

I

(*Legislative acts*)

REGULATIONS

REGULATION (EU) 2023/606 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 March 2023

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

(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 Committee (¹),

Acting in accordance with the ordinary legislative procedure (²),

Whereas:

- (1) Since the adoption of Regulation (EU) 2015/760 of the European Parliament and of the Council (³) 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. Moreover, there appears to be a lack of awareness and financial literacy, as well as, most importantly, low levels of trust and reliability as regards the finance industry, that need to be overcome in order to make ELTIFs more accessible and popular among retail investors. It is therefore necessary to review the functioning of the legal framework for the operation of ELTIFs in order to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects.

(¹) OJ C 290, 29.7.2022, p. 64.

(²) Position of the European Parliament of 15 February 2023 (not yet published in the Official Journal) and decision of the Council of 7 March 2023.

(³) 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).

- (4) At present, the objective of Regulation (EU) 2015/760 is to channel capital towards European long-term investments in the Union's real economy. As a result, it can occur that a majority of ELTIF assets and investments, or the main revenue or profit generation of such assets and investments, is located within the Union. However, long-term investments in projects, undertakings, and infrastructure projects in third countries can also bring capital to ELTIFs and benefit the Union's economy. Such benefits can originate in multiple ways, including through investments that promote the development of border regions, that enhance commercial, financial and technological cooperation and that facilitate investments in environmental and sustainable energy projects. Indeed, certain long-term assets and investments that benefit the Union's real economy will unavoidably be located in third countries, such as subsea fibre optic cables that connect Europe with other continents, the construction of liquefied natural gas terminals and related infrastructure, or cross-border investments in renewable energy installations and facilities that contribute to the resilience of the electrical grid and the energy security of the Union. Since investments in third-country qualifying portfolio undertakings and eligible assets can bring benefits to investors and managers of ELTIFs, as well as to the economies, infrastructure, climate and environmental sustainability and citizens of such third countries, Regulation (EU) 2015/760 should not prevent a majority of ELTIF assets and investments, or the main revenue or profit generation of such assets and investments, from being located in a third country.
- (5) Accordingly, and also having regard to ELTIFs' potential to facilitate long-term investments in, amongst others, energy, transport and social infrastructure, and job creation, and to contribute to the achievement of the European Green Deal, Regulation (EU) 2015/760 should be amended so that its objective is to facilitate the raising and channelling of capital towards long-term investments in the real economy, including towards investments that promote the European Green Deal and other priority areas, and to ensure that capital flows are directed towards projects that put the Union's economy on a path towards smart, sustainable and inclusive growth.
- (6) It is necessary to enhance the flexibility of asset managers to invest in broad categories of real assets. 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 include immovable property, such as 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.
- (7) Investments in commercial property, facilities or installations for education, counselling, research, development, including infrastructure and other assets that give rise to economic or social benefit, sports, or housing, including housing for senior residents or social housing, should also be deemed to be eligible investments in real assets due to the capacity of such assets to contribute to the objective of smart, sustainable and inclusive growth. To enable the realisation of investment strategies in areas where direct investments in real assets are not possible or are uneconomical, eligible investments in real assets should also comprise investments in water rights, forest rights, building rights and mineral rights.
- (8) Eligible investment assets should be understood to exclude works of art, manuscripts, wine stocks, jewellery or other assets, which do not in themselves represent long-term investments in the real economy.
- (9) It is necessary to increase the attractiveness of ELTIFs for asset managers and broaden the range of investment strategies available to managers of ELTIFs so as to avoid any 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 objectives, or upon environmental, social or governance matters and related sustainability disclosures and similar conditions, which are already covered by Regulations (EU) 2019/2088⁽⁴⁾ and (EU) 2020/852⁽⁵⁾ of the European Parliament and of the Council. Nevertheless, ELTIFs remain subject to the obligations stemming from Regulation (EU) 2019/2088 on sustainability-related disclosures. In particular, when ELTIFs either promote environmental or social characteristics or have sustainable investment as their objective, they are to comply with the disclosure requirements set out in Article 8 or 9 of Regulation (EU) 2019/2088, as applicable, which each contain detailed transparency requirements for pre-contractual disclosures.

⁽⁴⁾ 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).

⁽⁵⁾ 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).

- (10) In order to encourage private capital flows towards more environmentally sustainable investments, it should be clarified that ELTIFs are also able to invest in green bonds. At the same time, it should also be ensured that ELTIFs target long-term investments and that the requirements of Regulation (EU) 2015/760 regarding eligible investment assets are observed. Therefore, green bonds that comply with those eligibility requirements and that are issued pursuant to a Regulation of the European Parliament and of the Council on European green bonds should be expressly included in the list of eligible investment assets.
- (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 provided for in Regulation (EU) 2015/760. That register should therefore contain additional information to the information that it already contains including, and where available, the Legal Entity Identifier (LEI) and the national code identifier of the ELTIF, the name, address and the LEI of the manager of the ELTIF, the International Securities Identification Number (ISIN code) of the ELTIF and of each separate unit or share 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 solely to professional investors, the date of authorisation of the ELTIF, and the date on which the marketing of the ELTIF commenced.
- (12) Investments by ELTIFs can be conducted through the participation of intermediary entities, including special purpose vehicles and securitisation or aggregator vehicles or holding companies. At present, Regulation (EU) 2015/760 requires that investments in equity or quasi-equity instruments of qualifying portfolio undertakings only take place where those undertakings are majority-owned subsidiaries, which substantially limits the scope of the eligible asset base. ELTIFs should therefore, in general, have the possibility of conducting minority co-investment in investment opportunities. That possibility should give ELTIFs additional flexibility in implementing their investment strategies, attract more promoters of investment projects and increase the range of possible eligible target assets, all of which are 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 at present contains restrictions on investments in other funds throughout the life of an ELTIF. Fund-of-funds 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 of investing in other funds, to enable them to ensure a faster deployment of capital. Facilitating fund-of-funds investments by ELTIFs would also allow reinvestment of excess cash into funds, as different investments with distinct maturities might lower the cash drag of an ELTIF. It is therefore necessary to expand the eligibility of fund-of-funds strategies for managers of ELTIFs beyond investments in European venture capital funds (EuVECAs) or European social entrepreneurship funds (EuSEFs). The categories of collective investment undertakings in which ELTIFs can invest should thus be broadened to include undertakings for collective investment in transferable securities (UCITS) and also EU alternative investment funds (EU AIFs) managed by EU AIF managers (EU AIFMs). However, in order to ensure effective investor protection, it is also necessary to provide that where an ELTIF invests in other ELTIFs, in EuVECAs, in EuSEFs, in UCITS or 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. In order to prevent circumvention of those rules and to ensure that ELTIFs comply on an aggregate portfolio basis with Regulation (EU) 2015/760, the assets and cash borrowing position of ELTIFs should be combined with those of the collective investment undertakings in which ELTIFs have invested in order to assess ELTIFs' compliance with the portfolio composition and diversification requirements, and with the borrowing limits.
- (14) At present, Regulation (EU) 2015/760 requires that eligible investment assets, where those assets are individual real assets, have a value of at least EUR 10 000 000. Real asset portfolios, however, are often composed of a number of individual real assets which have a value of significantly less than EUR 10 000 000. The requirement for a minimum value of individual real assets should therefore be removed. It is expected that the removal of that unnecessary requirement will contribute to the diversification of investment portfolios and boost more effective investments in real assets by ELTIFs, while also allowing for different levels of development of long-term investment instruments in the Member States to be taken into consideration.

- (15) It is necessary to extend the scope of eligible investment 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 securitisations as referred to in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council (⁶). 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), 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-sized enterprises, and trade receivables or other underlying exposures that the originator considers 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.
- (16) At present, Regulation (EU) 2015/760 prevents investments by ELTIFs in credit institutions, investment firms, insurance undertakings and other financial undertakings. However, innovative recently authorised financial undertakings such as FinTechs could play an important role in promoting digital innovation, the overall efficiency of Union financial markets and job creation, and in contributing to the resilience and stability of Union financial infrastructure and the capital markets union. Such financial undertakings design, develop or offer innovative products or technologies that aim to automate or improve existing business models, processes, applications and products, or result in new ones, and thereby benefit Union financial markets, financial institutions and the provision of financial services to financial institutions, businesses or consumers. Such financial undertakings also render specific regulatory, supervisory or oversight processes more efficient and effective, or modernise regulatory, supervisory or oversight compliance functions across financial or non-financial institutions. It is therefore desirable to amend Regulation (EU) 2015/760 in order to permit ELTIFs to invest in innovative recently authorised financial undertakings. As the area is dynamic and rapidly evolving, ELTIFs should be allowed to invest in financial undertakings, other than financial holding companies or mixed-activity holding companies, that are regulated entities authorised or registered more recently than five years before the date of the initial investment.
- (17) At present, Regulation (EU) 2015/760 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. However, many listed companies with a low market capitalisation have a limited liquidity which prevents managers of ELTIFs from building, within a reasonable time, a sufficient position in such listed companies, and as a result narrows the range of available investment targets. In order to provide ELTIFs with a better liquidity profile, the market capitalisation of the listed qualifying portfolio undertakings in which ELTIFs can invest should therefore be increased from a maximum of EUR 500 000 000 to a maximum of EUR 1 500 000 000. 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 be made only at the time of the initial investment.
- (18) In order to ensure the transparency and integrity of investments in assets located in third countries for investors, managers of ELTIFs and competent authorities, the requirements in respect of investments in third-country qualifying portfolio undertakings should be aligned to the standards laid down in Directive (EU) 2015/849 of the European Parliament and of the Council (⁷). They should also be aligned to the standards set out in the common action undertaken by the Member States as regards non-cooperative jurisdictions for tax purposes, reflected in the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.
- (19) Managers of ELTIFs that hold a stake in a portfolio undertaking might place their own interests ahead of those of investors in the ELTIF. To avoid such conflicts of interest, and to ensure sound corporate governance, 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, established market practice that one or several investment vehicles of the asset manager

(⁶) 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).

(⁷) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

co-invest alongside another fund that has a similar objective and strategy as that of the ELTIF. Such co-investments by the EU AIFM 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 staff 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 conflicts of interest should not prevent a manager of an ELTIF or an undertaking that belongs to the same group from co-investing in that ELTIF or 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 take place, managers of ELTIFs should put in place organisational and administrative arrangements in accordance with the requirements laid down in Directive 2011/61/EU of the European Parliament and of the Council⁽⁸⁾ designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

- (20) To prevent conflicts of interest, avoid transactions that do not take place on commercial terms and ensure sound corporate governance, Regulation (EU) 2015/760 does not allow the staff of the manager of an ELTIF and of undertakings that belong to the same group as the manager of the ELTIF to invest in that ELTIF or to co-invest with the ELTIF in the same asset. It is, however, established market practice that the staff of the manager of an ELTIF and of other affiliate entities that belong to the same group, which co-invest alongside the manager of the ELTIF, including the portfolio managers and senior staff responsible for the key financial and operational decisions of the manager of the ELTIF, 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 those staff and the investors. It is therefore appropriate to specify that the provisions on conflicts of interest should not prevent the staff of the manager of an ELTIF or of undertakings that belong to that group from co-investing in their personal capacity in that ELTIF and from co-investing with the 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, managers of ELTIFs 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.
- (21) 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. However, professional and retail investors have different time horizons, risk tolerances and investment needs as well as different capabilities to analyse investment opportunities. Indeed, professional investors have a higher risk tolerance than retail investors, are able to perform thorough analyses of investment possibilities and due diligence of assets and their valuation, and might, due to their nature and activities, have different return objectives compared to retail investors. Despite that, and because of the almost identical rules and the resulting high administrative burden and associated costs for ELTIFs intended for professional investors, asset managers have to date been reluctant to offer tailored products to professional investors. It is therefore appropriate to provide for specific rules for ELTIFs that are marketed solely to professional investors, in particular with regard to the diversification and composition of the portfolio concerned, the concentration limits and the borrowing of cash.
- (22) At present, Regulation (EU) 2015/760 requires that ELTIFs invest at least 70 % of their capital in eligible investment assets. That high investment limit for 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 were expected to make to the financing of sustainable growth of the Union's economy. Given the illiquid and idiosyncratic nature of certain eligible investment assets within ELTIFs' portfolios, however, it can prove difficult and costly for managers of ELTIFs 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 limit for eligible investment assets would therefore enable managers of ELTIFs to better manage the liquidity of ELTIFs. Only eligible investment assets of ELTIFs other than collective investment undertakings and eligible investment assets of collective investment undertakings in which ELTIFs have invested should be combined for the purpose of assessing compliance by those ELTIFs with the investment limit for eligible investment assets.

⁽⁸⁾ 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).

- (23) The existing diversification requirements of Regulation (EU) 2015/760 were introduced in order to ensure that ELTIFs can withstand adverse market circumstances. However, those provisions have proven to be too burdensome because in practice they mean that ELTIFs are, on average, required to make 10 distinct investments. In relation to investment in projects or large-scale infrastructure, the requirement to make 10 investments per ELTIF can 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 have exposures 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 do not have a readily available market quotation, that might be highly illiquid, and that frequently have long-term maturity or a longer time horizon.
- (24) Unlike retail investors, professional investors have, in certain circumstances, a longer time horizon, distinct financial returns objectives, more expertise, higher risk tolerance to adverse market conditions and higher capacity to absorb losses. It is therefore necessary to establish for such professional investors a differentiated set of investor protection measures and to remove the diversification requirements for ELTIFs that are marketed solely to professional investors.
- (25) In order to better use the expertise of managers of ELTIFs and because of the benefits of diversification, in certain cases it can be beneficial for ELTIFs to invest all or almost all of their assets in the diversified portfolio of a master ELTIF. ELTIFs should therefore be allowed to pool their assets and make use of master-feeder structures by investing in master ELTIFs.
- (26) 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, where adequately controlled, amplify returns 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 is at present limited in Regulation (EU) 2015/760 to 30 % of the value of the capital of ELTIFs, managers of ELTIFs might 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 an ELTIF. At the same time, it is desirable to enhance the management of leverage and to promote a greater consistency with Directive 2011/61/EU with respect to borrowing policy by replacing capital with net asset value as the appropriate point of reference for determining the borrowing of cash limit, which should be accompanied by improvements to the rectification policy. In view of the possible risks that leverage can entail, ELTIFs that can be marketed to retail investors should be permitted to borrow cash amounting to no more than 50 % of the net asset value of the ELTIF. The 50 % limit is appropriate given the overall borrowing of cash limits common for funds investing in real assets with a similar liquidity and redemption profile.

For ELTIFs marketed to professional investors, however, a higher leverage limit should be permitted, because professional investors have a higher risk tolerance than retail investors. The borrowing of cash limit for ELTIFs that are marketed solely to professional investors should therefore be extended to no more than 100 % of the ELTIF's net asset value. Moreover, to date, Regulation (EU) 2015/760 does not offer the manager of an ELTIF the possibility of rectifying the investment position, within an appropriate period of time, in cases where the ELTIF infringes the leverage limit and the infringement is beyond the control of the manager of the ELTIF. Taking into account the volatility of the net asset value as a reference value and the interests of the investors in the ELTIF, it should therefore be specified that the provisions on rectification in Regulation (EU) 2015/760 apply also to borrowing limits.

- (27) 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 appropriately hedge their currency exposure.

- (28) ELTIFs should be able to encumber their assets to implement their borrowing strategy. In order to further increase the flexibility of ELTIFs in executing their borrowing strategy, borrowing arrangements should not constitute borrowing where that borrowing is fully covered by investors' capital commitments.
- (29) Given the increase of the maximum limits for the borrowing of cash by ELTIFs and the removal of certain limits on the borrowing of cash in foreign currencies, investors should have more comprehensive information on the borrowing strategies and limits employed by ELTIFs. It is therefore appropriate to require managers of ELTIFs to expressly disclose the borrowing limits in the prospectus of the ELTIF concerned.
- (30) At present, Regulation (EU) 2015/760 provides that investors in an ELTIF are able to 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 group of investors to request the winding down of an ELTIF can be disproportionate and detrimental to both the successful execution of the ELTIF's investment strategy and the interests of other investors or groups of investors. It is therefore appropriate to remove the possibility for investors to require the winding down of an ELTIF where that ELTIF is unable to satisfy redemption requests.
- (31) At present, Regulation (EU) 2015/760 is unclear about the criteria to assess the redemption percentage in any given period of time, and about the minimum information to be provided to competent authorities about the possibility of redemptions. Given the central role of the European Supervisory Authority (European Securities and Markets Authority) (ESMA) in the application of Regulation (EU) 2015/760 and its expertise in relation to securities and securities markets, it is appropriate to entrust ESMA with the drawing up of draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF; the criteria to determine the minimum holding period; the minimum information to be provided to the competent authority of the ELTIF; the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools; and the criteria to assess the redemption percentage. It should be noted that where the rules or instruments of incorporation of an ELTIF provide for the possibility of redemptions during the life of that ELTIF, the provisions on liquidity risk management and liquidity management tools set out in Directive 2011/61/EU apply.
- (32) At present, 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, managers of ELTIFs, as well as investors and market participants, have hardly used the secondary trading mechanism for the trading of units or shares of ELTIFs. To promote the secondary trading of ELTIF units or shares, it is appropriate to allow managers of ELTIFs to provide for the possibility of an early exit of ELTIF investors during the life of the ELTIF. In order to ensure the effective functioning of such a secondary trading mechanism, 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, amongst others, specify the transfer process, the role of the manager of the ELTIF or the fund administrator, the periodicity and duration of the liquidity window during which the units or shares of the ELTIF can be exchanged, the rules determining the execution price and pro-rata conditions, the disclosure requirements, and the fees, costs and charges and other conditions related to such a liquidity window mechanism. ESMA should be entrusted with the drawing up of draft regulatory technical standards specifying the circumstances for the use of matching, including the information that ELTIFs are required to disclose to investors.
- (33) In order to avoid any misunderstanding by retail investors regarding the legal nature of, and the potential liquidity allowed for by, the secondary trading mechanism, the distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF should issue a clear written alert to retail investors that the availability of a matching mechanism does not guarantee the matching or entitle retail investors to exiting or redeeming their units or shares of the ELTIF concerned. That written alert should be part of a single written alert that also informs retail investors that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment, where the life of an ELTIF offered or placed to retail investors exceeds 10 years. When presented in marketing communication to retail investors, the availability of a matching mechanism should not be promoted as a tool that guarantees liquidity upon request.

- (34) At present, 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 Regulation also requires ELTIFs to disclose that itemised schedule to the competent authority of the ELTIF. Those requirements subject managers of ELTIFs to substantial administrative and compliance burdens, without bringing a corresponding increase in investor protection. In order to alleviate those burdens without diminishing investor protection, ELTIFs should inform the competent authority of the ELTIF about the orderly disposal of their assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and only provide the competent authority of the ELTIF with an itemised schedule where they are expressly asked to do so by that competent authority.
- (35) The prospectus of a feeder ELTIF can contain highly relevant information for investors, which enables them to better assess the potential risks and benefits of an investment. It is therefore appropriate to require that, in the case of a master-feeder structure, the prospectus of the feeder ELTIF should contain disclosures on the master-feeder structure, the feeder ELTIF and the master ELTIF, and a description of all remuneration or reimbursement of costs payable by the feeder ELTIF.
- (36) Adequate disclosure of fees and charges is critically important for the evaluation of an ELTIF 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 manager of an ELTIF to include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF. Such requirement is expected to contribute to the protection of investors against being charged unjustified additional costs as a result of subscription and redemption fees potentially charged by the master ELTIF to the feeder ELTIF.
- (37) Regulation (EU) 2015/760 requires the manager of an ELTIF to disclose in the ELTIF prospectus information about fees related to investing in that ELTIF. Regulation (EU) No 1286/2014 of the European Parliament and of the Council^(*), however, also contains requirements concerning the disclosure of fees. In order to increase transparency on fee structures, the requirement laid down in Regulation (EU) 2015/760 should be aligned with the requirement laid down in Regulation (EU) No 1286/2014.
- (38) At present, Regulation (EU) 2015/760 requires managers of ELTIFs to set up local facilities in each Member State where they intend to market ELTIFs. While the requirements to perform certain tasks for investors across all Member States remain in place, the requirement to set up local facilities has, however, subsequently been removed by Directive (EU) 2019/1160 of the European Parliament and of the Council⁽¹⁰⁾ as regards UCITS and alternative investment funds marketed to retail investors, since such local facilities create additional costs and friction in respect of 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 electronic means. Removing that requirement from Regulation (EU) 2015/760 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 the operation of local facilities. That requirement should therefore be removed.
- (39) Since units and shares of ELTIFs are financial instruments, the product governance rules of Directive 2014/65/EU of the European Parliament and of the Council⁽¹¹⁾ apply where ELTIFs are marketed with the provision of investment services. However, an ELTIF's units or shares can also be purchased without the provision of investment services. To cover those cases, Regulation (EU) 2015/760 at present requires managers of ELTIFs to develop an internal assessment process for ELTIFs marketed to retail investors. The current regime is inspired by the product

^(*) 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).

⁽¹⁰⁾ 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).

⁽¹¹⁾ 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).

governance rules of Directive 2014/65/EU but contains several differences that are not justified and could reduce investor protection. It should therefore be specified that the product governance rules laid down in Directive 2014/65/EU apply. The references to Directive 2014/65/EU are to be understood as entailing the application of the delegated acts supplementing that Directive.

- (40) At present, Regulation (EU) 2015/760 requires distributors or managers of ELTIFs to carry out a suitability assessment in respect of retail investors. However, that requirement is already provided for in Article 25 of Directive 2014/65/EU. Having a duplicate requirement creates an additional layer of administrative burden leading to higher costs for retail investors and is a strong disincentive for managers of ELTIFs to offer new ELTIFs to retail investors. It is therefore necessary to remove that duplicate requirement from Regulation (EU) 2015/760.
- (41) In order to ensure a high level of protection of retail investors, a suitability assessment should be carried out irrespective of whether the units or shares of ELTIFs are acquired by retail investors from distributors or managers of ELTIFs or via the secondary market. In accordance with Article 25(2) of Directive 2014/65/EU, the suitability assessment should comprise information on the expected duration and purpose of the investment and the retail investor's risk tolerance, as part of the information on the retail investor's investment objectives and financial situation, including their ability to bear losses. The results of the assessment should be communicated to the retail investors in the form of a statement on suitability, in accordance with Article 25(6) of Directive 2014/65/EU.
- (42) In addition, in cases where the result of the suitability assessment is that an ELTIF is not suitable for a retail investor and such investor nevertheless wishes to proceed with the transaction, the express consent of that retail investor should be obtained before the distributor or manager of the ELTIF proceeds with the transaction.
- (43) Regulation (EU) 2015/760 also requires distributors or managers of ELTIFs to provide appropriate investment advice when marketing ELTIFs to retail investors. The lack of precision in Regulation (EU) 2015/760 as to what constitutes appropriate investment advice and the lack of a cross-reference to the definition of investment advice in Directive 2014/65/EU have led to a lack of legal certainty and confusion among distributors and managers of ELTIFs. In addition, the obligation to provide investment advice requires external distributors to be authorised under Directive 2014/65/EU when marketing ELTIFs to retail investors. That creates unnecessary impediments to the marketing of ELTIFs to such investors and also subjects ELTIFs to stricter requirements than those for the distribution of other complex financial products, including the requirements for securitisations laid down in Regulation (EU) 2017/2402 and for subordinated eligible liabilities laid down in Directive 2014/59/EU of the European Parliament and of the Council (⁽¹²⁾). It is therefore not necessary to require distributors and managers of ELTIFs to provide retail investors with such investment advice. Moreover, given the importance of having a level playing field among financial products when such products are marketed to end investors, and of ensuring that this Regulation contains, amongst others, effective investor protection safeguards, ELTIFs should not be subject to unnecessary administrative and regulatory burden.
- (44) To ensure effective supervision of the application of the requirements related to the marketing of ELTIFs to retail investors, the distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF should be subject to the record-keeping rules of Directive 2014/65/EU.
- (45) In the event that the marketing or placing of ELTIFs to retail investors is done through a distributor, such distributor should comply with the applicable requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council (⁽¹³⁾). In order to ensure legal certainty and avoid duplication, where a retail investor has been provided with investment advice under Directive 2014/65/EU, the requirement to provide a suitability assessment should be considered to be fulfilled.

⁽¹²⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽¹³⁾ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

- (46) It is established market practice that the portfolio managers and senior staff of the manager of an ELTIF are required or expected to invest in ELTIFs managed by that same manager of the ELTIF. Such persons are presumed to be financially sophisticated and well-informed about the ELTIF, meaning that it would be superfluous to require them to undergo a suitability assessment for investments in the ELTIF. It is therefore appropriate not to require distributors or managers of ELTIFs to carry out a suitability assessment for such individuals.
- (47) At present, for potential retail investors whose financial instrument portfolio does not exceed EUR 500 000, Regulation (EU) 2015/760 requires 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 their financial instrument portfolio in ELTIFs. When applied together, the EUR 10 000 initial minimum investment and the 10 % limit on aggregate investment create a significant obstacle to investments in ELTIFs for retail investors, which conflicts with the goal of ELTIFs to establish a retail alternative investment fund product. It is therefore necessary to remove the EUR 10 000 initial minimum investment requirement and the 10 % limit on aggregate investment.
- (48) At present, Regulation (EU) 2015/760 requires investors to be treated equally and prohibits preferential treatment of individual investors or groups of investors, or the granting of specific economic benefits to those investors. ELTIFs can, however, have several classes of units or shares 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, those requirements should only apply to individual investors or groups of investors that invest in the same class or classes of ELTIFs.
- (49) In order to give managers of ELTIFs sufficient time to adapt to the requirements of this Regulation, including the requirements pertaining to the marketing of ELTIFs to investors, this Regulation should start to apply nine months after its entry into force.
- (50) Due to the potentially illiquid nature of eligible assets and the long-term orientation of ELTIFs, ELTIFs can experience difficulties in complying with any changes to the fund rules and regulatory requirements introduced during their life-cycle, without affecting the trust and confidence of their investors. It is therefore necessary to provide for transitional rules in respect of those ELTIFs that were authorised before the entry into application of this Regulation. However, such ELTIFs should also be able to choose to be subject to this Regulation provided that the competent authority of the ELTIF is notified accordingly.
- (51) Since the objectives of this Regulation, namely, to ensure an effective legal framework for the operation of ELTIFs throughout the Union and to promote long-term finance by raising and channelling capital towards long-term investments in the real economy in line with the Union objective of smart, sustainable and inclusive growth, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (52) Regulation (EU) 2015/760 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2015/760

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, including towards investments that promote the European Green Deal and other priority areas, 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:

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

(b) in point (7), the following point is inserted:

'(ca) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;';

(c) the following points are 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 (*);

'(14b) 'group' means a group as defined in Article 2, point (11), of Directive 2013/34/EU of the European Parliament and of the Council (**);

(*) 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).

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

(d) the following points 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 or shares 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 or shares.';

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

'3. The competent authorities of the ELTIFs shall, on a quarterly 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 the ELTIF, where available;
- (b) the name and address of the manager of the ELTIF and, where available, the LEI of that manager;
- (c) the ISIN codes of the ELTIF and each separate unit or share class, where available;
- (d) the LEI of the master ELTIF, where available;
- (e) the LEI of the feeder ELTIF, where available;
- (f) the competent authority of the ELTIF and the home Member State of the ELTIF;
- (g) the Member States where the ELTIF is marketed;
- (h) whether the ELTIF can be marketed to retail investors or can be marketed solely to professional investors;
- (i) the date of the authorisation of the ELTIF;

- (j) the date on which the marketing of the ELTIF commenced;
- (k) 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 include 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 of an ELTIF that can be marketed to retail investors, the written agreement with the depositary;
- (d) where the ELTIF can 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 ELTIF and the master ELTIF, 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 authority of the home Member State of the master ELTIF that the master ELTIF is an ELTIF provided by the feeder ELTIF.';

- (b) in paragraph 2, second subparagraph, the introductory part is replaced by the following:

'Without prejudice to paragraph 1, an EU AIFM that applies to manage an ELTIF established in another Member State shall provide the competent authority of the ELTIF with the following documentation':

- (c) 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.';

- (d) in paragraph 5, second subparagraph, point (b) is replaced by the following:

'(b) where the ELTIF can be marketed to retail investors, a description of the information to be made available to retail 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 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 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 holds a capital participation in exchange for an equity or quasi-equity instrument acquired by the ELTIF in accordance with point (i) or (ii) of this point (a);
- (b) debt instruments issued by a qualifying portfolio undertaking as referred to in Article 11;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking as referred to in Article 11 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 AIFMs 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;
- (f) simple, transparent and standardised securitisations where the underlying exposures correspond to one of the following categories:
- (i) assets listed in Article 1, point (a)(i), (ii) or (iv), of Commission Delegated Regulation (EU) 2019/1851 (*);
 - (ii) assets listed in Article 1, point (a)(vii) or (viii), of Delegated Regulation (EU) 2019/1851, provided that the proceeds from the securitisation bonds are used for financing or refinancing long-term investments;
- (g) bonds issued, pursuant to a Regulation of the European Parliament and of the Council on European green bonds, by a qualifying portfolio undertaking as referred to in Article 11.

The limit laid down in point (d) of the first subparagraph shall not apply to feeder ELTIFs.

2. For the purpose of determining compliance with the investment limit laid down in Article 13(1), investments by ELTIFs in units or shares of ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs shall only be taken into account to the extent of the amount of the investments of those collective investment undertakings in the eligible investment assets referred to in paragraph 1, first subparagraph, points (a), (b), (c), (e), (f) and (g), of this Article.

For the purpose of determining compliance with the investment limit and the other limits laid down in Article 13 and Article 16(1), the assets and the cash borrowing position of an ELTIF and of the other collective investment undertakings in which that ELTIF has invested shall be combined.

The determination of compliance with the investment limit and the other limits laid down in Article 13 and Article 16(1) in accordance with this paragraph shall be carried out on the basis of information updated on at least a quarterly basis and, where that information is not available on a quarterly basis, on the basis of the most recent available information.

(*) 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).;

(6) in Article 11, paragraph 1 is replaced by the following:

'1. A qualifying portfolio undertaking shall be an undertaking that fulfils, at the time of the initial investment, the following requirements:

(a) it is not a financial undertaking, unless:

- (i) it is a financial undertaking that is not a financial holding company or a mixed-activity holding company; and
- (ii) that financial undertaking has been authorised or registered more recently than 5 years before the date of the initial investment;

(b) it is an undertaking which:

- (i) is not admitted to trading on a regulated market or on a multilateral trading facility; or
- (ii) is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 1 500 000 000;

(c) it is established in a Member State, or in a third country provided that the third country:

- (i) is not identified as high-risk third country listed in the delegated act adopted pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council (*);
- (ii) is not mentioned in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.

(*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).;

(7) Article 12 is replaced by the following:

'Article 12

Conflicts 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 the manager of the ELTIF manages.

2. An EU AIFM managing an ELTIF and undertakings that belong to the same group as that EU AIFM, and their staff, may co-invest in that ELTIF and co-invest with the ELTIF in the same asset provided that the manager of the ELTIF 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) Articles 13, 14, 15 and 16 are replaced by the following:

'Article 13

Portfolio composition and diversification

1. An ELTIF shall invest at least 55 % 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 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 referred to in Article 9(1), point (b), where those assets have been issued by any single body.

3. 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.

4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over-the-counter (OTC) derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 10 % of the value of the capital of the ELTIF.

5. By way of derogation from paragraph 2, point (d), an ELTIF may raise the 10 % limit referred to therein to 25 % where bonds are issued by a credit institution that has its registered office in a Member State and that is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

6. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Directive 2013/34/EU or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 5 of this Article.

7. The investment limits set out in paragraphs 2 to 4 shall not apply where ELTIFs are marketed solely to professional investors. The investment limit set out in paragraph 2, point (c), shall not apply where an ELTIF is a feeder ELTIF.

Article 14

Rectification of investment positions

In the event that an ELTIF infringes the portfolio composition and diversification requirements laid down in Article 13 or the borrowing limits set out in Article 16(1), point (a), and the infringement is beyond the control of the manager of the ELTIF, the manager of the ELTIF shall, within an appropriate period of time, take such measures as are necessary to rectify the position, taking due account of the interests of the investors in the ELTIF.

Article 15

Concentration limits

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, nor shall it apply to a feeder ELTIF investing in its master ELTIF.

2. The concentration limits laid down in Article 56(2) of Directive 2009/65/EC shall apply to investments in the assets referred to in Article 9(1), point (b), of this Regulation, except where ELTIFs are marketed solely to professional investors.

Article 16

Borrowing of cash

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

- (a) it represents no more than 50 % of the net asset value of the ELTIF in the case of ELTIFs that can be marketed to retail investors, and no more than 100 % of the net asset value of the ELTIF in the case of ELTIFs marketed solely to professional investors;
- (b) it serves the purpose of making investments or providing liquidity, including to pay costs and expenses, provided that the holdings in cash or cash equivalent 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 appropriately hedged;
- (d) it has a maturity no longer than the life of the ELTIF.

When borrowing cash, an ELTIF may encumber assets to implement its borrowing strategy.

Borrowing arrangements that are fully covered by investors' capital commitments shall not be considered to constitute borrowing for the purposes of this paragraph.

2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether the ELTIF intends to borrow cash as part of the ELTIF's investment strategy and, if so, shall also specify therein the borrowing limits.

3. The borrowing limits to be specified in the prospectus as referred to in paragraph 2 shall only apply as from the date specified in the rules or instruments of incorporation of the ELTIF. That date shall be no later than three years after the date on which the marketing of the ELTIF commenced.

4. The borrowing limits referred to in paragraph 1, point (a), shall be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital. Such suspension shall be limited in time to the period that is strictly necessary taking due account of the interests of the investors in the ELTIF and, in any case, shall last no longer than 12 months.';

(9) in Article 17(1), the first subparagraph is replaced by the following:

'1. The portfolio composition and diversification requirements laid down in Article 13 shall:

- (a) apply by the date specified in the rules or instruments of incorporation of the ELTIF;
- (b) cease to apply once the ELTIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the ELTIF;
- (c) be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months.';

(10) Article 18 is replaced by the following:

'Article 18

Redemption of units or shares of ELTIFs

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

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

The rules or instruments of incorporation of the ELTIF and disclosures to investors shall lay down the procedures for the redemption of units or shares and the disposal of assets, and state clearly that redemptions to investors shall be possible as from the day following the date of the end of life of the ELTIF.

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

- (a) redemptions are not granted before the end of a minimum holding period or before the date specified in Article 17(1), point (a);
- (b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authority of the ELTIF that the ELTIF has in place an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF;
- (c) the redemption policy of the ELTIF clearly indicates the procedures and conditions for redemptions;

- (d) the redemption policy of the ELTIF ensures that redemptions are limited to a percentage of the assets of the ELTIF referred to in Article 9(1), point (b);
- (e) the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the requests for redemptions exceed the percentage referred to in point (d) of this subparagraph.

The condition of a minimum holding period referred to in point (a) of the first subparagraph shall not apply to feeder ELTIFs investing in their master ELTIFs.

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

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

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

- (a) the rules or instruments of incorporation of the ELTIF offer that possibility, provided that all investors are treated fairly;
- (b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;
- (c) no specific rules restrict the transfer of those assets.

6. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF, as referred to in paragraph 3.

ESMA shall also develop draft regulatory technical standards specifying the following:

- (a) the criteria to determine the minimum holding period referred to in paragraph 2, first subparagraph, point (a);
- (b) the minimum information to be provided to the competent authority of the ELTIF under paragraph 2, first subparagraph, point (b);
- (c) the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in paragraph 2, first subparagraph, points (b) and (c); and
- (d) the criteria to assess the percentage referred to in paragraph 2, first subparagraph, point (d), taking into account amongst others the ELTIF's expected cash flows and liabilities.

ESMA shall submit the draft regulatory technical standards referred to in the first and second subparagraphs to the Commission by 10 January 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'

(11) Article 19 is amended as follows:

- (a) paragraph 2 is replaced by the following:

'2. The rules or instruments of incorporation of an ELTIF shall not prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF, subject to the applicable regulatory requirements and the conditions set out in the prospectus of the ELTIF.'

- (b) the following paragraph is inserted:

'2a. The rules or instruments of incorporation of an ELTIF may provide for the possibility, during the life of the ELTIF, of full or partial matching of transfer requests of units or shares of the ELTIF by exiting investors with transfer requests by potential investors, provided that all of the following conditions are fulfilled:

- (a) the manager of the ELTIF has a policy for matching requests which clearly sets out all of the following:

- (i) the transfer process for both existing and potential investors;

- (ii) the role of the manager of the ELTIF or the fund administrator in conducting transfers and in matching requests;
 - (iii) the periods of time during which existing and potential investors are able to request the transfer of units or shares of the ELTIF;
 - (iv) the rules determining the execution price;
 - (v) the rules determining 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 charges, if any, related to the transfer process;
- (b) the policy and procedures for matching the requests of the ELTIF's exiting investors with those of potential investors ensure that investors are treated fairly and that, where there is a mismatch between existing and potential investors, matching is carried out on a pro rata basis;
- (c) the matching of requests allows the manager of the ELTIF to monitor the liquidity risk of the ELTIF and the matching is compatible with the long-term investment strategy of the ELTIF.;
- (c) the following paragraph is added:

'5. ESMA shall develop draft regulatory technical standards specifying the circumstances for the use of matching provided for in paragraph 2a, including the information that ELTIFs need to disclose to investors.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 10 January 2024.

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

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

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

- (13) in Article 22, paragraph 3 is replaced by the following:

'3. An ELTIF may reduce its capital on a pro rata basis in the event of a disposal of an asset during the life of the ELTIF, provided that such disposal is duly considered by the manager of the ELTIF to be in the investors' interests.;

- (14) Article 23 is amended as follows:

- (a) in paragraph 3, point (b) is replaced by the following:

'(b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council (*);

(*) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).;

- (b) the following paragraph is inserted:

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

- (a) a declaration that the feeder ELTIF is a feeder of a master ELTIF and as such permanently invests 85 % or more of its assets in units or shares of that master ELTIF;

- (b) the investment objective and policy of the feeder ELTIF, including the risk profile and whether the performance of the feeder ELTIF 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 can 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- or shareholders 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 or shares of the master ELTIF, as well as of the aggregate charges of the feeder ELTIF and the master ELTIF.;
- (c) 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 of the master ELTIF can be obtained.';

- (15) in Article 25, paragraph 2 is replaced by the following:

'2. The prospectus shall disclose an overall cost ratio of the ELTIF.'

- (16) Article 26 is deleted;

- (17) Article 27 is replaced by the following:

'Article 27'

Internal assessment process for ELTIFs that can be marketed to retail investors

The manager of an ELTIF, the units or shares of which can be marketed to retail investors, shall be subject to the requirements laid down in Article 16(3), second to fifth and seventh subparagraphs, of Directive 2014/65/EU and in Article 24(2) of that Directive.'

- (18) Article 28 is deleted;

- (19) in Article 29, the following paragraphs are added:

'6. In the 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 of this Regulation. For that purpose, the feeder ELTIF shall enter into an agreement with the master ELTIF.

The agreement referred to in the first subparagraph shall be made available, on request and free of charge, to all unit- or shareholders. In the event that both the master ELTIF and the feeder ELTIF are managed by the same manager of the ELTIF, the agreement may be replaced by internal rules on the conduct of business ensuring compliance with the requirements of this paragraph.

7. Where the master ELTIF 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 or shares of the master ELTIF until such agreement has become effective.

Where they comply with the requirements of this paragraph, neither the depositary of the master ELTIF nor that of the feeder ELTIF shall be found to infringe 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 manager of the feeder ELTIF, shall be in charge of communicating to the depositary of the feeder ELTIF any information about the master ELTIF that 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 home Member State of the master ELTIF, of the feeder ELTIF or, where applicable, of the manager and of the depositary of the feeder ELTIF, of any irregularities it detects with regard to the master ELTIF that 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 has been carried out in accordance with Article 25(2) of Directive 2014/65/EU and a statement on suitability has been provided to that retail investor in accordance with Article 25(6), second and third subparagraphs, of that Directive.

The assessment of suitability referred to in the first subparagraph of this paragraph shall be carried out irrespective of whether the units or shares of the ELTIF are acquired by the retail investor from the distributor or the manager of the ELTIF, or via the secondary market in accordance with Article 19 of this Regulation.

The express consent of the retail investor indicating that the investor understands the risks of investing in an ELTIF shall be obtained where all of the following conditions are met:

- (a) the assessment of suitability is not provided in the context of investment advice;
- (b) the ELTIF is considered not suitable for the retail investor on the basis of the assessment of suitability carried out pursuant to the first subparagraph;
- (c) the retail investor wishes to proceed with the transaction despite the fact that the ELTIF is considered not suitable for that investor.

The distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall establish a record as referred to in Article 25(5) of Directive 2014/65/EU.

2. The distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall issue a clear written alert informing the retail investor about the following:

- (a) where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment;
- (b) where the rules or instruments of incorporation of an ELTIF provide for the possibility of the matching of units or shares of the ELTIF as referred to in Article 19(2a), that the availability of such a possibility does not guarantee or entitle the retail investor to exit or redeem its units or shares of the ELTIF concerned.

3. Paragraphs 1 and 2 shall not apply where the retail investor is a member of senior staff, or a portfolio manager, director, officer, or an agent or employee of the manager of the ELTIF, or of an affiliate of the manager of the ELTIF, and has sufficient knowledge about the ELTIF.

4. A feeder ELTIF shall disclose in its marketing communications that it permanently invests 85 % or more of its assets in units or shares of the master ELTIF.

5. 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 benefit is granted to individual investors or groups of investors within the relevant class or classes.

6. 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.

7. Retail investors shall be able, during the subscription period and during a period of two weeks after the signature of the initial commitment or subscription agreement of the units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.

8. 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) Article 31, paragraph 4 is amended as follows:

(a) points (a) and (b) are replaced by the following:

'(a) the prospectus of the ELTIF; and

(b) the key information document of the ELTIF in the event that it is marketed to retail investors.';

(b) point (c) is deleted;

(22) in Article 34, paragraph 2 is replaced by the following:

'2. ESMA's powers in accordance with Directive 2011/61/EU shall also be exercised with respect to this Regulation and in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council (*).

(*). Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).'.

(23) Article 37 is replaced by the following:

'Article 37

Review

1. The Commission shall review the application of this Regulation and shall analyse at least the following elements:

- (a) the extent to which ELTIFs are marketed in the Union, including whether the AIFMs referred to in Article 3(2) of Directive 2011/61/EU might have an interest in marketing 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) whether the list of eligible assets and investments, the portfolio composition and diversification requirements, the concentration rules and the limits regarding the borrowing of cash should be updated;
- (e) the impact of the application of the investment limit for eligible investment assets laid down in Article 13(1) on asset diversification;
- (f) whether the provisions concerning conflicts of interest laid down in Article 12 should be updated;
- (g) the application of Article 18 and the impact of that application on the redemption policy and the life of ELTIFs;
- (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;

- (j) whether ELTIFs have made a significant contribution to achieving Union objectives such as those set out in the European Green Deal and in other priority areas.

2. Based on the review referred to in paragraph 1 of this Article, the Commission shall by 10 April 2030, and after consulting ESMA, submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of ELTIFs to the completion of the capital markets union and to the achievement of the objectives set out in Article 1(2). The report shall be accompanied, where appropriate, by a legislative proposal.';

- (24) the following article is inserted:

'Article 37a

Review of sustainability aspects of ELTIFs

By 11 January 2026, the Commission shall carry out an assessment and submit a report to the European Parliament and to the Council accompanied, where appropriate, by a legislative proposal, regarding at least the following:

- (a) whether the creation of an optional designation of "ELTIF marketed as environmentally sustainable" or "green ELTIF" is feasible, and in particular:
- (i) whether such designation should be reserved to ELTIFs that are financial products having sustainable investment as their objective as referred to in Article 9 of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*);
 - (ii) whether such designation should be reserved to ELTIFs that invest all or a significant part of their eligible assets or total assets into sustainable activities and, if so, how the significant part is to be defined;
 - (iii) whether sustainable activities can be linked to the sustainability criteria set out in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of Regulation (EU) 2020/852 of the European Parliament and of the Council (**);
- (b) whether there should be a general obligation for ELTIFs to comply in their investment decisions with the principle of "do no significant harm" within the meaning of Article 2a of Regulation (EU) 2019/2088, or whether that obligation should be limited to ELTIFs marketed as environmentally sustainable or green ELTIFs, in the eventuality that such an optional designation is considered feasible;
- (c) whether there is any potential to improve the framework for ELTIFs by contributing more significantly to the objectives of the European Green Deal, without undermining the nature of ELTIFs.

(*) 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).

(**) 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).'

Article 2

Entry into force and application

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 10 January 2024.

ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before 10 January 2024 shall be deemed to comply with this Regulation until 11 January 2029. ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before 10 January 2024, which do not raise additional capital, shall be deemed to comply with this Regulation.

Notwithstanding the third subparagraph, an ELTIF authorised before 10 January 2024 may choose to be subject to this Regulation, provided that the competent authority of the ELTIF is notified thereof.

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

Done at Strasbourg, 15 March 2023.

For the European Parliament
The President
R. METSOLA

For the Council
The President
J. ROSWALL
