

rules should also ensure a level playing field between different long-term investment fund managers. This legislative proposal, therefore, harmonises the operating conditions for all relevant players in the investment fund market, for the benefit of all investors and for the smooth functioning of the single market in financial services.

The legal basis for the review of Regulation (EU) 2015/760 is laid down in Article 37. It stipulates that once the review referred to in Article 37(1) evaluating the functioning of the ELTIF regulatory framework has been completed and after ESMA has been consulted, the Commission is required to submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of ELTIFs to the completion of the Capital Markets Union and to the achievement of the objectives set out in the ELTIF Regulation. The report is to be accompanied, where appropriate, by a legislative proposal.

- **Subsidiarity**

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, while taking full account of the safety and reliability of ELTIFs for ELTIF managers, investors and various stakeholders, cannot be sufficiently achieved by the Member States acting alone.

As a result, the objectives of the ELTIF Regulation can be better achieved at Union level due to their scale and effects. The Union has the right to adopt measures in accordance with the principle of subsidiarity. In accordance with the principle of proportionality in Article 5 of the Treaty on European Union, the ELTIF Regulation does not go beyond what is necessary to achieve those objectives.

- **Proportionality**

As regards proportionality, the proposal strikes the appropriate balance between the public interest at stake and the cost-efficiency of the measure. The proposed rules seek to create a common product label for which there is strong public interest and which would lay down a foundation for a common, competitive and cost-efficient market for ELTIFs across the Union. The requirements imposed on the different parties concerned have been carefully calibrated. Whenever possible, requirements have been crafted as minimum standards and regulatory requirements have been tailored to avoid unnecessarily disrupting existing business models. In particular, the proposed Regulation has combined parameters suitable for long-term investments and specific investor groups, by taking into full account the safety and trust considerations relating to any designation of ELTIFs.

The proposal therefore does not go beyond what is necessary to achieve a common legal framework for ELTIFs. But at the same time it addresses the regulatory issues which would affect the label's reliability.

- **Choice of the instrument**

The current proposal is an amendment of the existing EU Regulation. A regulation is considered the most appropriate legal instrument to introduce uniform requirements that will deal, among others, with the scope of eligible assets, the portfolio composition, diversification rules, redemption policy, as well as rules on the authorisation of the funds intending to engage in long-term investments. The objective of these product rules is to ensure the ELTIFs work in a more efficient way.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

As of October 2021, only 57 ELTIFs were authorised. For that reason, it is important that the ELTIF review addresses 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.

More information on the problems identified in the proposal is provided in the impact assessment on the functioning of the ELTIF framework annexed to this proposal.

- **Stakeholder consultations**

In June 2020, the High Level Forum (HLF) on the Capital Markets Union (CMU) published its final report⁸ with 17 recommendations on removing barriers in the EU's capital markets, including a recommendation on reviewing the ELTIF Regulation. According to the report, a review of the ELTIF regulatory framework 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 economy⁹.

To understand the main reasons behind the slow uptake in ELTIFs across the Union and gather stakeholder suggestions for an improved functioning of the ELTIF regulatory framework, the Commission collected and analysed available evidence from a public consultation, bilateral engagement with a wide range of stakeholders and obtained feedback and a review of industry research papers. Overall, the ELTIF public consultation attracted 54 formal responses.

In addition, the impact assessment has incorporated and taken into account the feedback from different stakeholder groups, including fund managers, investor representatives, national competent authorities and the wider public (including citizens).

Based on industry consultations, fund managers seem to broadly agree (there are slight differences depending on the specialisation, jurisdiction of domicile and specific investment strategy pursued) that the key deficiencies of ELTIFs lie in the limited scope of eligible assets and investments, as well as the tangible barriers investors face in accessing ELTIFs.

There is broad consensus among the national competent authorities (NCAs) on the key topics that need to be revised (i.e. eligible assets, numeric thresholds, conflict of interest provisions, etc.). This consensus has been reflected in the European Securities and Markets Authority's (ESMA) technical advice, which very closely coincides with the policy proposals set out in the impact assessment. NCAs have so far broadly supported the objective 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 similar targeted improvements to the ELTIF framework.

⁸ 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).

⁹ *Ibid*, page 12.

Several responses to the open public consultation were provided outside the formal submission channels, and some submissions were made after the deadline. Several of these submissions (or *ex post* consultations) were made by representatives of ELTIF managers.

More information on the stakeholder consultation is provided in Annex 2 of the impact assessment on the functioning of the ELTIF framework, which is annexed to this proposal.

- **Collection and use of expertise**

The open public consultation on the ELTIF review was an opportunity for all stakeholders (the general public, Member States, ESMA, NCAs, financial institutions, asset managers, investors, etc.) to give 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.

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

In addition to the sources mentioned above, the Commission has undertaken a series of consultations with: (i) the Expert Group of the European Securities Committee (EGESC) on 27 November 2020 and 19 July 2021; (ii) the ESMA Investment Management Standing Committee, along with continued liaising with NCAs; (iii) the stakeholder colloquium on European long-term investment funds (ELTIFs) entitled ‘ELTIF - Challenges and Opportunities in 2020’ held on 4 February 2020; (iv) an ELTIF workshop organised by the French Asset Management Association on 7 December 2020; (v) an ELTIF workshop organised by the Alternative Investment Management Association on 2 February 2021 on the regulatory experience of the functioning of U.S. business development corporations (BDCs) and their similarities with ELTIFs; and (vi) an ELTIF workshop organised by EuropeInvest with representatives of the private equity industry on 27 May 2021.

- **Impact assessment**

The draft impact assessment report was submitted to the Regulatory Scrutiny Board (RSB) on 11 June 2021. The RSB hearing was held on 7 July 2021. Based on the additional information provided ahead of the hearing, the RSB issued a positive opinion, subject to recommendations on better defining and analysing the options and performing additional analysis on the data and closer monitoring. In order to address the Board’s comments, the Commission incorporated into the impact assessment additional information and analysis, including on the recent uptake of ELTIFs.

The summary sheet of the impact assessment and the RSB’s positive opinion are attached to this proposal.

- **Regulatory fitness and simplification**

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

Overall, the proposed amendments to the ELTIF Regulation are expected to introduce additional flexibility and alleviate the burden on fund managers who provide products tailored to the needs of professional clients. At the same time, removing the hurdles investors face in accessing ELTIFs (while maintaining current protections for investors) will reduce

administrative burdens and make ELTIFs more attractive for asset managers and investors alike.

However, precisely quantifying how much the preferred options would reduce regulatory costs would prove challenging due to several factors. Given the limited size of the ELTIF universe and the confidential nature of data on fund-related costs, the Commission would have to make a set of assumptions and extrapolate the possible effects the proposed measures would have on cost reductions by relying on a set of quantitative and qualitative assessments of the proposed measures.

Also, the ELTIF is a voluntary framework. Asset managers have no obligation to choose the ELTIF as a fund structure. Instead, asset managers can choose to ‘opt in’ in establishing an ELTIF. They are free to establish the fund as a standard AIF under the AIFMD or any alternative national fund structure, or they can structure their long-term investments through other means (such as private equity investments). Given those substitution and distributional effects, it would prove challenging to authoritatively substantiate any potential or implied cost savings of preferred policy options with a sufficient level of robustness.

Finally, in the open public consultation the Commission explicitly asked stakeholders about the costs and burdens of certain provisions and requirements of the ELTIF legal framework. Nevertheless, despite various attempts to collect numeric information on the costs and cost savings of certain policy choices, little information was provided. This could partially be explained by the inherent limitations of the ELTIF legal framework mentioned above (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.

- **Fundamental rights**

The ELTIF Regulation respects the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. The ELTIF framework would be applied in accordance with those rights and principles, and the targeted amendments to the ELTIF Regulation would not have any consequences or adverse effects on the exercise of fundamental rights.

4. BUDGETARY IMPLICATIONS

The proposal does not have a budgetary impact for the Commission

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 1(2) reiterates the objective of the ELTIF legal framework to raise and channel capital towards long-term projects. The adherence of this framework to the Union’s objective of smart, sustainable and inclusive growth remains intact. However, the newly proposed wording of Article 1(2) no longer includes the reference to European long-term projects to strengthen the broader scope of eligible assets, which do not necessarily need to be located in the Union. Given the fact that the ELTIF framework explicitly allows the eligible assets and investments to be located in third countries, under the conditions set out in the ELTIF Regulation, it is important to ensure that ELTIF investment strategies can pursue a global investment mandate. This clarification would also ensure more clarity and legal certainty on the flexibility of ELTIFs in the geographic investment allocation. Such ‘thematic’ allocation strategies may include investments in environmental preservation or sustainability projects in third countries,

research and development facilities or energy infrastructure, which have the potential of benefiting ELTIF investors and EU long-term growth and contribute to ELTIF's objectives.

Article 2, point 6 includes a definition of 'real asset' that has been revised to mean any assets that have intrinsic value due to their substance and properties. The purpose of this revision is to broaden the scope of the real asset investment strategies that ELTIF managers can pursue. Such real assets may, but do not necessarily need to, provide cash flows or investment returns, such as social, communication, environment, energy or transport infrastructure, as well as education, health, welfare support or industrial facilities or installations. This simplified definition of 'real assets' also ensures that the broader scope of assets may include those assets that cannot be easily quantified, for instance, those based on a discounted cash flow or comparison valuation method. Furthermore, the broadened definition of 'real assets' implies that such assets include infrastructure, intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property, including rights attached to or associated with real assets, such as water, forest and mineral rights. The enlarged scope of the 'real assets' definition also comprises investments in commercial property, education, counselling, research, sports or development facilities, or housing, such as senior residents or social housing. The scale of infrastructure projects may require that large amounts of capital remain invested for long periods of time. Such infrastructure projects may include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks, and waste management infrastructure such as recycling or collection systems.

Article 2, point 14a provides a definition of simple, transparent and standardised securitisation by cross-reference to Article 2, point 1 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

Article 3(3) of the ELTIF Regulation is revised to ensure that the information on authorisations granted or withdrawn and any changes to the information about the ELTIFs is communicated by the competent authorities to ESMA on a monthly basis, rather than on a quarterly basis. In addition, subparagraph 2 of Article 3(3) specifies a more granular composition of the ELTIF public register, and should include additional data fields beyond the names of authorised ELTIFs, the ELTIF managers and the competent authorities of the ELTIFs. The purpose of this electronic central ELTIF register is to ensure a better visibility of the entire ELTIF investment universe and allow investors, in particular retail investors, to obtain and evaluate relevant information on the investment opportunities available in the Member State of those investors.

Article 5(1) and (3) of the ELTIF Regulation sets out a few changes that facilitate the authorisation of the ELTIF and streamline the separation of those provisions that address the authorisation of the ELTIF and that of the AIF manager (AIFM). In particular, Article 5(3) of the ELTIF Regulation is amended to clarify that the national competent authority responsible for authorising the ELTIF is solely responsible for the authorisation of an ELTIF and is not involved in the additional authorisation or 'approval' of the EU AIFM. In addition, it has been clarified that the authorisation of an ELTIF should not be subject either to a requirement that

the ELTIF be managed by an AIFM having its registered office in the ELTIF home Member State or that the AIFM pursues or delegates any activities in the ELTIF home Member State.

Article 10(1) of the ELTIF Regulation is amended in several respects. First, point (iii) of Article 10(1)(a) is amended to ensure that ELTIFs may make minority co-investments in investment opportunities, which could attract more modest promoters of investment projects, rather than be required to invest via or in ‘majority owned’ subsidiaries. Point (d) is amended to facilitate the possibility of ELTIFs pursuing fund-of-funds investment strategies and investing in EU AIFs - in addition to ELTIFs, EuVECAs and EuSEFs - managed by EU AIFMs, provided those ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs invest in eligible investments. This look-through approach should ensure prudence in fund-of-fund strategies while the assets of the respective ELTIF and other collective investment undertakings are to be combined for the purposes of the limits laid down in Articles 13 and 16(1).

Article 10(1)(e) of the ELTIF Regulation allows investments in real assets and ensures that such ELTIF’s investments are not solely limited to the forms of ownership via direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets. Under the revised provisions, ELTIFs can invest in real assets if the minimum investment value of such assets is at least EUR 1 000 000, and it is no longer required that real assets are owned directly or via ‘indirect holding via qualifying portfolio undertakings’. This change would make it possible to capture a broad range of potential real assets investment strategies. Lowering the threshold would also contribute to the flexibility of ELTIF managers, since it is a standard market practice for individual real assets of a large portfolio to have a value of far less than EUR 10 000 000. Portfolios which have been operational for some time would otherwise be particularly affected, given that the value of certain assets in the renewable energy space (such as solar panels or wind turbine blades) normally decreases over the time of its life span. Lowering the minimum value of individual real assets also seeks to ensure that asset managers are provided access to large portfolios irrespective of the values of the individual real assets forming these large portfolios and that a portfolio is more diversified and consequently has fewer risks.

Article 10(1)(f) has been amended to specify the scope of eligible securitisations, which comprise securitisations of four categories: residential loans that are either secured by one or more mortgages on residential immovable property (i.e. a residential mortgage-backed security); commercial loans that are secured by one or more mortgages on commercial immovable property; corporate loans (including loans granted to small and medium enterprises); and trade receivables or other underlying exposures that the originator considers to form a distinct asset type, provided that the proceeds from securitising these trade receivables or other underlying exposures are used for financing or refinancing long-term investments. These provisions would allow the size and scope of eligible assets for ELTIFs to be broadened, and, in turn, make the ELTIF regulatory framework more appealing for asset managers and investors.

Article 11(1) is amended to streamline the notion of a ‘qualifying portfolio undertaking’. Article 11(1)(b) is also amended to raise the market capitalisation threshold for listed qualifying portfolio undertakings from EUR 500 million to EUR 1 billion and ensure that the market capitalisation threshold is solely applied at the time of the initial investment.

Article 12 is amended in two respects. First, the scope of conflict of interest provisions in paragraph 1 includes the references to EU AIFs that can be managed by the ELTIF manager. Paragraph 2, in turn, explicitly seeks to ensure that the ELTIF managers and their affiliated entities that belong to the same group, and their staff may invest in that ELTIF and in the

same asset. Such co-investments may be a necessary part of the co-investment strategies pursued by AIF managers and in some cases can represent a standard industry practice. Article 12(2) allows the co-investments by the manager and its affiliated entities that belong to the same group with that ELTIF manager, and their staff only in so far as the ELTIF manager has put in place organisational and administrative arrangements to identify, prevent, manage and monitor conflicts of interest and provided that such conflicts of interest are adequately disclosed. These additional requirements seek to provide necessary investor protection and market integrity safeguards.

Currently, Article 13 sets out that a minimum threshold for eligible assets and investments should be 70%. Furthermore, Article 13 sets out portfolio composition and diversification requirements. ELTIF diversification requirements are very granular and a default 10% investment requirement is put in place for investments in loans, for any single real asset, for other investment funds. To promote the attractiveness of ELTIFs to asset managers, the modification to Article 13(1) lowers the threshold for eligible investment assets of ELTIFs to 60%. Lowering this threshold would improve the liquidity profile of ELTIFs' underlying portfolios and promote the flexibility of asset managers in executing their investment strategies.

Article 13(2) points (a) to (c) increases to 20% the maximum retail ELTIF exposures to instruments issued by, or loans granted to, any single qualifying portfolio undertaking. Furthermore, the 20% threshold has also been established for those ELTIFs that can be marketed to retail investors for investments in any single ELTIF, EuVECA, EuSEF, or EU AIF managed by an EU AIFM that are eligible for investment under Article 10(1) of the ELTIF Regulation. For those assets referred to in Article 9(1) point (b) that have been issued by any single body, the threshold has been doubled to 10%.

To cater for the calibration of the exposures of retail ELTIFs to simple, transparent and standardised securitisations, a new paragraph 3a sets out that the aggregate value of simple, transparent and standardised securitisations may not exceed 20% of the value of the capital of the ELTIF. The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements should not exceed 10% of the value of the capital of the ELTIF. Article 13(5) is deleted, given the increased exposure limits of retail ELTIFs. Importantly, a new paragraph 8 of Article 13 specifies that the investment thresholds set in paragraphs 2 to 4 should not apply where ELTIFs are marketed solely to professional investors.

Article 15(1) specifies that an ELTIF may acquire no more than 30% of the units or shares of a single ELTIF, EuVECA, EuSEF, or of an EU AIF managed by an EU AIFM eligible under Article 10(1)(d). Paragraph 2 specifies that the concentration limits may not apply where ELTIFs are marketed solely to professional investors.

Article 16 seeks to enable ELTIFs that can be marketed to retail investors to increase their borrowing of cash up to 50% of the ELTIF threshold. By contrast, those ELTIFs marketed solely to professional investors would be permitted to leverage up to 100% of the value of the capital of the ELTIF. The proposal also seeks to provide additional flexibility in the currency-related rules and extends the possibility of ELTIFs to contract in a currency other than the base currency where such currency exposures have been hedged or where it can be otherwise demonstrated that the borrowing in another currency does not expose the ELTIF to material currency risks. The 30% encumbrance requirement in Article 16(1) point (e) is deleted, and it is clarified that the encumbering of assets is permitted where it is sought to implement the

borrowing strategy. A new paragraph 1a of Article 16 introduces a clarification that those borrowing arrangements fully covered by investors' capital commitments would not be considered to constitute borrowing. This provision would provide additional flexibility to asset managers in employing leverage. To cater for higher investor protection safeguards, the revised paragraph 2 of Article 16 requires ELTIF managers to provide a detailed presentation of the ELTIF borrowing strategy and limits. This requirement also seeks to oblige ELTIF managers to outline how exactly the borrowing would help implement the ELTIF strategy and mitigate borrowing, currency and duration risks.

The redemptions-related rules in Article 18(7) are amended to allow ESMA to develop draft regulatory technical standards which would further specify the circumstances for redemptions under limited circumstance in paragraph 2. Such redemptions could comprise cases where the minimum information to be provided to the competent authorities and the redemptions criteria and percentage for redemptions would enable ELTIFs to provide limited redemptions based on ELTIF's expected cash flows and liabilities. In addition, ESMA would be required to develop draft regulatory technical standards specifying the information that ELTIFs need to disclose to investors.

Article 19 would enable, but not require, the ELTIF managers to include in the rules or instruments of incorporation of the ELTIF the possibility for an optional liquidity window mechanism. This secondary market liquidity mechanism is aimed at providing, before the end of the ELTIF's life, full or partial matching of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with subscription requests by new investors. The matching of transfer and subscription requests can be done, provided several cumulative conditions are fulfilled. In particular, the manager of the ELTIF would have to have a defined policy for such an optional liquidity mechanism and specify in that policy the following information: the transfer process for both exiting and subscribing investors, the roles of the fund manager or the fund administrator, the applicable time window, the execution price, the conditions for the pro-rata, disclosure requirements and the applicable fees, costs and charges. It is critical that such an optional liquidity mechanism ensure fair treatment of investors and provide sufficient opportunity for the ELTIF manager to monitor the liquidity risk of the ELTIFs.

Article 21(1) modifies the provisions on disposing of ELTIF assets by requiring the ELTIF manager to inform the competent national authority of the orderly disposal of the assets for the redemption of investors. A separate request by the competent authority of the ELTIF would trigger an obligation for the ELTIF to submit to the competent authority an itemised schedule for the orderly disposal of the assets.

Article 26 requires that the manager of an ELTIF whose units or shares are intended to be marketed to retail investors put in place, in each Member State where ELTIFs are being marketed, facilities for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its manager are required to provide. These provisions on investor facilities are deleted to facilitate the marketing of ELTIFs, in particular cross-border marketing, in a manner compliant with the EU acquis. The deletion of Article 26 also seeks to ensure that the marketing of ELTIFs can take place without subjecting ELTIF managers to the requirement to put in place 'facilities', which are at times construed to imply physical facilities or separate IT, personnel-related or administrative arrangements or requirements.

Article 28(1) seeks to remove the partial duplication of suitability assessment referred to in the ELTIF Regulation and in the Directive on Markets in Financial Instruments (MiFID II).

To that end, Article 28(1) and Article 30(1) cross-refer to the obligation of ELTIF managers and distributors, when directly offering or placing ELTIFs, to carry out the suitability assessment in line with the MiFID II provisions. This alignment of the ELTIF suitability test with that of MiFID II is important in the context of the proposed deletion of the first subparagraph of Article 30(3) which contains the EUR 10 000 initial minimum investment requirement and the 10% aggregate threshold for the financial portfolios of retail investors. The proposal seeks to remove these requirements, i.e. the minimum EUR 10 000 investment (the ‘entry ticket’) and the 10% exposure threshold for retail investors whose financial portfolios are below EUR 500 000. This is due to the fact that such requirements constitute unjustified barriers preventing retail investors from having access to ELTIFs and that such thresholds have proven, in most instances, to be burdensome, dissuasive and ineffective.

Article 30(4) seeks to clarify the application of the equal treatment principle, as applied within the relevant class or classes of ELTIFs. Article 30(6) seeks to ensure that the two-week withdrawal period solely applies to retail investors and can only be effective during the 2 weeks following the effective date of the commitment or subscription agreement.

Article 37(1) is modified to expand the conditions of the new review of the ELTIF regulatory framework. Such a review could start within 5 years from the ELTIF Regulation’s entry into force and should cover a more comprehensive set of fund rules than those initially set out in Article 37. Comprehensive evaluation of the functioning of this Regulation will be conducted 5 years after it begins applying. The scope of the revised review clause is extended to cover the operation and application of the main fund rules and the impact these rules have on ELTIF managers and investors. The review of the ELTIF legal framework would require consultation of ESMA.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Since the adoption of Regulation (EU) 2015/760 of the European Parliament and of the Council¹¹, only a few European long-term investment funds (ELTIFs) have been authorised. The aggregate size of net assets of those funds was estimated at approximately EUR 2 400 000 000 in 2021.
- (2) The available market data indicate that the development of the ELTIF segment has not scaled up as expected, despite the Union's focus on promoting long-term finance in the Union.
- (3) Certain characteristics of the ELTIF market, including the low number of funds, the small net asset size, the low number of jurisdictions in which ELTIFs are domiciled, and a portfolio composition that is skewed towards certain eligible investment categories, demonstrate the concentrated nature of that market, both geographically and in terms of investment type. It is therefore necessary to review the functioning of the ELTIF legal framework to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects.
- (4) ELTIFs have a potential to facilitate long-term investments in the real economy. Long-term investments in projects, undertakings, and infrastructure projects in third

¹⁰ OJ C , , p. .

¹¹ 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).

countries can bring capital to ELTIFs and thereby benefit the economy of the Union. Such benefits can originate in multiple ways, including through investments that promote the development of border regions, enhance commercial, financial and technological cooperation and facilitate investments in environmental and sustainable energy projects. Investments in third country qualifying undertakings and eligible assets may bring substantial benefits to investors and ELTIF managers and to the economies, infrastructure, climate and environmental sustainability and citizens of such third countries. It should therefore be allowed that the majority of such assets and investments or the main revenue or profit generation of such assets and investments are located in a third country.

- (5) The rules for ELTIFs are almost identical for both professional and retail investors, including rules on the use of leverage, on the diversification of assets and composition of the portfolios, on concentration limits and on limits on the eligible assets and investments. Both types of investors, however, have different time horizons, risk tolerances and investment needs. Because of those almost identical rules and the consequential high administrative burden and associated costs for ELTIFs destined for professional investors, asset managers have been reluctant to offer tailored products to such investors. Professional investors have a higher risk tolerance than retail investors and may have, due to their nature and activities, different time horizon and return objectives. It is therefore appropriate to provide for specific rules for ELTIFs that are destined to be marketed to professional investors, in particular with regard to the diversification and composition of the portfolio concerned, the minimum threshold for eligible assets, the concentration limits, and the borrowing of cash.
- (6) It is necessary to enhance the flexibility of asset managers in investing in a broad categories of real assets. Direct or indirect holdings of real assets should therefore be deemed to form a category of eligible assets, provided that those real assets have value due to their nature or substance. Such real assets comprise immovable property, communication, environment, energy or transport infrastructure, social infrastructure, including retirement homes or hospitals, as well as infrastructure for education, health and welfare support or industrial facilities, installations, and other assets, including intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property.
- (7) Investments in commercial property, in facilities or installations for education, research, sports or development, or in housing, including in senior residents or social housing, should also be deemed to be eligible assets due to the capacity of such assets to contribute to the objectives of smart, sustainable and inclusive growth. To enable real investment strategies in areas where direct investments in real assets are not possible or uneconomical, eligible investments in real assets should also comprise investments in water rights, forest rights, building rights and mineral rights.
- (8) To promote accountability of investments and provide adequate disclosure on the impact of the investment strategy, investments in immovable property should be documented, including the extent to which real assets are integral to, or an ancillary element of, a long-term investment project that contributes to the Union's objective of smart, sustainable and inclusive growth.
- (9) It is necessary to increase the attractiveness of ELTIFs for asset managers and broaden the range of investment strategies available to ELTIF managers and thus to avoid the undue limitation of the scope of the eligibility of assets and investment activities of ELTIFs. The eligibility of real assets should not depend on their nature and objective

or upon environmental, sustainability or social and governance related disclosures and conditions, which are already covered by Regulation (EU) 2019/2088 of the European Parliament and of the Council¹² and by Regulation (EU) 2020/852 of the European Parliament and of the Council¹³.

- (10) It is necessary to extend the scope of eligible assets and promote the investments of ELTIFs in securitised assets. It should therefore be clarified that, where the underlying assets consist of long-term exposures, eligible investment assets should also include simple, transparent and standardised (STS) securitisations as referred to in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council¹⁴. Those long-term exposures comprise securitisations of residential loans that are secured by one or more mortgages on residential immovable property (residential mortgage backed securities (RMBS)), commercial loans that are secured by one or more mortgages on commercial immovable property, corporate loans, including loans which are granted to small and medium enterprises (SMEs), and trade receivables or other underlying exposures that the originator considers to form a distinct asset type, provided that the proceeds from securitising those trade receivables or other underlying exposures are used for financing or refinancing long-term investments.
- (11) In order to improve access of investors to more up-to-date and complete information on the ELTIF market, it is necessary to increase the granularity and the timeliness of the central public register referred to in Article 3(3), second subparagraph, of Regulation (EU) 2015/760 ('ELTIF register'). The ELTIF register should therefore contain additional information to the information that that register contains already, including, where available, the Legal Entity Identifier ('LEI') and the national code identifier of the ELTIF, the name, address and the LEI of the ELTIF manager, the International Securities Identification Numbers ('ISIN') codes of the ELTIF and of each separate share or unit class, the competent authority of the ELTIF and the home Member State of that ELTIF, the Member States where the ELTIF is marketed, whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors, the date of the authorisation of the ELTIF, and the date on which the marketing of the ELTIF has commenced. In addition, to enable ELTIF investors to analyse and compare existing ELTIFs, the ELTIF register should contain up-to-date links to the ELTIF documentation, including to the rules or instruments of incorporation of the ELTIF concerned, the annual reports, the prospectus and, where available, the Key Information Document drawn up in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹⁵. To ensure an up-to-date status of the ELTIF register, it is appropriate to require competent authorities to communicate to ESMA any changes to the information on an ELTIF, including authorisations and withdrawals of such authorisations, on a monthly basis.

¹² Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

¹³ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

¹⁴ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

¹⁵ 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).

- (12) Certain investments by ELTIFs can be conducted through the participation of intermediary entities, including special purpose vehicles and securitisation or aggregator vehicles or holding companies. Regulation (EU) 2015/760 currently requires that investments in equity or quasi-equity instruments of the qualifying portfolio undertaking can only take place where those undertakings are majority owned subsidiaries, which substantially limits the scope of the potential scope of the eligible asset base. ELTIFs should therefore have the possibility to conduct minority co-investment in investment opportunities. That possibility should enable ELTIFs to obtain additional flexibility in implementing their investment strategies, to attract more promoters of investment projects and to increase the range of possible eligible target assets, all of which is essential for the implementation of indirect investment strategies.
- (13) Due to concerns that fund-of-funds strategies can give rise to investments that would not fall within the scope of eligible investment assets, Regulation (EU) 2015/760 currently contains restrictions on investments in other funds throughout the ELTIF's life. Fund-of-fund strategies are, however, a common and very effective way of obtaining rapid exposure to illiquid assets, in particular in respect of real estate and in the context of fully paid-in capital structures. It is therefore necessary to give ELTIFs the possibility to invest in other funds, because that would enable ELTIFs to ensure a faster deployment of capital. Facilitating fund-of-fund investments by ELTIFs would also allow reinvestment of excess cash into funds as different investments with distinct maturities may lower the cash drag of the ELTIF. It is therefore necessary to expand the eligibility of funds-of-funds strategies for ELTIF managers beyond investments in European venture capital funds (EuVECAs) or European social entrepreneurship funds (EuSEFs). The scope of collective investment undertakings in which ELTIFs can invest should thus be broadened to undertakings for collective investment in transferable securities (UCITS) and to EU alternative investment funds (EU AIFs) managed by EU AIF managers. However, in order to ensure effective investor protection, it is also necessary to set out that where an ELTIF invests in other ELTIFs, in European venture capital funds (EuVECAs), in European social entrepreneurship funds (EuSEFs), in UCITS and EU AIFs managed by EU AIFMs, those collective investment undertakings should also invest in eligible investments and have not themselves invested more than 10 % of their capital in any other collective investment undertaking.
- (14) In order to better use the expertise of the ELTIF managers and because of diversification benefits, in certain cases it can be beneficial for ELTIFs to invest all or almost all of their assets into the diversified portfolio of the master ELTIF. ELTIFs should therefore be allowed to pool their assets and make use of master-feeder structures by investing in master ELTIFs.
- (15) The diversification requirements laid down in the current version of Regulation (EU) 2015/760 were introduced to ensure that ELTIFs can withstand adverse market circumstances. Those diversification thresholds imply, however, that ELTIFs are, on average, required to make ten distinct investments. In relation to investment in projects or infrastructures of large scale, the requirement to make ten investments per ELTIF may be difficult to achieve, and costly in terms of transactional costs and capital allocation. To reduce transaction and administrative costs for ELTIFs and ultimately their investors, ELTIFs should therefore be able to pursue more concentrated investment strategies and thus to be exposed to fewer eligible assets. It is therefore necessary to adjust the diversification requirements for ELTIFs' exposures to single

qualifying portfolio undertakings, single real assets, collective investment undertakings and certain other eligible investment assets, contracts and financial instruments. That additional flexibility in the portfolio composition of ELTIFs and the reduction in the diversification requirements should not materially affect the capacity of ELTIFs to withstand market volatility, since ELTIFs typically invest in assets that often do not have a readily available market quotation, may be highly illiquid, and frequently have long-term maturity or time horizon.

- (16) Unlike retail investors, professional investors may, in certain circumstances, have a longer time horizon, distinct financial returns objectives, more expertise, possess higher risk tolerance to adverse market conditions and higher capacity to absorb losses. Such professional thus require less investor protection measure than retail investors. It is therefore appropriate to remove the diversification requirements for ELTIFs that are solely marketed to professional investors.
- (17) Article 28 and 30 of Regulation (EU) 2015/760 currently require ELTIF managers or distributors to carry out a suitability assessment. That requirement is already laid down in Article 25 of Directive 2014/65/EU of the European Parliament and of the Council.¹⁶ That duplicative requirement constitutes an additional layer of administrative burdens leading to higher costs for retail investors and is a strong disincentive for ELTIF managers to offer new ELTIFs to retail investors. It is therefore necessary to remove that duplicate requirement from Regulation (EU) 2015/760.
- (18) Article 30 of Regulation (EU) 2015/760 also requires ELTIF managers or distributors to provide appropriate investment advice when marketing ELTIFs to retail investors. The lack of precision in what constitutes appropriate investment advice in Regulation (EU) 2015/760 and the lack of a cross-reference to Directive 2014/65/EU, which contains a definition of investment advice, have led to a lack of legal certainty and confusion among ELTIF managers and distributors. In addition, the obligation to provide investment advice would require external distributors to be authorised under Directive 2014/65/EU when marketing ELTIFs to retail investors. That would create unnecessary impediments to the marketing of ELTIFs to those investors. The distribution and marketing of ELTIFs should not be subject to stricter requirements than the distribution of other complex financial products, including the requirements for securitisations laid down in Regulation (EU) 2017/2402 of the European Parliament and of the Council¹⁷ and for subordinated eligible liabilities laid down in Directive 2014/59 of the European Parliament and of the Council¹⁸. The obligation to perform a suitability test is sufficient to provide retail investors with the necessary protection and is in line with the existing obligations laid down Regulation (EU) 2017/2402 and Directive 2014/59. It is therefore not necessary to require distributors and managers of ELTIFs to provide retail investors with that investment advice.

¹⁶ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

¹⁷ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

¹⁸ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (19) Article 30(3) of Regulation (EU) 2015/760 currently requires, for potential retail investors whose financial instrument portfolio does not exceed EUR 500 000, an initial minimum investment in one or more ELTIFs of EUR 10 000, and requires that such investors do not invest an aggregate amount exceeding 10 % of that their financial instrument portfolio in ELTIFs. When applied together, the EUR 10 000 minimum initial investment participation and the 10 % limitation on aggregate investment create a significant obstacle for the retail investor to invest in ELTIFs, which conflicts with the goal of an ELTIF to establish a retail alternative investment fund product. It is therefore necessary to remove that EUR 10 000 initial minimum investment requirement and the 10 % limitation on aggregate investment.
- (20) Article 10, point (e), of Regulation (EU) 2015/760 currently requires that eligible investment assets, where those assets are individual real assets, have a value of at least EUR 10 000 000. Real assets portfolios, however, are often composed of a number of individual real assets which have a value of less than EUR 10 000 000. The value of individual real asset should therefore be reduced to EUR 1 000 000. That amount is based on the estimated value of individual real assets which may typically form large real assets portfolios, and may thus contribute to the diversification of an investment portfolio.
- (21) Article 11(1), point (b)(ii) of Regulation (EU) 2015/760 currently requires that qualifying portfolio undertakings, where those qualifying undertakings are admitted to trading on a regulated market or on a multilateral trading facility, have a market capitalisation of no more than EUR 500 000 000. Many listed companies with a low market capitalisation, however, have a limited liquidity which prevents ELTIF managers from building, within a reasonable time, a sufficient position in such listed companies, which narrows down the range of available investment targets. In order to provide ELTIFs with a better liquidity profile, the market capitalisation of the listed qualifying undertakings in which ELTIFs can invest should therefore be increased from maximum EUR 500 000 000 to maximum EUR 1 000 000 000. To avoid potential changes to the eligibility of such investments due to currency fluctuations or other factors, the determination of the market capitalisation threshold should only be made at the time of the initial investment.
- (22) Managers of ELTIFs that hold a stake in a portfolio undertaking may place their own interests ahead of the interests of investors in the ELTIF. To avoid such a conflict of interests, and to ensure sound corporate governance, the current version of Regulation (EU) 2015/760 requires that an ELTIF only invests in assets that are unrelated to the manager of the ELTIF, unless the ELTIF invests in units or shares of other collective investment undertakings that are managed by the manager of the ELTIF. It is, however, an established market practice that one or several investment vehicles of the asset manager co-invest alongside another fund that has a similar objective and strategy as that ELTIF. Such co-investments by the AIF manager and other affiliate entities that belong to the same group allow for the attraction of larger pools of capital for investments in large-scale projects. For that purpose, asset managers typically invest in parallel with the ELTIF in a target entity and structure their investments through co-investment vehicles. As part of the asset management mandate, portfolio managers and senior personnel of the asset managers are typically required or expected to co-invest in the same fund that they manage. It is therefore appropriate to specify that the provisions on conflict of interest should not prevent an ELTIF manager or an undertaking that belongs to that group from co-investing in that ELTIF and co-investing with that ELTIF in the same asset. In order to ensure that effective

investor protection safeguards are in place, where such co-investments take place, ELTIF managers should put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

- (23) To prevent conflicts of interests, avoid transactions that do not take place on commercial terms and to ensure sound corporate governance, the current version of Regulation (EU) 2015/760 does not allow the staff of the ELTIF manager and of undertakings that belong to the same group with the ELTIF manager to invest in that ELTIF or to co-invest with the ELTIF in the same asset. It is, however, an established market practice that the staff of the ELTIF manager and of other affiliate entities that belong to the same group, which co-invest alongside the ELTIF manager, including the portfolio managers and senior personnel responsible for the key financial and operational decisions of the ELTIF manager, are often required or expected due to the nature of the asset management mandate to co-invest in the same fund or the same asset in order to promote the alignment of financial incentives of that staff and the investors. It is therefore appropriate to specify that the provisions on conflict of interest should not prevent the staff of the ELTIF manager or of undertakings that belong to that group from co-investing in their personal capacity in that ELTIF and from co-investing with that ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments by the staff take place, ELTIF managers should put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.
- (24) Article 13(1) of Regulation (EU) 2015/760 currently requires that ELTIFs invest at least 70 % of their capital in eligible investment assets. This high threshold for the composition of eligible investment assets in ELTIFs' portfolios was initially established in view of the focus of ELTIFs on long-term investments and the contribution such investments would make to the financing of a sustainable growth of the Union's economy. Given the illiquid and idiosyncratic nature of certain eligible investment assets within ELTIFs' portfolios, however, it may prove difficult and costly for ELTIF managers to manage the liquidity of ELTIFs, honour redemption requests, enter into borrowing arrangements, and execute other elements of ELTIFs' investment strategies pertaining to the transfer, valuation and pledging of such eligible investment assets. Lowering the eligible investment assets threshold would enable ELTIF managers to better manage the liquidity of ELTIFs.
- (25) Leverage is frequently used to enable the day-to-day operation of an ELTIF and to carry out a specific investment strategy. Moderate amounts of leverage can amplify returns, and, where controlled adequately, without incurring or exacerbating excessive risks. In addition, leverage can frequently be used by a variety of collective investment undertakings to gain additional efficiencies or operational results. Since the borrowing of cash threshold is currently limited to 30% of the capital of the ELTIF, ELTIF managers may be unable to successfully pursue certain investment strategies, including in the case of investments in real assets, where using higher levels of leverage is an industry norm or is otherwise required to achieve attractive risk-adjusted returns. It is therefore appropriate to increase the flexibility of managers of ELTIFs to raise further capital during the life of the ELTIF. In view of the possible risks that leverage can entail, ELTIFs marketed to retail investors should be permitted to borrow cash amounting to up to 50 % of the value of the capital of the ELTIF. The 50 % threshold is appropriate given the overall borrowing of cash limits common for funds

investing in real assets with a similar liquidity and redemption profile. As for ELTIFs marketed to professional investors, however, a higher leverage threshold should be permitted, because professional investors have a higher risk-tolerance than retail investors. The borrowing of cash threshold for ELTIFs that are marketed to professional investors only should therefore be extended to 100 % of the ELTIF capital.

- (26) To provide ELTIFs with wider investment opportunities, ELTIFs should be able to borrow in the currency in which the manager of the ELTIF expects to acquire the asset. It is, however, necessary to mitigate the risk of currency mismatches and thus to limit the currency risk for the investment portfolio. ELTIFs should therefore either put in place adequate hedges of the currency exposure, or should borrow in another currency where foreign currency exposures do not bring about significant currency risks.
- (27) ELTIFs should be able to encumber their assets to implement their borrowing strategy. To address concerns about shadow banking activities, however, cash borrowed by ELTIFs should not be used to grant loans to qualifying portfolio undertakings. However, to increase the flexibility of ELTIFs in executing their borrowing strategy, the borrowing arrangements should not count as borrowing where that borrowing is fully covered by investors' capital commitments.
- (28) Given the increase of the maximum thresholds for borrowing cash by ELTIFs and the removal of certain limitations on the borrowing of cash in foreign currencies, investors should have more comprehensive information on the borrowing strategy and limits employed by the ELTIF. It is therefore appropriate to require ELTIF managers to explicitly disclose in the prospectus of the ELTIF concerned the borrowing strategy and the borrowing limits and to provide information on how leverage will contribute to the ELTIF strategy and how currency and duration risks will be mitigated.
- (29) Article 18(4) of Regulation (EU) 2015/760 currently requires that investors in an ELTIF may request the winding down of that ELTIF where their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which those requests were made. Given the long-term orientation of ELTIFs and the often idiosyncratic and illiquid asset profile of ELTIFs' portfolios, the entitlement of any investor or a group of investors to request the winding down of an ELTIF can be disproportionate and detrimental to both the successful execution of the ELTIF investment strategy and the interests of other investors or groups of investors. It is therefore appropriate to delete the possibility for investors to require the winding down of an ELTIF where that ELTIF is unable to satisfy redemption requests.
- (30) The current version of Regulation (EU) 2015/760 is unclear about the criteria to assess the redemption percentage in a period of time, and about the minimum information to be provided to competent authorities about the possibility of redemptions. Given ESMA's central role in the application of Regulation (EU) 2015/760 and its expertise about securities and securities markets, it is appropriate to entrust ESMA with the drawing up of draft regulatory technical standards specifying those criteria and that information.
- (31) Article 19(1) of the current version of Regulation (EU) 2015/760 requires that the rules or instruments of incorporation of an ELTIF do not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility. Despite that possibility, ELTIF managers, investors and market

participants have hardly used the secondary trading mechanism by for the trading of shares or units of ELTIFs. To promote the secondary trading of ELTIF units or shares, it is appropriate to allow ELTIF managers to put in place a possibility for an early exit of ELTIF investors, before the end of the ELTIF's life. In order to ensure an effective functioning of such a secondary trading mechanism, such an early exit should be possible only where the manager of the ELTIF has put in place a policy for matching potential investors and exit requests. That policy should, among others, specify the transfer process, the role of the ELTIF manager and the ELTIF administrator, the duration of the liquidity window during which the units or shares of the ELTIF could be exchanged, the execution price, pro-rata conditions, disclosure requirements, fees, costs and charges and other conditions pertaining to such a liquidity window mechanism.

- (32) Article 26 of the current version of Regulation (EU) 2015/760 requires that ELTIF managers set up local facilities in each Member State where they intend to market ELTIFs. The requirement to set up local facilities has, however, been removed by Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019¹⁹ as regards UCITS and alternative investment funds marketed to retail investors, since such local facilities create additional costs and friction to the cross-border marketing of ELTIFs. In addition, the preferred method of contact with investors has shifted from physical meetings at local facilities to direct interaction between fund managers or distributors and investors by virtue of electronic means. Removing this obligation from the ELTIF Regulation for all ELTIF investors would hence be consistent with Directive (EU) 2019/1160 and the contemporary methods of marketing of financial products, and could promote the attractiveness of ELTIFs for asset managers who would no longer be required to incur costs stemming from operating local facilities. Article 26 should therefore be deleted.
- (33) The current version of Article 21(1) of Regulation (EU) 2015/760 requires ELTIFs to adopt an itemised schedule for the orderly disposal of their assets to redeem investors' units or shares after the end of the life of the ELTIF. That provision also requires ELTIFs to disclose that itemised schedule to the competent authorities. Those requirements subject ELTIF managers to substantial administrative and compliance burdens, without bringing a corresponding increase in investor protection. In order to alleviate those burdens without diminishing investors protection, ELTIFs should be required inform the competent authority of the ELTIF about the orderly disposal of their assets to redeem investors' units or shares after the end of the ELTIF's life, and only provide the competent authority of the ELTIF with an itemised schedule where they are explicitly asked by the competent authority of the ELTIF to do so.
- (34) Adequate disclosure of fees and charges is critically important for the evaluation of the ELTIFs as a potential investment target by investors. Such disclosure is also important where the ELTIF is marketed to retail investors in the case of master-feeder structures. It is therefore appropriate to require the ELTIF manager to include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF.
- (35) Regulation (EU) 2015/760 requires ELTIF managers to disclose in the ELTIF prospectus information about fees related to investing in that ELTIF. Regulation (EU)

¹⁹ 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 undertakings (OJ L 188, 12.7.2019, p. 106).

No 1286/2014 of the European Parliament and of the Council²⁰, however, also contains requirements concerning the disclosure of fees. In order to increase transparency on the fee structure, the requirement laid down in Regulation (EU) 2015/760 should be aligned with the requirement laid down in Regulation (EU) No 1286/2014.

- (36) It is an established market practice that the portfolio manager or senior personnel of the ELTIF manager are required or expected to invest in ELTIFs managed by that ELTIF manager. Such persons are presumed to be financially sophisticated and well-informed about the ELTIF concerned. In those circumstances, it is superfluous to require those individuals to undergo a suitability assessment test for investments in the ELTIF. It is therefore appropriate not to require ELTIF managers or the distributors to carry out a suitability assessment for such individuals.
- (37) The prospectus of the feeder ELTIF may contain highly relevant information for investors, which enables investors to better assess potential risks and benefits of an investment. It is therefore appropriate to require that in case of a master-feeder structure the prospectus of the feeder ELTIF contains disclosures on the master-feeder structure, the feeder ELTIF and the master ELTIF, a description of all remuneration or reimbursement of costs payable by the feeder ELTIF and a description of the tax implications of the investment into the master ELTIF for the feeder ELTIF.
- (38) Article 30(7) of Regulation (EU) 2015/760 currently requires that investors are treated equally and prohibits preferential treatment of individual investors or groups of investor, or the granting of specific economic benefits to those investors. ELTIFs may, however, have several classes of shares or units with slightly or substantially distinct conditions as regards the fees, legal structure, marketing rules and other requirements. In order to take those differences into account. It should be specified that those requirements should only apply to individual investors or groups of investors that invest into the same class or classes of ELTIFs.
- (39) Regulation (EU) 2015/760 should therefore be amended accordingly.
- (40) In order to give ELTIF managers sufficient time to adapt to the new requirements, including the requirements pertaining to the marketing of ELTIFs to investors, this Regulation should start to apply six months after its entry into force,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2015/760 is amended as follows:

- (1) in Article 1, paragraph 2 is replaced by the following:
 - ‘2. The objective of this Regulation is to facilitate the raising and channelling of capital towards long-term investments in the real economy, in line with the Union objective of smart, sustainable and inclusive growth.’;
- (2) Article 2 is amended as follows:
 - (a) point (6) is replaced by the following:

²⁰ 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).

‘(6) ‘real asset’ means an asset that has an intrinsic value due to its substance and properties;’;

(b) the following point (14a) is inserted:

‘(14a) ‘simple, transparent and standardised securitisation’ means a securitisation that complies with the conditions set out in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council*¹;’;

*¹ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).’;

(c) the following point (14b) is inserted:

‘(6) ‘group’ means a group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and the Council*²;’;

*² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (OJ L 182, 29.6.2013, p.19).’;

(d) the following points (20) and (21) are added:

‘(20) ‘feeder ELTIF’ means an ELTIF, or an investment compartment thereof, which has been approved to invest at least 85 % of its assets in units of another ELTIF or investment compartment of an ELTIF;

(21) ‘master ELTIF’ means an ELTIF, or an investment compartment thereof, in which another ELTIF invests at least 85 % of its assets in units of another ELTIF or investment compartment of an ELTIF.’

(3) in Article 3, paragraph 3 is replaced by the following:

‘3. The competent authorities of the ELTIFs shall, on a monthly basis, inform ESMA of authorisations granted or withdrawn pursuant to this Regulation and of any changes to the information about an ELTIF that is set out in the central public register referred to in the second subparagraph.

ESMA shall keep an up-to-date central public register identifying for each ELTIF authorised under this Regulation:

- (a) the Legal Entity Identifier (LEI) and national code identifier of that ELTIF, where available;
- (b) the name of the manager of the ELTIF, and the address and the LEI of that manager;
- (c) the ISIN codes of the ELTIF and each separate share or unit class, where available;
- (d) the LEI of the master fund, where available;
- (e) the LEI of the feeder funds, where available;
- (f) the competent authority of the ELTIF and the home Member State of that ELTIF;
- (g) the Member States where the ELTIF is marketed;

- (h) whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors;
- (i) the date of the authorisation of the ELTIF;
- (j) the date on which the marketing of the ELTIF has commenced;
- (k) up-to-date links to the ELTIF documentation, including to the rules or instruments of incorporation of the ELTIF, the annual reports, the prospectus and, where available, the Key Information Document;
- (l) the date of the last update by ESMA of the information about the ELTIF.

The central public register shall be made available in electronic format.’;

- (4) Article 5 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:

‘The application for authorisation as an ELTIF shall contain all of the following:

- (a) the fund rules or instruments of incorporation;
- (b) the name of the proposed manager of the ELTIF;
- (c) the name of the depositary and, where requested by the competent authority for ELTIF’s marketed to retail investors, the written agreement with the depositary;
- (d) where the ELTIF is intended to be marketed to retail investors, a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;
- (e) where applicable, the following information on the master-feeder structure of the ELTIF:
 - (i) a declaration that the feeder ELTIF is a feeder of the master ELTIF;
 - (ii) the fund rules or instruments of incorporation of the master ELTIF and the agreement between the feeder and the master ELTIF referred or the internal rules on the conduct of business referred to in Article 29(6);
 - (iii) where the master ELTIF and the feeder ELTIF have different depositaries, the information-sharing agreement referred to in Article 29(7), ;
 - (iv) where the feeder ELTIF is established in a Member State other than the home Member State of the master ELTIF, an attestation by the competent authorities of the home Member State of the master ELTIF that the master ELTIF is an ELTIF provided by the feeder ELTIF.’;

- (b) paragraph 3 is replaced by the following:

‘3. Applicants shall be informed within two months from the date of submission of a complete application whether authorisation as an ELTIF has been granted. Authorisation shall not be subject either to a requirement that the ELTIF be managed by an AIFM having its registered office in the

ELTIF home Member State or that the AIFM pursue or delegate any activities in the ELTIF home Member State.’;

(c) in paragraph 5, point (b) is replaced by the following:

‘(b) where the ELTIF is intended to be marketed to retail investors, a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors.’;

(5) Article 10 is replaced by the following:

‘Article 10

Eligible investment assets

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

(a) equity or quasi-equity instruments which have been:

- (i) issued by a qualifying portfolio undertaking as referred to in Article 11(1) and acquired by the ELTIF from that qualifying portfolio undertaking or from a third party via the secondary market;
- (ii) issued by a qualifying portfolio undertaking as referred to in Article 11(1) in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from that qualifying portfolio undertaking or from a third party via the secondary market;
- (iii) issued by an undertaking in which a qualifying portfolio undertaking as referred to in Article 11(1) holds a capital participation in exchange for an equity or quasi-equity instrument acquired by the ELTIF in accordance with points (i) or (ii) of this paragraph;

(b) debt instruments issued by a qualifying portfolio undertaking as referred to in Article 11(1);

(c) loans granted by the ELTIF to a qualifying portfolio undertaking as referred to in Article 11(1) with a maturity that does not exceed the life of the ELTIF;

(d) units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFM provided that those ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs invest in eligible investments as referred to in Article 9(1) and (2) and have not themselves invested more than 10% of their assets in any other collective investment undertaking.

(e) real assets with a value of at least EUR 1 000 000 or its equivalent in the currency in which, and at the time when, the expenditure is incurred;

(f) simple, transparent and standardised securitisations where the underlying exposures correspond to one of the following categories:

- (i) assets listed in Article 1, points (a)(i), (ii) or (iv), of Commission Delegated Regulation 2019/1851^{*3};
- (ii) assets listed in Article 1, points (a),(vii) and (viii), of Delegated Regulation 2019/1851, provided that the proceeds from the securitisation bonds are used for financing or refinancing long-term investments.

*3 Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1).’;

2. Where an ELTIF has invested in shares or units of other ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs in accordance with paragraph 1, point (d), the assets of the respective ELTIF and other collective investment undertakings are to be combined for the purposes of determining the compliance with limits laid down in Article 13 and Article 16(1).’
- (6) Article 11(1) is amended as follows:
 - (a) the introductory sentence is replaced by the following:

‘A qualifying portfolio undertaking referred to in Article 10 shall be an undertaking that fulfils the following requirements:’;
 - (b) in point (b), point (ii) is replaced by the following:

‘(ii) is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 1 000 000 000 at the time of the initial investment;’;
- (7) Article 12 is replaced by the following:

‘Article 12

Conflict of interest

1. 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, EuVECAs, UCITS or EU AIFs that it manages.
2. The AIFM managing an ELTIF and undertakings that belong to the same group with an AIFM managing an ELTIF, and their staff may co-invest in that ELTIF and co-invest with the ELTIF in the same asset, provided that the ELTIF manager has put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and provided that such conflicts of interest are adequately disclosed.’;
- (8) Article 13 is amended as follows:
 - (a) paragraphs 1, 2 and 3 are replaced by the following:
 - ‘1. An ELTIF shall invest at least 60 % of its capital in eligible investment assets.
 2. An ELTIF shall invest no more than:
 - (a) 20 % of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking;
 - (b) 20 % of its capital directly or indirectly in a single real asset;
 - (c) 20 % of its capital in units or shares of any single ELTIF, EuVECA, EuSEF, UCITS or EU AIF managed by an EU AIFM;

- (d) 10 % of its capital in assets as referred to in Article 9(1), point (b), where those assets have been issued by any single body.
3. The aggregate value of units or shares of ELTIFs, EuVECAs, EuSEFs, UCITS and of EU AIFs managed by EU AIFM in an ELTIF portfolio shall not exceed 40 % of the value of the capital of the ELTIF.’;
- (b) the following paragraph 3a is inserted:

‘3a. The aggregate value of simple, transparent and standardised securitisations in an ELTIF portfolio shall not exceed 20% of the value of the capital of the ELTIF.’;
 - (c) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 10 % of the value of the capital of the ELTIF.’;
 - (d) paragraph 5 is deleted;
 - (e) in paragraph 6, the first sentence is replaced by the following:

‘By way of derogation from paragraph 2, point (d), an ELTIF may raise the 10 % limit referred to in that point to 25 % where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders.’;
 - (f) the following paragraph 8 is added:

‘8. The investment thresholds set out in paragraphs 2 to 4 shall not apply where ELTIFs are marketed solely to professional investors.’;
- (9) Article 15 is amended as follows:
- (a) paragraph 1 is replaced by the following:

‘1. An ELTIF may acquire no more than 30 % of the units or shares of a single ELTIF, EuVECA, EuSEF, UCITS or of an EU AIF managed by an EU AIFM. That limit shall not apply where ELTIFs are marketed solely to professional investors.’;
 - (b) in paragraph 2, the following subparagraph is added:

‘Those concentration limits shall not apply where ELTIFs are marketed solely to professional investors.’;
- (10) Article 16 is amended as follows:
- (a) paragraph 1 is amended as follows:
 - (i) points (a), (b) and (c) are replaced by the following:
 - ‘(a) it represents no more than 50 % of the value of the capital of the ELTIF, and no more than 100 % of the value of the capital of the ELTIF for ELTIFs marketed solely to professional investors;
 - (b) it serves the purpose of making investments or providing liquidity, including to pay costs and expenses, except for loans as referred to in Article 10, point (c), provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned;

- (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash or in another currency where currency exposure has been hedged or where it can be otherwise demonstrated that the borrowing in another currency does not expose the ELTIF to material currency risks.’;
- (ii) point (e) is replaced by the following:
 - ‘(e) it encumbers assets to implement the borrowing strategy of the ELTIF concerned.’;
- (b) the following paragraph 1a is inserted:
 - ‘1a. Borrowing arrangements which are fully covered by investors’ capital commitments shall not be considered to constitute borrowing for the purposes of paragraph 1.’;
- (c) paragraph 2 is replaced by the following:
 - ‘2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether or not the ELTIF intends to borrow cash as part of the ELTIF’s investment strategy and shall provide a detailed presentation of the ELTIF borrowing strategy and limits. In particular, the manager of the ELTIF shall indicate how borrowing will help implement the ELTIF strategy and mitigate borrowing, currency and duration risks.’;
- (11) in Article 18, paragraph 4 is deleted;
- (12) in Article 18, paragraph 7 is replaced by the following:
 - ‘7. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, as referred to in paragraph 3.

ESMA shall develop draft regulatory technical standards specifying the minimum information to be provided to competent authorities under Article 18(2), point (b), and the criteria to assess the percentage referred to in Article 18(2), point (d), taking into account the ELTIF’s expected cash flows and liabilities.’;
- (13) Article 19 is amended as follows:
 - (i) the following paragraph 2a is inserted:
 - ‘2a. Rules or instruments of incorporation of the ELTIF may provide for the possibility of full or partial matching, before the end of the life of the ELTIF, of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors, provided that all of the following conditions are fulfilled:
 - (a) the manager of the ELTIF has set out a policy for matching requests which clearly sets out all of the following:
 - (i) the transfer process for both exiting and potential investors;
 - (ii) the role of the fund manager or the fund administrator in conducting transfers, and the matching of respective requests;
 - (iii) the periods of time during which existing and potential investors may request transfer of shares or units of the ELTIF;

- (iv) the execution price;
- (v) the pro-rata conditions;
- (vi) the timing and the nature of the disclosure of information with respect to the transfer process;
- (vii) the fees, costs and charge, if any, related to the transfer process;
- (b) the policy and procedures for matching requests of the ELTIF exiting potential investors ensures that investors are treated fairly and that matching is carried out on a pro rata basis where there is a mismatch between existing and potential investors;
- (c) the matching of requests allows the ELTIF manager to monitor the liquidity risk of the ELTIF and is compatible with the long-term investment strategy of the ELTIF.’;

(ii) the following paragraph 5 is added:

‘5. ESMA shall develop draft regulatory technical standards specifying the circumstances in which Article 19(2a) shall be applied, including the information that ELTIFs need to disclose to investors.

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

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

(14) in Article 21, paragraph 1 is replaced by the following:

‘1. An ELTIF shall inform its competent authority about the orderly disposal of its assets in order to redeem investors' units or shares after the end of life of the ELTIF at the latest one year before the date of the end of life of the ELTIF. Upon the request of the competent authority of the ELTIF, the ELTIF shall submit to its competent authority an itemised schedule for the orderly disposal of those assets.’;

(15) Article 23 is amended as follows:

(a) the following paragraph 3a is inserted:

‘3a. The prospectus of the feeder ELTIF shall contain the following information:

- (a) a declaration that the feeder ELTIF is a feeder of a particular master ELTIF and as such permanently invests 85% or more of its assets in units of that master ELTIF;
- (b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master ELTIF are identical, or to what extent and for which reasons they differ;
- (c) a brief description of the master ELTIF, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master ELTIF may be obtained;

- (d) a summary of the agreement entered into between the feeder ELTIF and the master ELTIF or of the internal rules on the conduct of business referred to in Article 29(6));
 - (e) how the unit-holders may obtain further information on the master ELTIF and the agreement entered into between the feeder ELTIF and the master ELTIF referred to in Article 29(6);
 - (f) a description of all remuneration or reimbursement of costs payable by the feeder ELTIF by virtue of its investment in units of the master ELTIF, as well as of the aggregate charges of the feeder ELTIF and the master ELTIF;
 - (g) a description of the tax implications for the feeder ELTIF of the investment into the master ELTIF.’;
- (b) in paragraph 5, the following subparagraph is added:
- ‘Where the ELTIF is marketed to retail investors, the manager of the ELTIF shall include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF. The annual report of the feeder ELTIF shall indicate how the annual report or reports of the master ELTIF can be obtained’.
- (16) in Article 25, paragraph 2 is replaced by the following:
- ‘2. The prospectus shall disclose an overall cost ratio of the ELTIF.’;
- (17) Article 26 is deleted.
- (18) Article 28 is deleted.
- (19) in Article 29, the following paragraphs 6 and 7 are added:
- ‘6. In case of a master-feeder structure, the master ELTIF shall provide the feeder ELTIF with all documents and information necessary for the latter to meet the requirements laid down in this Regulation. For that purpose, the feeder ELTIF shall enter into an agreement with the master ELTIF.
- That agreement shall be made available, on request and free of charge, to all unit-holders. In the event that both master and feeder ELTIF are managed by the same management company, the agreement may be replaced by internal rules on the conduct of business ensuring compliance with the requirements set out in this paragraph.
7. Where the master and the feeder ELTIF have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries. The feeder ELTIF shall not invest in units of the master ELTIF until such agreement has become effective.
- Where they comply with the requirements laid down in this paragraph, neither the depositary of the master ELTIF nor that of the feeder ELTIF shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such depositary or any person acting on its behalf.
- The feeder ELTIF or, where applicable, the management company of the feeder ELTIF, shall be in charge of communicating to the depositary of the feeder ELTIF

any information about the master ELTIF which is required for the completion of the duties of the depositary of the feeder ELTIF. The depositary of the master ELTIF shall immediately inform the competent authorities of the master ELTIF home Member State, the feeder ELTIF or, where applicable, the management company and the depositary of the feeder ELTIF about any irregularities it detects with regard to the master ELTIF which are deemed to have a negative impact on the feeder ELTIF.’;

- (20) Article 30 is replaced by the following:

‘Article 30

Specific requirements concerning the distribution and marketing of ELTIFs to retail investors

1. The units or shares of an ELTIF may only be marketed to a retail investor where an assessment of suitability in accordance with Article 25, paragraphs 1, 2 and 5, Article 25(6), second and third subparagraph, and Article 25(7) of Directive 2014/65/EU has been carried out with respect to that investor.
2. Where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, the manager of the ELTIF or the distributor shall issue a clear written alert that the ELTIF product may not be suitable for retail investors that are unable to sustain such a long-term and illiquid commitment.
3. Paragraphs 1 and 2 shall not apply where the retail investor is a member of senior staff, portfolio manager, director, officer, agent or employee of the manager or of an affiliate of the manager and has sufficient knowledge about the ELTIF concerned.
4. In case of a master-feeder structure, the prospectus of the feeder ELTIF shall contain all of the following information:
 - (a) a declaration that the feeder ELTIF is a feeder of the master ELTIF;
 - (b) the investment objective and policy, including the risk profile and whether the performance of the feeder and of the master ELTIF are identical, or to what extent and for which reasons they differ;
 - (c) a brief description of the master ELTIF, its organisation, its investment objective and policy, including the risk profile, and information on how the prospectus of the master ELTIF can be obtained;
 - (d) a description of all remuneration or reimbursement of costs payable by the feeder ELTIF by virtue of its investment in units of the master ELTIF, as well as of the aggregate charges of the feeder ELTIF and the master ELTIF;
 - (e) a description of the tax implications for the feeder ELTIF of the investment into the master ELTIF .
5. A feeder ELTIF shall disclose in any marketing communications that it permanently invests 85 % or more of its assets in units of the master ELTIF.
6. The rules or instruments of incorporation of an ELTIF marketed to retail investors in the relevant class of units or shares shall provide that all investors benefit from equal treatment and that no preferential treatment or specific economic benefits shall be granted to individual investors or groups of investors within the relevant class or classes.

7. The legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment.
 8. Retail investors shall be able, during the subscription period and at least two weeks after the effective date of the commitment or subscription agreement of the units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.
 9. The manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which shall allow retail investors to file complaints in the official language or one of the official languages of their Member State.’;
- (21) in Article 37, paragraph 1 is replaced by the following:
- ‘1. No later than [date of the entry into force + 5 years], the Commission shall start a review of the application of this Regulation. The review shall analyse, in particular:
- (a) the application of Article 18 and the impact of that application on the redemption policy and life of ELTIFs;
 - (b) the application of provisions on the authorisation of ELTIFs, as set out in Articles 3 to 6;
 - (c) whether the provisions on the central public register of ELTIFs as laid down in Article 3 should be updated;
 - (d) the impact of the application of the minimum thresholds of eligible investment assets laid down in Article 13(1) on asset diversification;
 - (e) the extent to which ELTIFs are marketed in the Union, including whether AIFMs as referred to in Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;
 - (f) whether the list of eligible assets and investments, the diversification rules, the rules on portfolio composition, concentration rules and limits regarding the borrowing of cash should be updated;
 - (g) whether the provisions concerning conflicts of interest as laid down in Article 12 should be updated;
 - (h) whether the transparency requirements laid down in Chapter IV are appropriate;
 - (i) whether the provisions concerning the marketing of units or shares of ELTIFs laid down in Chapter V are appropriate and ensure an effective protection of investors, including retail investors.’.

Article 2

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

It shall apply from [entry into force + 6 months].

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President