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Closed-Ended Luxembourg ELTIFs

Compulsory Redemption Matters and Compartment Termination & Amalgamation Provisions

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Abstract: This article examines the legal and regulatory framework governing compulsory redemptions and compartment terminations in Luxembourg closed-ended ELTIFs. Focusing on the interplay between EU law, Luxembourg product regimes, and CSSF practice, it analyses how these mechanisms enhance capital efficiency, support fund liquidity management, and ensure investor protection. The study clarifies the compatibility of redemption provisions with the closed-ended ELTIF model and outlines best practices for implementing termination and amalgamation clauses within fund documentation. It concludes that Luxembourg offers a coherent and operationally flexible platform for ELTIF structuring aligned with the evolving European regulatory landscape.

KEY WORDS: LUXEMBOURG CLOSED-ENDED ELTIFs · COMPULSORY REDEMPTION · INVESTOR PROTECTION · DISTRIBUTION MECHANISMS · FUND LIQUIDITY MANAGEMENT · TERMINATION & AMALGAMATION OF COMPARTMENTS · CAPITAL REDUCTION · REDEMPTION CLAUSES · FUND DOCUMENTATION · CSSF PRACTICE

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Introduction

(1) Out of the 160 EU alternative investment funds (the "**AIFs**")[1] – or compartments thereof – that are marketed in the European Union as European long-term investment funds (the "**ELTIFs**")[2] as listed on the ELTIF register,[3] over 60% – *i.e.*, a solid 100 of them – have been set up in Luxembourg.[4] This figure is no coincidence: it underscores Luxembourg's position as the preeminent jurisdiction in the EU in the investment management space, including for ELTIF structuring.

(2) Luxembourg ELTIFs have always been organised in one of the following product wrappers, namely – and in order of popularity:

[1] See Article 4(1)(a) of the 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 (the "**AIFMD**"), *OJ L 174*, 1 July 2011, p. 1 – 73; for a consolidated version please see: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02011L0061-20250117 (last accessed on 27 June 2025) defines AIFs as "*collective investment undertakings, including investment compartments thereof, which: (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC [i.e., that are not UCITS]*".

[2] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, as amended, *OJ L 123*, 19 May 2015, p. 98 – 121; for a consolidated version please see https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015R0760-20240110 (last accessed on 27 June 2025); see also Commission delegated regulation (EU) 2018/480 of 4 December 2017 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors (Text with EEA relevance), *OJ L 81*, 23 March 2018, p. 1 – 5; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0480&from=EN (last accessed on 27 June 2025).

[3] https://www.esma.europa.eu/document/register-authorised-european-long-term-investment-funds-eltifs (last accessed on 28 March 2025).

[4] 33 have been set up in France, 13 in Italy, 11 in Ireland, 2 in Spain, and 1 in Liechtenstein.

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- Undertakings for collective investment subject to Part II of the UCI Act[5] (the "**Part II Funds**"): a total of 75 to date, with 34 newly established since the effective date of ELTIF II,[6] *i.e.*, 10 January 2024;
- Reserved alternative investment funds subject to the RAIF Act[7] (the "**RAIFs**"): a total of 22 to date, with 8 newly established since the effective date of ELTIF II;
- Specialised investment funds subject to the SIF Act[8] (the "**SIFs**"): 2 to date, both created prior to the effective date of ELTIF II; and
- Investment companies in risk capital subject to the SICAR Act[9] (the "**SICARs**"): 1 to date and created after the effective date of ELTIF II.

(3) Part II Funds – classified as "public funds" – are typically set up to market to retail investors (the "**Public Product Fund**"). In contrast, SICARs, SIFs and RAIFs – falling under the category of "private funds" – target mainly (when set-up as ELTIFs) professional investors (the "**Private Product Funds**", and together with the Public Product Funds, the "**Product Funds**"). For the purpose of this article, a reference to a Product Fund shall encompass one or more of its compartments.

(4) This article explores the legal, regulatory, and practical underpinnings of two pivotal tools used in Luxembourg closed-ended Funds – compulsory redemptions and compartment terminations/amalgamations. It focuses in particular on the role these tools play in portfolio liquidity management, investor protection, regulatory compliance, and capital efficiency. Drawing on the ELTIF Regulation, Luxembourg's Product Laws, and long-standing guidance from the CSSF, this analysis provides a detailed roadmap for practitioners structuring or reviewing ELTIFs operating within a closed-ended framework.

[5] The Luxembourg Act of 17 December 2010 relating to undertakings for collective investment (the "**UCI Act**") implementing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the "**UCITS**") (recast) amending: (i) the Law of 20 December 2002 relating to undertakings for collective investment, as amended; (ii) the Law of 13 February 2007 relating to specialised investment funds, as amended; and (iii) Article 156 of the Law of 4 December 1967 on income tax; *Mémorial A – N° 239*, 24 December 2010, Parl. doc. 6170; for its coordinated version see: https://www.cssf.lu/wp-content/uploads/L_171210_UCI.pdf (last accessed on 27 June 2025).

[6] See 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, *OJ L 80*, 20 March 2023, p. 1 – 23; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0606 (last accessed on 27 June 2025).

[7] The Luxembourg Act of 23 July 2016 relating to reserved alternative investment funds (the "**RAIF Act**") and amending (i) the Act of 16 October 1934 on wealth tax, as amended; (ii) the Act of 1 December 1936 on commercial tax, as amended; (iii) the Act of 4 December 1967 on income tax, as amended; (iv) the Act of 5 April 1993 on the financial sector, as amended; (v) the Act of 13 February 2007 relating to specialised investment funds, as amended; and (vi) the Act of 17 December 2010 relating to undertakings for collective investment, as amended, *Mémorial A – N° 140*, 28 July 2016, Doc. parl. 6929; https://www.cssf.lu/wp-content/uploads/L_230716_RAIF_eng.pdf (last accessed on 27 June 2025).

[8] The Luxembourg Act of 13 February 2007 relating to specialised investment funds (the "**SIF Act**") (i) amending the Act of 20 December 2002 relating to undertakings for collective investment, as amended; and (ii) amending the Act of 12 February 1979 on value added tax, as amended; *Mémorial A – N° 13*, 13 February 2007, Parl. doc. 5616; for its coordinated version see: https://www.cssf.lu/wp-content/uploads/L_130207_SIF.pdf (last accessed on 27 June 2025).

[9] The Luxembourg Act of 15 June 2004 relating to investment companies in risk capital (the "**SICAR Act**", and together with the UCI Act, the RAIF Act, and the SIF Act, the "**Product Laws**") and amending (i) the Act of 4 December 1967 on income tax, as amended; (ii) the Act of 16 October 1934 on wealth tax, as amended; (iii) the law of 1 December 1936 on business tax, as amended; (iv) the Act of 12 February 1979 on value added tax, as amended; (v) the Act of 20 December 2002 relating to undertakings for collective investment, as amended; *Mémorial A – N° 95*, 22 June 2004, Parl. doc. 5201; for its coordinated version see: https://www.cssf.lu/wp-content/uploads/L_150604_SICAReng.pdf (last accessed on 27 June 2025).

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(A) Compulsory Redemptions in Closed-Ended Funds

1. Overview of Compulsory Redemption Mechanisms in Closed-Ended Product Funds

a) General Background and Types of Compulsory Redemption

(5) Product Funds of the closed-ended type have traditionally included a compulsory redemption clause in their prospectus / offering document / issuing document / private placement memorandum (the "**Offering Document**"). These clauses are referred to as "compulsory redemption" clauses because they grant the board, the management company, the general partner, or the alternative investment fund manager (the "**AIFM**"), as applicable (the "**Management Body**"), the discretionary authority to enforce the redemption of part or all of the shares, units, or partnership interests (as applicable, hereinafter the "**Shares**") held by a particular investor (hereinafter referred to as the "**Punitive Compulsory Redemption**" clause) or by a category of investors on a *pro rata* basis (hereinafter referred to as the "**Distribution Compulsory Redemption**" clause, and together with the Punitive Compulsory Redemption, the "**Compulsory Redemption**") to be redeemed, *i.e.*, without the investor(s) initiating this process.

(6) Given that a Public Product Fund, designed for the retail market, is subject to different constraints, particularly regarding investor eligibility, the author did not focus extensively on this type of fund structure. However, for Public Product Funds that allow for illiquid strategies, the observations below remain relevant, particularly in relation to the Distribution Compulsory Redemption clauses.

b) Redemption Rights in Closed-Ended Fund Structures

(i) Sample Wording of Redemption Restrictions

(7) The following template provision outlines the redemption restriction applicable to Shares in closed-ended Product Funds: "*While Shares may always be redeemed at the request of the Management Body in accordance with this Offering Document, no Share may be redeemed at the request of a Shareholder. No redemption of Shares may be made as a result of which the capital of the Product Fund would fall below the minimum capital amount*[10] *required by the Product Law*".

(ii) Strategic and Legal Rationale for Closed-Ended Structures

(8) Many Product Funds are structured as "closed-ended" AIFs[11] to align with the nature of their investment strategies, the illiquidity of their underlying assets, and the need for a committed, stable capital base. Unlike open-ended AIFs, which permit investors to redeem their interests periodically, closed-ended AIFs operate on a fixed term (which may at times be extended), during which capital is locked in and available to be deployed according to the fund's long-term objectives. This structural rigidity is not a limitation – it is a feature designed to empower the Management Body to focus on value creation over time, free from the constraints of short-term liquidity management or redemption-driven "fire sales".

(9) In addition to supporting strategy execution, closed-ended Product Fund structures offer a range of regulatory, tax, and performance-related advantages that enhance the overall effectiveness and investor alignment of the Product Fund. The rationale for adopting a closed-ended Product Fund structure can be better understood by examining the following core considerations:

- *Investment strategy fit*: Closed-ended Product Fund structures are a natural match for alternative asset classes – private equity, real estate, infrastructure, and venture capital – that require time-intensive strategies like operational turnarounds, asset

[10] Such amount being equal to (i) EUR 1,250,000 namely as per Article 94 of the UCI Act for Part II Funds, (ii) EUR 1,000,000 as per Article 4 of the SICAR Act for SICARs, (iii) EUR 1,250,000 as per Articles 21 and 27 of the SIF Act for SIFs, and (iv) EUR 1,250,000 as per Articles 20 and 25 of the RAIF Act for RAIFs.

[11] Article 1(3) of Regulation 694/2014 (as defined below) provides a negative definition of closed-ended AIFs by referring to AIFs "*other than of the type described in paragraph 2*". Article 1(2) of Regulation 694/2014 says that is an "open-ended AIF" an "*AIF the shares or units of which are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIF and in accordance with the procedures and frequency set out in its rules or instruments of incorporation, prospectus or offering documents*" (emphasis added).

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repositioning, or long-term value creation. Because these investments are inherently illiquid and not suited to frequent subscriptions and redemptions, closed-ended vehicles offer the Management Body the structural stability needed to execute their strategy without the pressure of liquidity management.

- *Commitment-based efficiency*: Closed-ended Product Funds most often benefit from a capital commitment model, where investors pledge capital upfront and the Management Body draws down only as needed.[12] This approach optimises capital efficiency, minimising cash drag. The absence of redemption rights also shields the Product Fund from untimely investor withdrawals, allowing the Management Body to invest with a long-term horizon and avoid forced asset sales that could erode returns.
- *Investor protection*: Closed-ended Product Fund structures protect investors by locking in capital for the full investment horizon, giving the Management Body the runway needed to execute value-maximising strategies without the pressure of premature redemptions. This is especially critical for illiquid assets, where forced sales can lead to value erosion. By insulating the portfolio from short-term liquidity shocks, closed-ended Product Funds create a more stable, aligned, and protective environment for long-term investors.
- *Capital gain considerations*: Closed-ended Product Fund structures often provide a more favourable tax framework for both investors and the Management Body. For investors, these vehicles typically allow for the deferral of latent capital gains and preferential treatment of actual returns upon disposal as capital gains, rather than income. For the Management Body, alignment through co-investment can facilitate the favorable treatment of carried interest, which, in many jurisdictions, may also be taxed as investment income rather than employment income.

(iii) Compatibility of Compulsory Redemption with Closed-Ended Classification

(10) A Product Fund – irrespective of the Compulsory Redemption mechanism contained in its Offering Document with a wording similar in substance to that contained under point **(28)** – should be viewed as a "closed-ended" fund provided that (i) the decision leading to the capital reduction does not rest with a single shareholder, unitholder or limited partner (the "**Shareholder**"), but rather with the Management Body or the Shareholders' meeting, and (ii) such rules are clearly set out in the Offering Document.

(11) This interpretation is supported by Article 1(2) second paragraph of Regulation 694/2014[13] which states that a "*decrease in the capital of the AIF in connection with distributions according to the rules or instruments of incorporation of the AIF, its prospectus or offering documents, including one that has been authorised by a resolution of the shareholders or unitholders passed in accordance with those rules or instruments of incorporation, prospectus or offering documents, shall not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type*" (emphasis added).

(12) Accordingly, the presence of a Compulsory Redemption mechanism in the Offering Document does not, in itself, alter the classification of a Product Fund as closed-ended, provided that its implementation adheres to the governing rules and is not left at the unilateral discretion of a single investor.

2. *Punitive Compulsory Redemption Clauses Introduced in Offering Documents of Closed-Ended Product Funds*

a) Sample Clause Language

(13) The following outlines standard terms found in Offering Documents regarding Punitive Compulsory Redemptions applicable to Shares in closed-ended Product Funds: "*The*

[12] See Ezechiel Havrenne, *"Commitment-based funds": comprendre les mécanismes de tirage et leurs conséquences principales*, Agefi Luxembourg, December 2012, p. 35.
[13] Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers, as amended (the "**Regulation 694/2014**"); *OJ L 183*, 24 June 2014, p. 18 – 20; for a consolidated version please see https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0694 (last accessed on 27 June 2025).

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*Management Body, on behalf of the Product Fund, may compulsorily redeem the Shares held by any person, (i.e., any corporation, company, trust, partnership, estate, unincorporated association or other legal entity, including an individual) (the "**Person**"), if:*

- *[*(in the case of Private Product Funds:) *such Person is not or would not qualify as, a well-informed investor as defined under Article 2 of the Product Law;]*
- *in the sole opinion of the Management Body, the holding of Shares by such person may be detrimental to the interests of the existing Shareholders, or of the Product Fund or may expose the Product Fund to tax, legal or regulatory disadvantages, fines or penalties that it would not have otherwise incurred, or would be contrary to any term of the Offering Documents;*
- *such person has given representations in a subscription agreement entered into with the Product Fund that were not true when given or have ceased to be true;*
- *it may result in a breach of any law or regulation whether Luxembourg or foreign, including anti-money laundering laws and regulations; or*
- *as a result thereof the Product Fund may become subject to laws other than those of the Grand Duchy of Luxembourg (including tax laws); specifically but without limitation the Product Fund may compulsorily redeem Shares held, directly or indirectly, by any "**U.S. Person**", i.e., any person:*
    - *(i) that is a pension or other benefit plan subject to Title I of United States Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder;*
    - *(ii) that is (a) a "U.S. persons" as defined in Regulation S under the US Securities Act of 1933, as amended, or as described in section 7701(a)(30) of the U.S. Internal Revenue Code of 1986, as amended, (b) a person that is "in the United States" as defined in Rule 202(a)(30)-1 under the United States Investment Company Act of 1940, as amended (the "**Investment Company Act**"), (c) a person that does not qualify as a "Non-United States Person" as such term is defined in U.S. Commodities Futures Trading Commission Rule 4.7;*
    - *(iii) such that the aggregate number of United States persons who are holders and who are private offering holders may be 100 or more; and*
    - *(iv) whose holding of Shares (solely or in conjunction with any other circumstance appearing to the Management Body to be relevant) might in the opinion of the Management Body require registration of the Product Fund as an investment company under the Investment Company Act*".

b) Legal and Regulatory Objectives of Punitive Compulsory Redemptions

(14) A Punitive Compulsory Redemption clause is designed to safeguard the integrity, regulatory compliance, and operational efficiency of closed-ended Product Funds. It ensures that the Product Fund operates within the boundaries of the relevant Product Law and other applicable laws and regulations, maintains its intended investor base, and mitigates regulatory and financial risks that could arise from certain investor holdings.

(i) Ensuring Investor Qualification

(15) For Private Product Funds, a Punitive Compulsory Redemption clause mandates that investors qualify as well-informed investors under Article 2 of the relevant Product Law.[14]

(16) This requirement ensures that only sophisticated investors with the necessary financial knowledge and experience participate in the Product Fund. The intention is to mitigate the risks associated with "pure" retail investors, who may not fully understand the nature of, and risks linked to, their investment in the Product Fund.

[14] See for more information on the topic Ezechiel Havrenne, *Luxembourg SICARs, SIFs and RAIFs: a 20-Year Review of the "Well-Informed Investor" notion*, JurisNews Investment Management, Larcier, Vol. 12 – N° 3-4.

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(17) By restricting access to well-informed investors, the Management Body shields the Product Fund from regulatory scrutiny arising from unsuitable investor participation and ensuing potential consequences such as the loss of tax advantages afforded under the relevant Product Law.[15]

(ii) Protection of the Fund and Existing Investors

(18) Punitive Compulsory Redemption clauses generally grant the Management Body the discretion to compulsorily redeem Shares where it deems that an investor's holding may be detrimental to the interests of the existing Shareholders or the Product Fund itself.

(19) This provision is crucial in preventing situations where an investor's presence could result in operational risks, conflicts of interest, financial instability, or reputational damage.

(20) For example, if an investor were to become involved in a high-profile financial scandal, their continued participation in the Product Fund could expose it to unwanted press, regulatory scrutiny, or loss of other institutional relationships. Similarly, if an investor is affiliated with a competitor of the Management Body, their access to sensitive Product Fund information could create conflicts of interest, potentially undermining the Product Fund's strategic decisions and investor confidence.

(21) Furthermore, it ensures that the Product Fund does not incur unnecessary tax, legal, or regulatory burdens as a result of specific investor holdings.

(22) Indeed, if an investor changes its domicile to a jurisdiction with stringent tax transparency requirements, the Product Fund might be required to adopt complex reporting mechanisms or risk being classified as a taxable entity in that jurisdiction, leading to increased administrative costs and legal exposure. By implementing a Punitive Compulsory Redemption clause, the Management Body can proactively mitigate such risks and ensure the Product Fund remains compliant with its intended investment strategy and regulatory framework.

(iii) Prevention of Misrepresentation in Subscription Agreements

(23) Investors are required to provide accurate and truthful representations when entering into a subscription agreement with a Product Fund. If it is later determined that representations made by an investor were false or have ceased to be true, the Management Body should reserve the right to compulsorily redeem their Shares.

(24) For instance, a situation may arise where an investor subscribes to the Product Fund while falsely declaring that they are investing on their own behalf, when in reality, they are acting as a straw man for an undisclosed third party potentially linked to illicit activities.

(25) Therefore, this measure protects the Product Fund from fraudulent or misrepresented investments, which could lead to regulatory penalties, non-compliance with eligibility criteria, or financial losses.

(iv) Ensuring Compliance with Luxembourg and Foreign Law

(26) While a Product Fund operates within the framework of the relevant Product Law, it must also consider foreign legal and regulatory requirements. A Punitive Compulsory Redemption clause should therefore also allow for the compulsory redemption of Shares where an investor's holding could result in a breach of such laws, including anti-money laundering and counter-terrorism financing regulations.

(27) Product Funds have also typically catered for specific provisions regarding U.S. Persons, as their participation could subject the Product Fund to stringent U.S. regulations and U.S. tax laws. To prevent such complications, such clauses are often inserted to allow the Management Body to compulsorily redeem Shares held by U.S. Persons.

3. Distribution Compulsory Redemption Clauses

a) Example Language for Capital Return via Redemption

(28) The following wording could be used as an example to introduce the Distribution Compulsory Redemption possibility: "*Shares may be compulsorily redeemed whenever (i) the Management Body considers this to be in the best interest of the Product Fund, and/or (ii) a distribution by*

[15] *Ibidem*

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way of compulsory redemption needs to be made, subject to the terms and conditions the Management Body will determine and within the limits set forth by law and the Offering Documents and constitutive Product Fund document. In particular, Shares of any class, and series may be redeemed at the option of the Management Body on a pro rata basis among the relevant Shareholders. Shares compulsorily redeemed will be redeemed at their net asset value calculated on the date specified in the relevant compulsory redemption notice sent by the Product Fund's administrative agent. Payment of the redemption proceeds will be made to Shareholders that are not prohibited persons no later than 10 business days from the date on which the compulsory redemption has occurred unless legal constraints, such as foreign exchange controls or restrictions on capital movements, or other circumstances beyond the control of the Management Body make it impossible or impracticable to transfer the redemption proceeds to the country in which said redemption proceeds were to be transferred".

b) Legal and Economic Purpose of Distribution Compulsory Redemption

(29) A Distribution Compulsory Redemption clause is typically inserted in an Offering Document to provide the Management Body with the flexibility to reduce the Product Fund's capital efficiently while ensuring compliance with the applicable Product Law and the provisions of the Offering Document.

(i) Regulatory Flexibility under Luxembourg Law

(30) The Luxembourg legislator, in each of the Product Laws, introduced a framework that grants the Management Body broad discretion regarding the modalities of distributions to investors, subject to maintaining the applicable minimum capital requirement.[16]

(31) This flexibility reflects an established market reality which was already present in the UCITS industry where some investors favoured early on subscribing for capitalising Share classes whilst others prefer distributive Share classes. Even if, distributive compulsory redemptions in UCITS are infrequent as they are by essence open-ended funds, such option between capitalising and distributive Share classes would be lifted by investors in the framework of their subscription form.

(32) In the context of closed-ended Product Funds, this distinction is even more relevant. Since these funds do not allow for voluntary redemptions, *i.e.*, investors cannot request for the redemption of their Shares, the investor's distribution preference must definitely be reflected in the subscription agreement (assuming the Product Fund would have catered for this possibility in their standard subscription agreement) or in a side letter (entered into with the relevant investor(s)). This ensures that each investor is aware in advance of how the Product Fund distributions will be made, *i.e.*, (i) for capitalising Share classes, distribution take the form of capital repayments, potentially including a capital gain, through a Distribution Compulsory Redemption initiated by the Management Body and applied across all investors in that Share class, and (ii) for distributive Share classes, distributions are made via dividend payments, following a resolution of the Management Body, applicable exclusively to this Share class. In this way, fair treatment and compliance to contractual obligations are therefore respected by the Management Body.

(ii) Economic Neutrality of the Distribution Mechanism

(33) From an economic perspective, the choice between distributing dividends or implementing a Distribution Compulsory Redemption is neutral with respect to the Product Fund's net asset value (the "**NAV**"). As closed-ended Product Funds often take the form of SICAVs (or the case being FCPs), their NAV is always equal to their net assets. Whether distributions are executed via dividends or Distribution Compulsory Redemptions, the Product Fund's overall NAV declines by the amount distributed, ensuring that the treatment remains equitable for all investors.

(34) However, while the impact on the Product Fund's NAV is neutral, the effect on individual investors varies depending on the category of Shares they hold. Investors in distributing Share classes retain the same number of Shares post-distribution, but their NAV per share decreases accordingly. Conversely, investors in capitalising Share classes experience a reduction in the

[16] See footnote 11.

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number of Shares they hold due to Distribution Compulsory Redemption, but the NAV per Share remains unchanged.

(iii) Illustration: NAV Impact Based on Share Class

(35) Consider a scenario where two investors each hold 10 Shares initially subscribed at an issue price of EUR 1 per Share. If the NAV of the Product Fund increases by 100%, each Share is then valued at EUR 2. Should the Management Body resolve to proceed with an aggregate distribution of EUR 20, the impact on each investor differs based on their Share class:

- the investor holding distributing Shares would retain 10 Shares, but the NAV per Share would decrease to EUR 1 post-distribution; and
- the investor holding capitalising Shares would see its number of Shares reduced to 5 through Distribution Compulsory Redemption, but each remaining Share would maintain its EUR 2 NAV.

c) Redemption Execution Mechanics Payment Constraints

(i) Redemption Procedure and Pro Rata Treatment

(36) When a Distribution Compulsory Redemption is executed, Shares are redeemed on a *pro rata* basis among the relevant Shareholders of the same class. This ensures that all affected Shareholders are treated proportionally rather than allowing selective redemptions. The redemption of Shares is executed at their NAV as calculated on the date specified in the Distribution Compulsory Redemption notice.

(ii) Timing and Restrictions on Payment of Redemption Proceeds

(37) Following a Distribution Compulsory Redemption, the Product Fund is required to distribute the proceeds to Shareholders who are eligible to receive them within the timeframe specified in the Offering Document. However, certain Shareholders classified as "prohibited persons" under the Offering Document may not be entitled to receive payments.

(38) Additionally, if legal or regulatory constraints – such as foreign exchange controls or capital movement restrictions – prevent the transfer of funds, payments may be delayed or blocked. The Management Body should not be held liable for such delays if they result from circumstances beyond its control.

4. ELTIF Regulatory Framework for Compulsory Redemptions

a) Article 17(1)(b) of the ELTIF Regulation and Open-Ended Funds

(39) Article 17(1)(b) of the ELTIF Regulation provides that investment limits laid down in Article 13 shall "[…] *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*".

(40) A close reading of this provision confirms that the ELTIF Regulation does not prohibit an ELTIF – or any of its compartments – from selling assets or making distributions via compulsory redemptions prior to the end of its term. Rather, it clarifies the temporal scope of the diversification and portfolio composition rules: (i) these rules remain fully applicable until the end of the ELTIF's (or ELTIF compartment's) life, ensuring compliance with the investment limits throughout its lifetime; and (ii) they cease to apply once the ELTIF has entered its portfolio liquidation phase and begins to sell assets to meet redemption obligations following the expiry of its term.

(41) For ELTIFs structured as closed-ended Product Funds, Article 17(1)(b) is not relevant in this context, as such structures are not subject to redemption obligations during their term. Moreover, the redemption-related provisions of the ELTIF Regulation are tailored specifically to open-ended ELTIFs. The regulatory intention behind these provisions is to mitigate liquidity risk in scenarios where: (i) investors are granted a right to request redemption of their Shares in an open-ended ELTIF; and (ii) the ELTIF is simultaneously required to maintain at least 55% exposure to illiquid eligible assets – creating an inherent tension between large portfolio illiquidity and potential liquidity demands.

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(42) Accordingly, Article 17(1)(b) does not apply to closed-ended ELTIFs, nor does it restrict the use of compulsory redemptions undertaken in connection with distributions to investors.

(43) This interpretation is further supported by several other provisions of the ELTIF Regulation, which consistently reference redemption rights exclusively in the context of open-ended structures, including:

- Recitals (34) to (37), which discuss the "offering" of redemption rights, thus referring explicitly to open-ended funds;
- Article 18, which establishes investors' "right to request" redemptions – again, a feature unique to open-ended ELTIFs;
- Article 21, which outlines the procedure for asset sales to meet "redemption requests placed by investors";
- Article 23(4)(d), which imposes a transparency requirement concerning investors' "redemption request rights", reinforcing its applicability solely to open-ended structures.

(44) In light of the foregoing, it is clear that Article 17(1)(b) of the ELTIF Regulation does not govern the operations of closed-ended ELTIFs or limit their ability to effect compulsory redemptions in connection with distributions. These mechanisms remain fully permissible within the ELTIF framework and consistent with both the letter and spirit of the Regulation.

b) Compulsory Redemptions Expressly Recognised under Article 22(3) of the ELTIF Regulation

(45) The ELTIF Regulation explicitly recognises the ability of an ELTIF to return capital to investors during its lifetime – without the need to wait until the end of its term. This feature provides the Management Body with valuable flexibility in managing excess liquidity while maintaining the long-term nature of the ELTIF.

(46) Article 22(3) of the ELTIF Regulation provides: *"An ELTIF may reduce its capital on a pro rata basis in the event of a disposal of an asset before the end of the life of the ELTIF, provided that such a disposal is duly considered to be in the investors' interests by the manager of the ELTIF*". This provision establishes a clear legal basis for "mid-life" capital distributions, subject to a dual condition: (i) the availability of proceeds from asset disposals, and (ii) the Management Body's reasoned determination that such distributions serve the best interests of the ELTIF's investors. In the context of ELTIFs running a credit strategy, the extinction of a receivable through payment of principal and interests should be construed as equivalent to the "*availability of proceeds from asset disposals*".

(47) The regulatory principles of *pro rata* capital reduction and investor interest embedded in Article 22(3) align closely with typical fund-level mechanics, and would be effectively mirrored in an ELTIF's Offering Document should it provide that:

- Shares may be redeemed at the discretion of the Management Body on a *pro rata* basis among the relevant Shareholders; and
- Shares may be compulsorily redeemed whenever the Management Body determines such action to be in the best interest of the ELTIF.

(48) These Offering Document provisions would give practical effect to Article 22(3) by embedding both Management Body discretion and principles of investor fairness directly into the ELTIF's distribution framework, thereby ensuring compliance with the Regulation while facilitating efficient "mid-life" capital management.

(49) Collectively, these rules confirm that compulsory redemptions for distribution purposes are not only permitted but are explicitly contemplated under the ELTIF framework. They strike a balance between enabling efficient capital management and protecting investor interests, allowing closed-ended ELTIFs to return surplus capital in a controlled and equitable manner – without undermining the ELTIF's long-term investment strategy.

c) Policy Rationale Behind Article 22(3) in the ELTIF Regulation

(50) The principle of compulsory redemptions in connection with distributions, as expressly recognised by the European legislator in the ELTIF Regulation, is grounded in a sound and well-established economic rationale. This principle has long been acknowledged in Luxembourg by

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the *Commission de Surveillance du Secteur Financier* (the "**CSSF**") as consistent with prudent fund governance and investor protection standards.

(51) From an economic and fiduciary standpoint, where an ELTIF accumulates excess cash during its lifetime – typically as a result of asset disposals, interest payments, or other liquidity events – it should be permitted to distribute such amounts to investors before the expiry of its term. Doing so ensures that capital is not inefficiently retained and avoids the negative effects of cash drag. In most cases, interim distributions of excess liquidity will be in the best interests of investors, aligning with both market expectations and long-term value preservation.

(52) The only exception to this general principle arises in situations where a distribution would compromise the ELTIF's ability to meet current or foreseeable funding obligations tied to investment commitments, follow-on investments, or agreed capital expenditures. Prematurely distributing capital under such circumstances could impair the ELTIF's capacity to fulfil its investment strategy, potentially placing the ELTIF in a default position. This would clearly run counter to investor interests and could give rise to managerial liability under various legal frameworks:

- First, under the AIFMD, which imposes fiduciary duties and conduct of business obligations on authorised AIFMs, including acting honestly, fairly, and in the best interests of investors;[17]
- Second, under Luxembourg company law, particularly in relation to the responsibilities and potential liabilities of the Management Bodies and/or their relevant members in exercising corporate governance over the ELTIF and its management company;[18]
- Third, under the Luxembourg Civil Code, which provides the general legal basis for claims arising from mismanagement, negligence, or breach of duty by legal or natural persons entrusted with the management of third-party assets.[19]

(53) By incorporating Article 22(3) into the ELTIF Regulation, the European legislator struck a careful balance between operational flexibility and investor protection. This provision gives ELTIFs the legal clarity and discretion needed to optimise capital allocation during the ELTIF's lifecycle, while maintaining strict safeguards against imprudent or premature distributions. As such, it reinforces the permissibility and legal soundness of compulsory redemptions linked to interim distributions, particularly in closed-ended Product Fund structures, where disciplined and efficient capital management is critical to long-term performance.

(B) Termination, Amalgamation and Transfer of Assets in Closed-Ended ELTIFs

1. Termination of ELTIF compartments

a) General Framework under the CSSF Note

(i) Historical Practice in Luxembourg Umbrella Product Funds

(54) For the past three decades, most umbrella Product Funds have included a "termination, amalgamation, and transfer of assets" clause in their Offering Documents, in line with the *Note of the Institut Monétaire Luxembourgeois concerning the procedure for closing a compartment of an umbrella fund* (the "**CSSF Note**").[20]

(55) The CSSF Note outlined the permitted methods for closing compartments, namely: (i) the pure and simple liquidation of the compartment, (ii) the contribution to another compartment within the same undertaking for collective investment (the "**UCI**"), (iii) the contribution to another Luxembourg-law UCI, or (iv) the contribution to a foreign-law UCI.

[17] See namely Article 12 of the AIFMD.
[18] See namely Article 441-9 of the Luxembourg Act of 10 August 1915 on commercial companies, as amended (the "**Company Act**"); for a consolidated version please see https://legilux.public.lu/eli/etat/leg/loi/1915/08/10/n1/jo (last accessed on 27 June 2025).
[19] See namely Article 1382 of the Luxembourg Civil code; for a consolidated version please see https://legilux.public.lu/eli/etat/leg/code/civil/20200101 (last accessed on 27 June 2025).
[20] See *Note concernant la procédure de fermeture d'un compartiment d'un organisme de placement collectif à compartiments multiples*, Institut Monétaire Luxembourgeois [now the CSSF], 29 March 1993

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(ii) Decision-Making Bodies and Documented Thresholds

(56) The CSSF Note allowed the UCI sponsor to determine which governing body (*i.e.*, Management Body and/or general meeting of Shareholders) of the UCI would be authorised to decide on such closure, provided that the relevant rules were clearly set out in the UCI's constitutive documentation.

(57) Where the constitutive documents designated the Management Body as the decision-making authority for the closure of a compartment, they were also required to specify the conditions under which such a decision could be made – such as when the net assets of the compartment fall below a certain threshold, or in the event of significant economic or political changes.

b) Example Termination Provisions in Offering Documents

(58) The following wording could be used as an example to introduce the termination of an ELTIF compartment by decision of the Management Body and by decision of the general meeting in line with both the CSSF Note and the ELTIF Regulation.

(i) Termination by the Management Body

(59) "*In the event (i) that, for any reason whatsoever, the value of the total net assets in any compartment has decreased to, or has not reached within 18 months of its initial closing, an amount of EUR 5,000,000 (or its equivalent in the relevant currency) – said amount being determined by the Management Body to be the minimum level for such compartment to be operated in an economically efficient manner – or (ii) of a substantial modification in the political, economic or monetary situation, the Management Body may decide to terminate the relevant compartment and hence compulsorily redeem all the Shares of the relevant class or classes (or series) at the net asset value (taking into account actual realisation prices of investments and realisation expenses) calculated with reference to the valuation day in respect of which such decision will be effective provided that the net asset value so calculated is at least equal to any threshold value previously documented and agreed by the Management Body and the Shareholders. The Management Body will serve a written notice to the holders of the relevant class or classes (or series) of Shares prior to the effective date for the compulsory redemption, which will indicate the reasons and the procedure for the redemption operations. Registered holders will be notified in writing. Where applicable and unless it is otherwise decided in the interests of, or to keep equal treatment between the Shareholders, the Shareholders of the compartment concerned may continue to request redemption of their Shares free of charge (but taking into account actual realisation prices of investments and realisation expenses) prior to the effective date for the compulsory redemption*".

(ii) Termination by the General Meeting of Shareholders

(60) *"Notwithstanding the powers conferred to the Management Body as referred to above, the general meeting of Shareholders of any one or all classes (or series) of Shares issued in a compartment will have the power, with the consent of the Management Body, to decide on the termination of the relevant compartment and hence on the compulsory redemption of all the Shares of the relevant class or classes (or series) and refund to the Shareholders the net asset value of their Shares (taking into account actual realisation prices of investments and realisation expenses) calculated with reference to the valuation day in respect of which such decision will be effective. Such general meeting will not validly deliberate unless Shareholders representing alone or together fifty (50) percent of the votes' allocation percentage in the relevant compartments are present or represented. If this requirement is not achieved, a second general meeting may be convened and will validly deliberate with no quorum requirement. At both meetings, resolutions, in order to be adopted, must meet a 66% 2/3 special majority. Redemption proceeds, which may not be distributed to their beneficiaries upon the implementation of the redemption will be deposited with the* caisse de consignation *on behalf of the persons entitled thereto*".

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c) Pre-Defined Term and Early Termination under the ELTIF Regulation and Luxembourg Law

(i) Pre-Defined Term Requirement and Investor Protection

(61) The ELTIF Regulation mandates that each ELTIF must include a "pre-defined term" in its Offering Document by which the ELTIF will reach its end of life / be liquidated. This principle is enshrined in Articles 17(1)(b) and 18(1) of the ELTIF Regulation.

(62) Luxembourg private law – particularly within the framework of the *droit des obligations* – contains the same requirement that one may not be indefinitely bound by a contractual arrangement.

(63) In the context of a closed-ended ELTIF, the European legislator's rationale is grounded in investor protection: investors must be clearly informed prior to investment of the precise date or conditions under which they will be entitled to exit the investment through a final redemption or liquidation event. Without such clarity, the ELTIF structure would risk undermining investor trust and violating basic contractual limitations.

(ii) Extension of the Pre-Defined Term: Procedural Safeguards

(64) While the term of an ELTIF must be defined upfront, the extension of that term is treated with caution and is strictly regulated under the ELTIF framework. Recognising that long-term projects may face unforeseen delays, the European legislator permits term extensions – as a necessary departure from the principle of "pre-defined term" – when the economic reality requires it and subject to stringent conditions for its application also being mindful of the necessity to protect investors' interest in not having their capital locked up longer than the pre-determined date or at most accepting a limited extension

(65) The ELTIF Regulation thus provides that the Offering Document must clearly indicate (i) the right to extend temporarily the life of the ELTIF and (ii) the conditions for exercising such a right.[21]

(iii) Reduction of the Pre-Defined Term: Legal Silences and Member State Discretion

(66) In contrast to term extensions, the reduction of the ELTIF's pre-defined term – *i.e.*, an early liquidation – is not addressed in the ELTIF Regulation. This omission is justified as a shortening of the ELTIF's life results in investors receiving capital earlier than initially planned.

(67) As such, the ability to reduce the term is left in the hands of Member State legislation and supervisory guidance.[22]

(68) As mentioned under points **(54)** *et seq.*, in Luxembourg, this element had long been addressed under the CSSF Note.

(69) Pursuant to the CSSF Note, if the power to liquidate a compartment has been granted to the Management Body, the Offering Document (and the constitutive documents of a relevant fund) will have to clearly define the circumstances under which such a liquidation may be decided.[23] Indeed, if, for instance, the ELTIF compartment's assets were to drop to or never reach a value of let's say less than EUR 5,000,000, and the compartment's fixed/minimum running costs were of EUR 200,000, it then becomes economically difficult to explain to investors that they would have to remain locked-up in this compartment until the end of its pre-defined term as the creation of value – where fixed or minimum running costs are so high (relatively speaking of course) – is extremely challenging. For this reason, a threshold such as the one of EUR 5,000,000 is typically inserted in Offering Documents.

(70) If the power to liquidate is instead (or also) reserved to the general meeting of Shareholders, the Offering Document and constitutive documents of the ELTIF will have to specify whether such a decision requires the approval of all Shareholders of the ELTIF, or only the approval of Shareholders of the relevant compartment. In either case, the constitutive documents of the ELTIF must also set out the applicable quorum and majority requirements. These may allow the

[21] See Recital (47) and Articles 18(1) (second paragraph) and 23(4)(b) of the ELTIF Regulation.
[22] See namely Article 1(3) of the ELTIF Regulation which states that "*Member States shall not add any further requirements in the field covered by this Regulation*".
[23] See how the wording under point **(59)** aligns with this requirement set out by the CSSF Note.

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decision to be taken without a quorum and by a simple majority of the votes present or represented.[24]

2. *Amalgamation and Transfer of ELTIF Assets*

a) Example Provisions for Amalgamation and Transfer of Assets

(71) The following wording could be used as an example to introduce the amalgamation/merger of ELTIF compartments including transfer of assets by decision of the Management Body and by decision of the general meeting.

(i) Amalgamation/Transfer of Assets by Decision of the Management Body

(72) "*Under the same circumstances as those provided for in relation to the termination of a compartment by decision of the Management Body, the Management Body may decide to allocate the assets of any compartment through amalgamation/merger or transfer of assets to those of another existing compartment within the ELTIF, or to another Luxembourg undertaking for collective investment qualifying as an ELTIF organised under the provisions of the relevant Product Law, or to another compartment within such other undertaking for collective investment (the "**New Compartment**") and to re-designate the Shares of the class or classes concerned as shares of the New Compartment (following a split or consolidation, if necessary, and the payment of the amount corresponding to any fractional entitlement to Shareholders). Such decision will be published in the same manner as described above one (1) month before its effectiveness (and, in addition, the publication will contain information in relation to the New Compartment), in order to enable Shareholders to request redemption of their Shares, free of charge, during such period. Where applicable, Shareholders who have not requested redemption will be transferred as of the end of this one (1) month period to the New Compartment*".

(ii) Amalgamation/Transfer of Assets by Decision of the General Meeting of Shareholders

(73) "*Notwithstanding the powers conferred to the Management Body under the above paragraph, the contribution of the assets and of the current and determined liabilities attributable to any compartment to another undertaking for collective investment referred to under said paragraph or to another compartment within such other undertaking for collective investment shall require a resolution of the Shareholders of the class or classes of Shares issued in the compartment concerned. There shall be no quorum requirements for such general meeting, which shall decide by resolution taken by simple majority of those present or represented and voting at such general meeting, with the consent of the Management Body, except when such an amalgamation is to be implemented with a Luxembourg common fund or a foreign based undertaking for collective investment either one qualifying as an ELTIF, in which case the resolutions shall be binding only on such Shareholders who have voted in favour of such amalgamation*".

b) Regulatory Interpretation of Article 4(2) of the ELTIF Regulation

(74) We understand, based on our reading of the ELTIF Regulation – particularly Article 4(2), which provides that "*ELTIFs shall be prohibited from transforming themselves into collective investment undertakings that are not covered by this Regulation*" – that the European legislator expressly acknowledged the possibility of mergers, amalgamations, or transfers involving ELTIFs, provided that the receiving collective investment undertaking also qualifies as an ELTIF.

(75) The underlying rationale for this provision is the European legislator's view that investors who have committed capital to an ELTIF must continue to benefit from the protections afforded under the ELTIF regime throughout the duration of their investment, including in the event of a merger or transfer.

(76) For this reason, Offering Documents providing for terms similar to those mentioned under points **(72)** *et seq.* are aligned with Article 4(2) of the ELTIF Regulation, as they spell out the circumstances under which an amalgamation/merger or transfer of assets and only with another vehicle that also qualifies as an ELTIF.

[24] See how the wording under point **(60)** aligns with this requirement set out by the CSSF Note.

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Conclusion

(77) As the ELTIF framework matures under ELTIF Regulation, Luxembourg continues to lead by example – pairing European regulatory clarity with market-tested tools that ensure both investor protection and operational flexibility.

(78) The use of compulsory redemption mechanisms, far from undermining the closed-ended classification of ELTIFs, in fact reinforces the ability of fund managers to run long-term strategies with discipline and control – free from disruptive liquidity shocks or unforeseen investor exits. Whether punitive or distribution-driven, such redemptions provide essential levers for ensuring legal compliance, economic efficiency, and investor fairness.

(79) Similarly, compartment terminations, amalgamations, and transfers of assets, when implemented in line with Luxembourg market practice and the ELTIF Regulation, offer viable routes to restructure, consolidate, or exit investment strategies in a manner that preserves fund integrity and transparency.

(80) In short, Luxembourg's ecosystem of Product Funds – anchored by well-crafted constitutive documents, CSSF-endorsed procedures, and ELTIF-aligned frameworks – provides a powerful, scalable, and legally robust platform for closed-ended ELTIFs across Europe. As asset managers continue to navigate the evolving landscape of long-term investment products, these tools will remain indispensable in the modern structuring toolbox.