



7.12.2022

# PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

**Subject: Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds (COM(2021)0722 – C9-0435/2021 – 2021/0377(COD))**

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 74(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Economic and Monetary Affairs for decision by way of a single vote.

**REGULATION (EU) 2022/...**

**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of ...**

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C ..., p. .

Whereas:

- (1) Since the adoption of Regulation (EU) 2015/760 of the European Parliament and of the Council<sup>2</sup>, 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, it appears that there is a lack of awareness and financial literacy, but most importantly a low level of trust and reliability in the finance industry, that should be overcome to make ELTIFs more accessible and popular among individual investors. It is therefore necessary to review the functioning of the ELTIF legal framework to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects.

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<sup>2</sup> 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) The objective of Regulation (EU) 2015/760 is to channel capital towards long-term investments in the Union's real economy, including towards investments that promote the European Green Deal and other priority areas, and ensure that capital flows are directed towards projects that put the Union economy on a path towards smart, sustainable and inclusive growth. ELTIFs have a potential to facilitate long-term investments, among others, in energy, transport and social infrastructure, in job creation, and to contribute to the achievement of the European Green Deal objectives.

(4a) Regulation (EU) 2015/760 is mainly intended to channel capital towards European long-term investments in the Union real economy, and therefore it may 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 bring capital to ELTIFs and thereby benefit the economy of the Union. Such benefits can originate in multiple ways, including through investments that promote the development of border regions, enhance commercial, financial and technological cooperation and facilitate investments in environmental and sustainable energy projects. Investments in third country qualifying undertakings and eligible assets may bring benefits to investors and ELTIF managers and to the economies, infrastructure, climate and environmental sustainability and citizens of such third countries and should therefore be allowed. Since certain long-term assets and investments that benefit the real economy of the Union will unavoidably be located in third countries, such as subsea fibre optic cables that connect Europe with other continents, or 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, it should not be prevented that a majority of ELTIF assets and investments or the main revenue or profit generation of such assets and investments are located in a third country.

- (4b) To ensure the transparency and the integrity of investments in assets located in third countries for the investors, ELTIF managers and the competent authorities, the requirements for 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. They should also be aligned to the standards set out in the common action undertaken by the EU 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.

- (5) The rules for ELTIFs are almost identical for both professional and retail investors, including rules on the use of leverage, on the diversification of assets and composition of the portfolios, on concentration limits and on limits on the eligible assets and investments. Both types of investors, however, have different time horizons, risk tolerances, investment needs and capabilities to analyse investment opportunities. Because of those almost identical rules and the consequential high administrative burden and associated costs for ELTIFs destined for professional investors, asset managers have been reluctant to offer tailored products to professional investors. 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 may have, due to their nature and activities, different time horizon and return objectives. It is therefore appropriate to provide for specific rules for ELTIFs that are destined to be marketed to professional investors, in particular with regard to the diversification and composition of the portfolio concerned, the minimum threshold for eligible assets, the concentration limits, and the borrowing of cash.

- (6) It is necessary to enhance the flexibility of asset managers in investing in a broad categories of real assets. Real assets should therefore be deemed to form a category of eligible assets, provided that those real assets have value due to their nature or substance. Such real assets comprise immovable property, 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, in facilities or installations for education, counselling, research, development, including infrastructure and other assets that give rise to economic or social benefit, sports, or in housing, including in senior residents or social housing, should also be deemed to be eligible assets due to the capacity of such assets to contribute to the objectives of smart, sustainable and inclusive growth. To enable real investment strategies in areas where direct investments in real assets are not possible or uneconomical, eligible investments in real assets should also comprise investments in water rights, forest rights, building rights and mineral rights. 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.



- (8) Deleted
- (9) It is necessary to increase the attractiveness of ELTIFs for asset managers and broaden the range of investment strategies available to ELTIF managers and thus to avoid the undue limitation of the scope of the eligibility of assets and investment activities of ELTIFs. The eligibility of real assets should not depend on their nature and objective or upon environmental, sustainability or social and governance related disclosures and conditions, which are already covered by Regulation (EU) 2019/2088 of the European Parliament and of the Council<sup>3</sup> and by Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>4</sup>.
- (9a) 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 be also ensured that ELTIFs target long-term investments and that the requirements of Regulation (EU) 2015/760 on the eligibility of investment assets are observed. Therefore, green bonds that comply with those eligibility requirements and are issued under Union legislation on environmentally sustainable bonds should be explicitly included in the list of eligible investment assets.

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<sup>3</sup> 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).

<sup>4</sup> 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).

(9b) Regulation (EU) 2015/760 currently prevents investments by ELTIFs in credit institutions, investment firms, insurance undertakings and other financial undertakings. However, innovative recently authorized financial undertakings such as FinTechs could play an important role in promoting digital innovation and the overall efficiency of Union financial markets, job creation and 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, which aim to automate or improve existing or result in new business models, processes, applications and products and thereby benefit Union financial markets, financial institutions or 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 remove the restriction of Regulation (EU) 2015/760 and permit ELTIFs to invest in innovative new financial undertakings. Since this is a dynamic and rapidly evolving field, it should be allowed more broadly that ELTIFs invest in financial undertakings, other than a financial holding company or a mixed-activity holding company, that are regulated entities in the first five years of their activity.

- (9c) ELTIFs are subject to the obligations stemming from Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector. In particular, when ELTIFs either promote environmental or social characteristics or have sustainable investment as their objective, they should comply with the disclosure requirements set out in Articles 8 or 9 of Regulation (EU) 2019/2088, which specify detailed transparency requirements for pre-contractual disclosures.
- (10) It is necessary to extend the scope of eligible assets and promote the investments of ELTIFs in securitised assets. It should therefore be clarified that, where the underlying assets consist of long-term exposures, eligible investment assets should also include simple, transparent and standardised (STS) securitisations as referred to in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>5</sup>. Those long-term exposures comprise securitisations of residential loans that are secured by one or more mortgages on residential immovable property (residential mortgage backed securities (RMBS)), commercial loans that are secured by one or more mortgages on commercial immovable property, corporate loans, including loans which are granted to small and medium enterprises (SMEs), and trade receivables or other underlying exposures that the originator considers to form a distinct asset type, provided that the proceeds from securitising those trade receivables or other underlying exposures are used for financing or refinancing long-term investments.

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<sup>5</sup> 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).

- (11) In order to improve access of investors to more up-to-date and complete information on the ELTIF market, it is necessary to increase the granularity and the timeliness of the central public register referred to in Article 3(3), second subparagraph, of Regulation (EU) 2015/760 ('ELTIF register'). The ELTIF register should therefore contain additional information to the information that that register contains already, among others, where available, the Legal Entity Identifier ('LEI') and the national code identifier of the ELTIF, the name, address and the LEI of the ELTIF manager, the International Securities Identification Numbers ('ISIN') codes of the ELTIF and of each separate share or unit class, the competent authority of the ELTIF and the home Member State of that ELTIF, the Member States where the ELTIF is marketed, whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors, the date of the authorisation of the ELTIF, and the date on which the marketing of the ELTIF has commenced.

- (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. Regulation (EU) 2015/760 currently requires that investments in equity or quasi-equity instruments of the qualifying portfolio undertaking can only take place where those undertakings are majority owned subsidiaries, which substantially limits the scope of the eligible asset base. ELTIFs should therefore, in general, have the possibility to conduct minority co-investment in investment opportunities. That possibility should enable ELTIFs to obtain additional flexibility in implementing their investment strategies, to attract more promoters of investment projects and to increase the range of possible eligible target assets, all of which is essential for the implementation of indirect investment strategies.

- (13) Due to concerns that fund-of-funds strategies can give rise to investments that would not fall within the scope of eligible investment assets, Regulation (EU) 2015/760 currently contains restrictions on investments in other funds throughout the ELTIF's life. Fund-of-fund strategies are, however, a common and very effective way of obtaining rapid exposure to illiquid assets, in particular in respect of real estate and in the context of fully paid-in capital structures. It is therefore necessary to give ELTIFs the possibility to invest in other funds, because that would enable ELTIFs to ensure a faster deployment of capital. Facilitating fund-of-fund investments by ELTIFs would also allow reinvestment of excess cash into funds as different investments with distinct maturities may lower the cash drag of the ELTIF. It is therefore necessary to expand the eligibility of funds-of-funds strategies for ELTIF managers beyond investments in European venture capital funds (EuVECAs) or European social entrepreneurship funds (EuSEFs). The scope of collective investment undertakings in which ELTIFs can invest should thus be broadened to undertakings for collective investment in transferable securities (UCITS) and to EU alternative investment funds (EU AIFs) managed by EU AIF managers. However, in order to ensure effective investor protection, it is also necessary to set out that where an ELTIF invests in other ELTIFs, in European venture capital funds (EuVECAs), in European social entrepreneurship funds (EuSEFs), in UCITS and EU AIFs managed by EU AIFMs, those collective investment undertakings should also invest in eligible investments and have not themselves invested more than 10 % of their capital in any other collective investment undertaking. In order to avoid rules circumvention and to ensure compliance by ELTIFs on an aggregate portfolio basis with the requirements of this Regulation, the assets and cash borrowing position of the ELTIF should be combined with those of the collective investment undertakings in which the ELTIF has invested to assess whether the portfolio composition and diversification rules, and the borrowing limit are complied with.

- (14) In order to better use the expertise of the ELTIF managers and because of diversification benefits, in certain cases it can be beneficial for ELTIFs to invest all or almost all of their assets into the diversified portfolio of the master ELTIF. ELTIFs should therefore be allowed to pool their assets and make use of master-feeder structures by investing in master ELTIFs.

- (15) The diversification requirements laid down in the current version of Regulation (EU) 2015/760 were introduced to ensure that ELTIFs can withstand adverse market circumstances. Those diversification thresholds imply, however, that ELTIFs are, on average, required to make ten distinct investments. Those provisions have proven to be too burdensome. In relation to investment in projects or infrastructures of large scale, the requirement to make ten investments per ELTIF may be difficult to achieve, and costly in terms of transactional costs and capital allocation. To reduce transaction and administrative costs for ELTIFs and ultimately their investors, ELTIFs should therefore be able to pursue more concentrated investment strategies and thus to be exposed to fewer eligible assets. It is therefore necessary to adjust the diversification requirements for ELTIFs' exposures to single qualifying portfolio undertakings, single real assets, collective investment undertakings and certain other eligible investment assets, contracts and financial instruments. That additional flexibility in the portfolio composition of ELTIFs and the reduction in the diversification requirements should not materially affect the capacity of ELTIFs to withstand market volatility, since ELTIFs typically invest in assets that often do not have a readily available market quotation, may be highly illiquid, and frequently have long-term maturity or time horizon.



- (16) Unlike retail investors, professional investors may, in certain circumstances, have a longer time horizon, distinct financial returns objectives, more expertise, possess higher risk tolerance to adverse market conditions and higher capacity to absorb losses. It is therefore necessary to establish for such professional investors a differentiated set of investor protection measures. It is therefore appropriate to remove the diversification requirements for ELTIFs that are solely marketed to professional investors.
- (17) Article 28 and 30 of Regulation (EU) 2015/760 currently require ELTIF managers or distributors to carry out a suitability assessment. That requirement is already laid down in Article 25 of Directive 2014/65/EU of the European Parliament and of the Council<sup>6</sup>. That duplicative requirement constitutes an additional layer of administrative burdens leading to higher costs for retail investors and is a strong disincentive for ELTIF managers to offer new ELTIFs to retail investors. It is therefore necessary to remove that duplicate requirement from Regulation (EU) 2015/760.

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<sup>6</sup> 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).

(18) Article 30 of Regulation (EU) 2015/760 also requires ELTIF managers or distributors to provide appropriate investment advice when marketing ELTIFs to retail investors. The lack of precision in what constitutes appropriate investment advice in Regulation (EU) 2015/760 and the lack of a cross-reference to Directive 2014/65/EU, which contains a definition of investment advice, have led to a lack of legal certainty and confusion among ELTIF managers and distributors. In addition, the obligation to provide investment advice would require external distributors to be authorised under Directive 2014/65/EU when marketing ELTIFs to retail investors. That would create unnecessary impediments to the marketing of ELTIFs to those investors and subject ELTIFs to stricter requirements than the distribution of other complex financial products, including the requirements for securitisations laid down in Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>7</sup> and for subordinated eligible liabilities laid down in Directive 2014/59 of the European Parliament and of the Council<sup>8</sup>. It is therefore not necessary to require distributors and managers of ELTIFs to provide retail investors with that 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 having effective investor protection safeguards, among others, provided for in this Regulation, ELTIFs should not be subject to unnecessary administrative and regulatory burdens.

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<sup>7</sup> 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).

<sup>8</sup> 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).

- (18a) To ensure strong protection of retail investors, it should be required to perform a suitability test irrespective of whether the shares or units of ELTIFs are acquired by retail investors from an ELTIF manager or a distributor, or via the secondary market. In line with Article 25(2) of Directive 2014/65/EU, the suitability assessment should comprise the information on the expected duration of the investment, the retail investor's risk tolerance and the purpose of the investment, as part of the information on the retail investors' investment objectives, risk tolerance and financial situation, including their ability to bear losses. The result of the assessment should be communicated to the retail investor in the form of a statement on suitability, in line with article 25(6) of Directive 2014/65/EU. For the sake of completeness, it should be clarified that the references to Article 25(2) and (6) of Directive 2014/65/EU should be understood as entailing the application of the delegated acts supplementing those provisions.
- (18b) In addition, in case that the retail investor receives a negative result on suitability assessment and such investor wishes to proceed with the transaction nonetheless, the explicit consent of the concerned retail investor should be obtained before the ELTIF manager or the distributor proceed with the transaction.

- (18c) 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.
- (18d) In the event that the marketing or placing of ELTIFs to retail investors is done through a distributor, such distributor should comply with the relevant requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council<sup>9</sup>. In order to ensure the legal certainty and avoid duplicative actions, where the 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.

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<sup>9</sup> *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).*

(18e) Since ELTIFs units and shares are financial instruments, product governance rules of Directive 2014/65/EU are applicable where ELTIFs are marketed with the provision of investment services. However, ELTIFs units or shares can also be purchased without provision of investment services. To cover these cases, Article 27 of Regulation (EU) 2015/760 requires the manager of an ELTIF to develop an internal assessment process for ELTIFs marketed to retail investors. The current regime is inspired by product governance rules of Directive 2014/65/EU but contains several differences which are not justified and could reduce investor protection. It should therefore be specified that product governance rules as laid down in article 16(3), second to fifth and seventh subparagraphs, and in article 24(2) of Directive 2014/65/EU should apply. For the sake of completeness, it should be clarified that the references to the Articles of Directive 2014/65/EU should be understood as entailing the application of the delegated acts supplementing those provisions.

- (19) Article 30(3) of Regulation (EU) 2015/760 currently requires, for potential retail investors whose financial instrument portfolio does not exceed EUR 500 000, an initial minimum investment in one or more ELTIFs of EUR 10 000, and requires that such investors do not invest an aggregate amount exceeding 10 % of that their financial instrument portfolio in ELTIFs. When applied together, the EUR 10 000 minimum initial investment participation and the 10 % limitation on aggregate investment create a significant obstacle for the retail investor to invest in ELTIFs, which conflicts with the goal of an ELTIF to establish a retail alternative investment fund product. It is therefore necessary to remove that EUR 10 000 initial minimum investment requirement and the 10 % limitation on aggregate investment.
- (20) Article 10, point (e), of Regulation (EU) 2015/760 currently requires that eligible investment assets, where those assets are individual real assets, have a value of at least EUR 10 000 000. Real assets portfolios, however, are often composed of a number of individual real assets which have a value of significantly less than EUR 10 000 000. The limitation on the minimum value of individual real assets should be therefore removed. It is expected that the removal of that unnecessary limitation would contribute to the diversification of investment portfolios and boost more effective investments in real assets by ELTIFs, while also allowing to take into consideration the different levels of development of long-term investing instruments in the Member States.

- (21) Article 11(1), point (b)(ii) of Regulation (EU) 2015/760 currently requires that qualifying portfolio undertakings, where those qualifying undertakings are admitted to trading on a regulated market or on a multilateral trading facility, have a market capitalisation of no more than EUR 500 000 000. Many listed companies with a low market capitalisation, however, have a limited liquidity which prevents ELTIF managers from building, within a reasonable time, a sufficient position in such listed companies, which narrows down the range of available investment targets. In order to provide ELTIFs with a better liquidity profile, the market capitalisation of the listed qualifying undertakings in which ELTIFs can invest should therefore be increased from maximum EUR 500 000 000 to maximum EUR 1 500 000 000. 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 only be made at the time of the initial investment.

(22) Managers of ELTIFs that hold a stake in a portfolio undertaking may place their own interests ahead of the interests of investors in the ELTIF. To avoid such a conflict of interests, and to ensure sound corporate governance, the current version of Regulation (EU) 2015/760 requires that an ELTIF only invests in assets that are unrelated to the manager of the ELTIF, unless the ELTIF invests in units or shares of other collective investment undertakings that are managed by the manager of the ELTIF. It is, however, an established market practice that one or several investment vehicles of the asset manager co-invest alongside another fund that has a similar objective and strategy as that ELTIF. Such co-investments by the AIF manager and other affiliate entities that belong to the same group allow for the attraction of larger pools of capital for investments in large-scale projects. For that purpose, asset managers typically invest in parallel with the ELTIF in a target entity and structure their investments through co-investment vehicles. As part of the asset management mandate, portfolio managers and senior personnel of the asset managers are typically required or expected to co-invest in the same fund that they manage. It is therefore appropriate to specify that the provisions on conflict of interest should not prevent an ELTIF manager or an undertaking that belongs to that group from co-investing in that ELTIF and co-investing with that ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments take place, ELTIF managers should put in place organisational and administrative arrangements in line with the requirements laid down in Directive 2011/61/EU of the European Parliament and of the Council<sup>10</sup> designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

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<sup>10</sup> 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) To prevent conflicts of interests, avoid transactions that do not take place on commercial terms and to ensure sound corporate governance, the current version of Regulation (EU) 2015/760 does not allow the staff of the ELTIF manager and of undertakings that belong to the same group with the ELTIF manager to invest in that ELTIF or to co-invest with the ELTIF in the same asset. It is, however, an established market practice that the staff of the ELTIF manager and of other affiliate entities that belong to the same group, which co-invest alongside the ELTIF manager, including the portfolio managers and senior personnel responsible for the key financial and operational decisions of the ELTIF manager, are often required or expected due to the nature of the asset management mandate to co-invest in the same fund or the same asset in order to promote the alignment of financial incentives of that staff and the investors. It is therefore appropriate to specify that the provisions on conflict of interest should not prevent the staff of the ELTIF manager or of undertakings that belong to that group from co-investing in their personal capacity in that ELTIF and from co-investing with that ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments by the staff take place, ELTIF managers should put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

(24) Article 13(1) of Regulation (EU) 2015/760 currently requires that ELTIFs invest at least 70 % of their capital in eligible investment assets. This high threshold for the composition of eligible investment assets in ELTIFs' portfolios was initially established in view of the focus of ELTIFs on long-term investments and the contribution such investments would make to the financing of a sustainable growth of the Union's economy. Given the illiquid and idiosyncratic nature of certain eligible investment assets within ELTIFs' portfolios, however, it may prove difficult and costly for ELTIF managers to manage the liquidity of ELTIFs, honour redemption requests, enter into borrowing arrangements, and execute other elements of ELTIFs' investment strategies pertaining to the transfer, valuation and pledging of such eligible investment assets. Lowering the eligible investment assets threshold would enable ELTIF managers to better manage the liquidity of ELTIFs. Only eligible investment assets of the ELTIF, other than collective investment undertakings, and eligible investment assets of collective investment undertakings in which the ELTIF has invested should be combined for the purpose of assessing the compliance by that ELTIF with the minimum threshold for investments in eligible assets.

(25) Leverage is frequently used to enable the day-to-day operation of an ELTIF and to carry out a specific investment strategy. Moderate amounts of leverage can amplify returns, where controlled adequately, without incurring or exacerbating excessive risks. In addition, leverage can frequently be used by a variety of collective investment undertakings to gain additional efficiencies or operational results. Since the borrowing of cash threshold is currently limited to 30 % of the capital of the ELTIF, ELTIF managers may be unable to successfully pursue certain investment strategies, including in the case of investments in real assets, where using higher levels of leverage is an industry norm or is otherwise required to achieve attractive risk-adjusted returns. It is therefore appropriate to increase the flexibility of managers of ELTIFs to raise further capital during the life of the ELTIF. 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 threshold, which should be accompanied by an improvement of 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 up to 50 % of the net asset value of the ELTIF. The 50 % threshold is appropriate given the overall borrowing of cash limits common for funds investing in real assets with a similar liquidity and redemption profile. As for ELTIFs marketed to professional investors, however, a higher leverage threshold should be permitted, because professional investors have a higher risk-tolerance than retail investors. The borrowing of cash threshold for ELTIFs that are marketed solely to professional investors only should therefore be extended to 100 % of the ELTIF net asset value. Moreover, the current version of Regulation (EU) 2015/760 does not provide a possibility for the manager of the ELTIF to rectify the position, within an appropriate period of time, when the ELTIF infringes the leverage threshold 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 be therefore specified that Article 14 of Regulation (EU) 2015/760 applies also to the borrowing limits.

- (26) To provide ELTIFs with wider investment opportunities, ELTIFs should be able to borrow in the currency in which the manager of the ELTIF expects to acquire the asset. It is, however, necessary to mitigate the risk of currency mismatches and thus to limit the currency risk for the investment portfolio. ELTIFs should therefore appropriately hedge their currency exposure.
- (27) ELTIFs should be able to encumber their assets to implement their borrowing strategy. To further increase the flexibility of ELTIFs in executing their borrowing strategy, the borrowing arrangements should not count as borrowing where that borrowing is fully covered by investors' capital commitments.
- (28) Given the increase of the maximum thresholds for borrowing cash by ELTIFs and the removal of certain limitations on the borrowing of cash in foreign currencies, investors should have more comprehensive information on the borrowing strategy and limits employed by the ELTIF. It is therefore appropriate to require ELTIF managers to explicitly disclose the borrowing limits in the prospectus of the ELTIF concerned.

(29) Article 18(4) of Regulation (EU) 2015/760 currently requires that investors in an ELTIF may request the winding down of that ELTIF where their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which those requests were made. Given the long-term orientation of ELTIFs and the often idiosyncratic and illiquid asset profile of ELTIFs' portfolios, the entitlement of any investor or a group of investors to request the winding down of an ELTIF can be disproportionate and detrimental to both the successful execution of the ELTIF investment strategy and the interests of other investors or groups of investors. It is therefore appropriate to delete the possibility for investors to require the winding down of an ELTIF where that ELTIF is unable to satisfy redemption requests.

- (30) The current version of Regulation (EU) 2015/760 is unclear about the criteria to assess the redemption percentage in a period of time, and about the minimum information to be provided to competent authorities about the possibility of redemptions. Given ESMA's central role in the application of Regulation (EU) 2015/760 and its expertise about securities and securities markets, it is appropriate to entrust ESMA with the drawing up of draft regulatory technical standards specifying the criteria to determine the minimum holding period before redemption is possible, the criteria to assess the redemption percentage, the minimum information to be provided to competent authority of the ELTIF, and the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools. It should be clarified that where the rules or instruments of incorporation of the ELTIF provide for the possibility of redemptions during the life of the ELTIF, the provisions on liquidity risk management and liquidity management tools set out in Directive 2011/61/EU apply.

- (31) Article 19(1) of the current version of Regulation (EU) 2015/760 requires that the rules or instruments of incorporation of an ELTIF do not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility. Despite that possibility, ELTIF managers, investors and market participants have hardly used the secondary trading mechanism for the trading of shares or units of ELTIFs. To promote the secondary trading of ELTIF units or shares, it is appropriate to allow ELTIF managers to put in place a possibility for an early exit of ELTIF investors, during the life of the ELTIF. In order to ensure an effective functioning of such a secondary trading mechanism, such an early exit should be possible only where the manager of the ELTIF has put in place a policy for matching potential investors and exit requests. That policy should, among others, specify the transfer process, the role of the ELTIF manager and the ELTIF administrator, the periodicity and the duration of the liquidity window during which the units or shares of the ELTIF could be exchanged, rules determining the execution price, pro-rata conditions, disclosure requirements, fees, costs and charges and other conditions pertaining to such a liquidity window mechanism. In order to avoid misperception of 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 such a matching mechanism does not guarantee the matching or entitle retail investors to exiting or redeeming their units or shares of the ELTIF concerned. This written alert should be part of a single written alert that should also inform the retail investor 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 such a matching mechanism should not be promoted as a tool that guarantees liquidity upon request.

(32) Article 26 of the current version of Regulation (EU) 2015/760 requires that ELTIF managers set up local facilities in each Member State where they intend to market ELTIFs. 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, been removed by Directive (EU) 2019/1160 of the European Parliament and of the Council<sup>11</sup> as regards UCITS and alternative investment funds marketed to retail investors, since such local facilities create additional costs and friction to the cross-border marketing of ELTIFs. In addition, while the requirements to perform certain tasks for investors across all Member States remain in place, the preferred method of contact with investors has shifted from physical meetings at local facilities to direct interaction between fund managers or distributors and investors by virtue of electronic means. Removing this obligation from the ELTIF Regulation for all ELTIF investors would hence be consistent with Directive (EU) 2019/1160 and the contemporary methods of marketing of financial products, and could promote the attractiveness of ELTIFs for asset managers who would no longer be required to incur costs stemming from operating local facilities. Article 26 should therefore be deleted.

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<sup>11</sup> 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).



- (33) The current version of Article 21(1) of Regulation (EU) 2015/760 requires ELTIFs to adopt an itemised schedule for the orderly disposal of their assets to redeem investors' units or shares after the end of the life of the ELTIF. That provision also requires ELTIFs to disclose that itemised schedule to the competent authorities. Those requirements subject ELTIF managers to substantial administrative and compliance burdens, without bringing a corresponding increase in investor protection. In order to alleviate those burdens without diminishing investors protection, ELTIFs should be required to inform the competent authority of the ELTIF about the orderly disposal of their assets to redeem investors' units or shares after the end of the ELTIF's life, and only provide the competent authority of the ELTIF with an itemised schedule where they are explicitly asked by the competent authority of the ELTIF to do so.

- (34) Adequate disclosure of fees and charges is critically important for the evaluation of the ELTIFs as a potential investment target by investors. Such disclosure is also important where the ELTIF is marketed to retail investors in the case of master-feeder structures. It is therefore appropriate to require the ELTIF manager to include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF. It is expected that this would 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.
- (35) Regulation (EU) 2015/760 requires ELTIF managers to disclose in the ELTIF prospectus information about fees related to investing in that ELTIF. Regulation (EU) No 1286/2014 of the European Parliament and of the Council<sup>12</sup>, however, also contains requirements concerning the disclosure of fees. In order to increase transparency on the fee structure, the requirement laid down in Regulation (EU) 2015/760 should be aligned with the requirement laid down in Regulation (EU) No 1286/2014.

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<sup>12</sup> 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).

- (36) It is an established market practice that the portfolio manager or senior personnel of the ELTIF manager are required or expected to invest in ELTIFs managed by that ELTIF manager. Such persons are presumed to be financially sophisticated and well-informed about the ELTIF concerned. In those circumstances, it is superfluous to require those individuals to undergo a suitability assessment test for investments in the ELTIF. It is therefore appropriate not to require ELTIF managers or the distributors to carry out a suitability assessment for such individuals.
- (37) The prospectus of the feeder ELTIF may contain highly relevant information for investors, which enables investors to better assess potential risks and benefits of an investment. It is therefore appropriate to require that in case of a master-feeder structure the prospectus of the feeder ELTIF contains disclosures on the master-feeder structure, the feeder ELTIF and the master ELTIF, a description of all remuneration or reimbursement of costs payable by the feeder ELTIF.

- (38) Article 30(7) of Regulation (EU) 2015/760 currently requires that investors are treated equally and prohibits preferential treatment of individual investors or groups of investor, or the granting of specific economic benefits to those investors. ELTIFs may, however, have several classes of shares or units with slightly or substantially distinct conditions as regards the fees, legal structure, marketing rules and other requirements. In order to take those differences into account. It should be specified that those requirements should only apply to individual investors or groups of investors that invest into the same class or classes of ELTIFs.
- (38a) Since the objectives of this Regulation, namely to ensure an effective framework for the operation of ELTIFs throughout the Union promoting 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.

- (39) Regulation (EU) 2015/760 should therefore be amended accordingly.
- (40) In order to give ELTIF managers sufficient time to adapt to the new requirements, including the requirements pertaining to the marketing of ELTIFs to investors, this Regulation should start to apply nine months after its entry into force.
- (40a) Due to the potentially illiquid nature of eligible assets and the long-term orientation of ELTIFs, ELTIFs may experience inherent difficulty in complying with changes of 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 for those ELTIFs that have been authorised before this Regulation enters into application. However, such ELTIFs should also have the possibility to be subject to this Regulation provided that the competent authority of the ELTIF is notified accordingly,

HAVE ADOPTED THIS REGULATION:

## Article 1

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

(1) In Article 1, paragraph 2 is replaced by the following:

‘2. The objective of this Regulation is to facilitate the raising and channelling of capital towards long-term investments in the real economy, 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;’;

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

‘(ca) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC of the European Parliament and of the Council\*;

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

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

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

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

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

‘(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\*;

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

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

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



- (b) the name of the manager of the ELTIF, and the address and, where available, the LEI of that manager;
- (c) the ISIN codes of the ELTIF and each separate share or unit class, where available;
- (d) the LEI of the master ELTIF, where available;
- (e) the LEI of the feeder ELTIFs, where available;
- (f) the competent authority of the ELTIF and the home Member State of that ELTIF;
- (g) the Member States where the ELTIF is marketed;
- (h) whether the ELTIF can be marketed to retail investors or can solely be marketed to professional investors;
- (i) the date of the authorisation of the ELTIF;
- (j) the date on which the marketing of the ELTIF has commenced;
- (k) *deleted*
- (l) the date of the last update by ESMA of the information about the ELTIF.

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

(4) Article 5 is amended as follows:

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

‘The application for authorisation as an ELTIF shall 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 for ELTIFs marketed to retail investors, the written agreement with the depositary;
- (d) where the ELTIF is intended to be marketed to retail investors, a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;
- (e) where applicable, the following information on the master-feeder structure of the ELTIF:
  - (i) a declaration that the feeder ELTIF is a feeder of the master ELTIF;

- (ii) the fund rules or instruments of incorporation of the master ELTIF and the agreement between the feeder and the master ELTIF referred or the internal rules on the conduct of business referred to in Article 29(6);
  - (iii) where the master ELTIF and the feeder ELTIF have different depositaries, the information-sharing agreement referred to in Article 29(7);
  - (iv) where the feeder ELTIF is established in a Member State other than the home Member State of the master ELTIF, an attestation by the competent authorities of the home Member State of the master ELTIF that the master ELTIF is an ELTIF provided by the feeder ELTIF.’;
- (aa) in paragraph 2, the second subparagraph is replaced by the following:
- ‘Without prejudice to paragraph 1, an EU AIFM which applies to manage an ELTIF established in another Member State shall provide the competent authority of the ELTIF with the following documentation:
- (a) the written agreement with the depositary;

- (b) information on delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF;
- (c) information about the investment strategies, the risk profile and other characteristics of AIFs that the EU AIFM is authorised to manage.’;

(b) paragraph 3 is replaced by the following:

‘3. Applicants shall be informed within two months from the date of submission of a complete application whether authorisation as an ELTIF, has been granted.’;

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

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

(5) Article 10 is replaced by the following:

#### ‘Article 10

#### Eligible investment assets

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

- (a) equity or quasi-equity instruments which have been:
  - (i) issued by a qualifying portfolio undertaking as referred to in Article 11 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 paragraph;
- (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 AIFM provided that those ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs invest in eligible investments as referred to in Article 9(1) and (2) and have not themselves invested more than 10 % of their assets in any other collective investment undertaking;
- (e) real assets;
- (f) simple, transparent and standardised securitisations where the underlying exposures correspond to one of the following categories:
  - (i) assets listed in Article 1, points (a)(i), (ii) or (iv), of Commission Delegated Regulation (EU) 2019/1851\*;
  - (ii) assets listed in Article 1, points (a)(vii) and (viii), of Delegated Regulation (EU) 2019/1851, provided that the proceeds from the securitisation bonds are used for financing or refinancing long-term investments;

- (fa) bonds issued, under Union legislation on environmentally sustainable bonds, by a qualifying portfolio undertaking, as referred to in Article 11.

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

2. For the purposes of determining the compliance with the limit laid down in Article 13(1), investments in units or shares of ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFM, shall only be accounted for the amount of the investments of these collective investment undertakings in the assets defined in points (a), (b), (c), (e), (f) and (fa) of paragraph 1.

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

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

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- \* 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) Article 11(1) is amended as follows:

- (a) the introductory sentence is replaced by the following:

‘1. A qualifying portfolio undertaking referred to in Article 10 shall be an undertaking that fulfils, at the time of the initial investment, the following requirements:’;

- (aa) point (a) is replaced by the following:

‘(a) it is not a financial undertaking, unless it is a financial undertaking, other than a financial holding company or a mixed-activity holding company, that has been authorized or registered more recently than 5 years before the date of the investment;’;



(b) in point (b), point (ii) is replaced by the following:

- ‘(ii) is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 1 500 000 000;’;

(ba) point (c) is replaced by the following:

‘(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;
- (ii) is not mentioned in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.’;

(7) Article 12 is replaced by the following:

‘Article 12  
Conflict of interest

1. An ELTIF shall not invest in an eligible investment asset in which the manager of the ELTIF has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs, EuVECAs, UCITS or EU AIFs that it manages.
2. The EU AIFM managing an ELTIF and undertakings that belong to the same group as an EU AIFM managing an ELTIF, and their staff may co-invest in that ELTIF and co-invest with the ELTIF in the same asset, provided that the ELTIF manager has put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and provided that such conflicts of interest are adequately disclosed.’;

(8) Article 13 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. An ELTIF shall invest at least 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. Deleted’;

- (b) the following paragraph 3a is inserted:

‘3a. The aggregate value of simple, transparent and standardised securitisations in an ELTIF portfolio shall not exceed 20 % of the value of the capital of the ELTIF.’;

(c) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 10 % of the value of the capital of the ELTIF.’;

(d) paragraph 5 is deleted;

(e) in paragraph 6, the first sentence is replaced by the following:

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

(f) the following paragraph 8 is added:

‘8. The investment thresholds set out in paragraphs 2 to 4 shall not apply where ELTIFs are marketed solely to professional investors. The investment thresholds set out in paragraph 2, point (c) shall not apply where the ELTIF is a feeder fund.’;

(8b) Article 14 is replaced by the following:

‘Article 14

Rectification of investment positions

In the event that an ELTIF infringes the portfolio composition and diversification requirements set out in Article 13(1) to 13(6) or the borrowing limits set out in point (a) of Article 16(1) 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.’;

(9) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. An ELTIF may acquire no more than 30 % of the units or shares of a single ELTIF, EuVECA, EuSEF, UCITS or of an EU AIF managed by an EU AIFM. That limit shall not apply where ELTIFs are marketed solely to professional investors nor to feeder ELTIFs investing in its master ELTIFs.’;

(b) in paragraph 2, the following subparagraph is added:

‘Those concentration limits shall not apply where ELTIFs are marketed solely to professional investors.’;

(10) Article 16 is amended as follows:

(a) paragraph 1 is amended as follows:

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

- ‘(a) it represents no more than 50 % of the net asset value of the ELTIF for ELTIFs that can be marketed to retail investors, and no more than 100 % of the net asset value of the ELTIF for ELTIFs marketed solely to professional investors;
- (b) it serves the purpose of making investments or providing liquidity, including to pay costs and expenses, provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned;
- (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash, or in another currency where currency exposure has been appropriately hedged.’;

(ii) point (e) is deleted;

(iii) the following subparagraph is added:

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

(b) the following paragraph 1a is inserted:

‘1a. Borrowing arrangements that are fully covered by investors’ capital commitments shall not be considered to constitute borrowing for the purposes of paragraph 1.’;

(c) paragraph 2 is replaced by the following:

‘2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether or not the ELTIF intends to borrow cash as part of the ELTIF’s investment strategy and shall indicate the borrowing limits in the prospectus.’;

(ca) the following paragraphs are added:

‘3. The borrowing limits referred to in paragraph 2 shall only apply as from the date specified in the rules or instruments of incorporation of the ELTIF. This date shall not be later than three years after the date of start of the marketing of the fund.

4. The borrowing limits referred to in point (a) of paragraph 1 shall be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital. Such suspension shall be limited to the period that is strictly necessary taking due account of the interests of the investors in the ELTIF and, in any case, shall not last longer than 12 months.’;

(10a) in Article 17, the introductory part of paragraph 1 is replaced by the following:

‘1. The portfolio composition and diversification requirements laid down in Article 13(1) to (6) shall:’;



(11) 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 from the day following the date of the end of the life of the ELTIF.

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

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

2. By way of derogation from paragraph 1, rules or instruments of incorporation of the ELTIF may provide for the possibility of redemptions 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 point (a) of Article 17(1);
  - (b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authority of the ELTIF that the ELTIF has an appropriate redemption policy and liquidity management tools, which 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 assets of the ELTIF which are referred to in point (b) of Article 9(1);

- (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 paragraph.

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 provide for this possibility, provided that all investors are treated fairly;

- (b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;
  - (c) no specific rules restrict the transfer of those assets.
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 develop draft regulatory technical standards specifying the following:

- (a) the criteria to determine the minimum holding period referred to in point (a) of paragraph 2;
- (b) the minimum information to be provided to the competent authority of the ELTIF under point (b) of paragraph 2;
- (c) the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of paragraph 2; and

- (d) the criteria to assess the percentage referred to in point (d) of paragraph 2, taking into account among 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 ... [nine months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to adopt 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.';

(13) 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.';

(a) the following paragraph 2a is inserted:

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

- (a) the manager of the ELTIF has set out a policy for matching requests which clearly sets out all of the following:
  - (i) the transfer process for both exiting and potential investors;
  - (ii) the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests;
  - (iii) the periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF;
  - (iv) the rules determining the execution price;
  - (v) the rules determining the pro-ration conditions;

- (vi) the timing and the nature of the disclosure of information with respect to the transfer process;
  - (vii) the fees, costs and charge, if any, related to the transfer process;
- (b) the policy and procedures for matching the requests of the ELTIF's exiting investors and those of potential investors ensure that investors are treated fairly and that matching is carried out on a pro rata basis where there is a mismatch between exiting and potential investors;
- (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.';
- (b) the following paragraph 5 is added:
- '5. ESMA shall develop draft regulatory technical standards specifying the circumstances for the use of the possibility provided for in Article 19(2a), including the information that ELTIFs need to disclose to investors.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months from the date of entry into force of this amending Regulation].

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

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

‘1. An ELTIF shall inform its competent authority 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 that competent authority an itemised schedule for the orderly disposal of its assets.’;

(14a) Article 22(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 a disposal is duly considered to be in the investors' interests by the manager of the ELTIF.’;



(15) 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\*.

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\* 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).’;

(a) the following paragraph 3a is inserted:

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

- (a) a declaration that the feeder ELTIF is a feeder of a particular master ELTIF and as such permanently invests 85 % or more of its assets in units or shares of that master ELTIF;
- (b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master ELTIF are identical, or to what extent and for which reasons they differ;
- (c) a brief description of the master ELTIF, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master ELTIF 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-holders or share-holders may obtain further information on the master ELTIF and the agreement entered into between the feeder ELTIF and the master ELTIF referred to in Article 29(6);
  - (f) a description of all remuneration or reimbursement of costs payable by the feeder ELTIF by virtue of its investment in units or shares of the master ELTIF, as well as of the aggregate charges of the feeder ELTIF and the master ELTIF.
  - (g) deleted’;
- (b) in paragraph 5, the following subparagraph is added:
- ‘Where the ELTIF is marketed to retail investors, the manager of the ELTIF shall include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF. The annual report of the feeder ELTIF shall indicate how the annual report or reports of the master ELTIF can be obtained.’;

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

‘2. The prospectus shall disclose an overall cost ratio of the ELTIF.’;

(17) Article 26 is deleted;

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

‘Article 27

Internal assessment process for ELTIFs marketed to retail investors

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

(18) Article 28 is deleted;

(19) in Article 29, the following paragraphs 6 and 7 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 laid down in 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 master and feeder ELTIF are managed by the same management company, the agreement may be replaced by internal rules on the conduct of business ensuring compliance with the requirements set out in this paragraph.

7. Where the master and the feeder ELTIF have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries. The feeder ELTIF shall not invest in units or shares of the master ELTIF until such agreement has become effective.

Where they comply with the requirements laid down in this paragraph, neither the depositary of the master ELTIF nor that of the feeder ELTIF shall be found to 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 management company of the feeder ELTIF, shall be in charge of communicating to the depositary of the feeder ELTIF any information about the master ELTIF which is required for the completion of the duties of the depositary of the feeder ELTIF. The depositary of the master ELTIF shall immediately inform the competent authorities of the master ELTIF home Member State, the feeder ELTIF or, where applicable, the management company and the depositary of the feeder ELTIF of any irregularities it detects with regard to the master ELTIF which are deemed to have a negative impact on the feeder ELTIF.’;

(20) Article 30 is replaced by the following:

‘Article 30

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

1. The units or shares of an ELTIF may only be marketed to a retail investor where an assessment of suitability has been carried out in accordance with Article 25(2) of Directive 2014/65/EU and a statement on suitability was communicated to that retail investor in accordance with Article 25(6), second and third subparagraphs, of that Directive.

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

The retail investor's explicit consent indicating that he or she understands the risks of investing in an ELTIF shall be obtained where all 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 on the basis of the assessment conducted under the first subparagraph; and
- (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, or of an affiliate of the manager of the ELTIF, and has sufficient knowledge about the ELTIF.
4. deleted

5. A feeder ELTIF shall disclose in any marketing communications that it permanently invests 85 % or more of its assets in units or shares of the master ELTIF.
6. The rules or instruments of incorporation of an ELTIF marketed to retail investors in the relevant class of units or shares shall provide that all investors benefit from equal treatment and that no preferential treatment or specific economic benefits is granted to individual investors or groups of investors within the relevant class or classes.
7. The legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment.
8. Retail investors shall be able, during the subscription period and 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.
9. The manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which shall allow retail investors to file complaints in the official language or one of the official languages of their Member State.’;



(20a) in Article 31(4), point (c) is deleted;

(20b) 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\*.

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\* 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).’;

(21) 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 application of Article 18 and the impact of that application on the redemption policy and life of ELTIFs;
  - (b) the application of provisions on the authorisation of ELTIFs, as set out in Articles 3 to 6;
  - (c) whether the provisions on the central public register of ELTIFs as laid down in Article 3 should be updated;

- (d) the impact of the application of the minimum thresholds of eligible investment assets laid down in Article 13(1) on asset diversification;
- (e) the extent to which ELTIFs are marketed in the Union, including whether AIFMs as referred to in Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;
- (f) whether the list of eligible assets and investments, the diversification rules, the rules on portfolio composition, concentration rules and limits regarding the borrowing of cash should be updated;
- (g) whether the provisions concerning conflicts of interest as laid down in Article 12 should be updated;
- (h) whether the transparency requirements laid down in Chapter IV are appropriate;
- (i) whether the provisions concerning the marketing of units or shares of ELTIFs laid down in Chapter V are appropriate and ensure an effective protection of investors, including retail investors;

(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, the Commission shall by ... [seven years after the date of entry into force of this amending Regulation], 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.’;

(21a) the following Article is inserted:

‘Article 37a

Review of sustainability aspects of ELTIFs

By ... [two years after the date of application of this amending Regulation], 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 ELTIF framework by contributing more significantly to the objectives of the European Green Deal without undermining the nature of ELTIFs.

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- \* 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).<sup>7</sup>

## Article 2

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

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

ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before ... [date of application of this amending Regulation] shall be deemed to comply with this Regulation until ... [date of application of this amending Regulation + five years]. ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before ... [date of application of this amending Regulation], which do not raise additional capital, shall be deemed to comply with this Regulation.

Notwithstanding the third subparagraph, an ELTIF authorised before ... [date of application of this amending Regulation] may choose to be subject to the provisions set out in 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 ...,

*For the European Parliament*

*For the Council*

*The President*

*The President*