

# ESMA Consultation on the draft RTS under the revised ELTIF Regulation



15 August 2023

List of questions:

**Q1: Do you agree with the proposed approach in relation to the RTS under the above mentioned Articles 9(3), 21, and 26(2) of the ELTIF Regulation?**

We do not express an opinion on this issue.

**Q2: Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIF Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose?**

We do not express an opinion on this issue.

**Q3: Do you agree with the abovementioned assumptions? In relation to the ELTIF cost ratio figures to be expressed as yearly percentages (of the capital of the ELTIF), would you see merit in expressing it instead in terms of maximum percentages (and, in the prospectus, only refer to the corresponding yearly figures included in the KID, or in the annual report of the ELTIF)?**

We do not express an opinion on this issue.

**Q4: Do you agree that the types of cost mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital? What are your views on the list of “other costs” referred to above in paragraph 31(b) which are suggested to be added, as compared to the list of “other costs” referred to in Article 25(1)(e) of the ELTIF Regulation?**

We do not express an opinion on this issue.

**Q5: Do you agree that the types of cost mentioned in paragraph 32 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall cost ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio? Would you see merit in specifying what is to be meant by the “setting-up” of the ELTIF, as referred to in Article 25(1)(a) of the ELTIF Regulation? If yes, could you indicate which elements of the “setting-up” of the ELTIF should be clarified?**

We do not express an opinion on this issue.

**Q6: Do you agree that the types of costs mentioned in paragraph 35 may be considered as fixed costs in the case of an ELTIF?**

We do not express an opinion on this issue.

**Q7. Would you see merit in including a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand-fathering clause provided for in Article 2 of Regulation 2023/606?**

We do not express an opinion on this issue.

**Q8: Do you agree with the proposed amendment to the existing RTS under the first paragraph of Article 18(6) of the ELTIF Regulation?**

We do not express an opinion on this issue.

**Q9: Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation? What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the above mentioned minimum holding period?**

We support the proposed criteria; however, we do not support establishing a specified/default minimum holding period during which redemptions cannot be granted. In real estate investment, for example, three years might be appropriate for some strategies but might be too long for certain real estate debt strategies. In our view it is more appropriate for the manager to determine the minimum holding period without reference to justifying how it may differ from a standardised period, taking the specified criteria set out in the RTS into account and based on the type, investment strategy and liquidity profile of the ELTIF in question. An arbitrary period that would apply in default in all cases and regardless of individual specificities would create operational and administrative burdens without any obvious benefit.

**Q10: Do you agree with the proposed approach in relation to the minimum information to be provided to the competent authority of the ELTIF (referred to in point (b) of paragraph 2 - Article 18(6)(b) of the ELTIF Regulation)?**

We do not express an opinion on this issue.

**Q11: a) Do you agree with the proposed approach in relation to 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 Article 18(2) - Article 18(6)(c) of the ELTIF Regulation)?**

We do not agree that a certain amount of liquid assets should be required to meet redemption requests as outlined in option 1, as we believe that it would be very counterproductive for the attractiveness of ELTIFs invested in real estate to sideline such large amounts of capital. Option 2 would also prejudice less sophisticated investors. We believe that it is in the best interests of investors in real estate and other illiquid assets to get their capital back through an orderly process (transparently disclosed within the ELTIF fund promotion and constitutional documentation), which for real estate funds is generally satisfactorily achieved through the use of liquidity management tools including gates, side pockets and suspensions if there are insufficient liquid assets.

While the draft RTS provides that at least 45% of the ELTIF's capital (by reference to an ELTIF's holding of UCITS assets) cannot be used to meet redemption requests during the life of the ELTIF, it is not clear how this limit works for a fund that invests, for example, 100% in real assets (with no exposure to UCITS).

It would be useful to have confirmation and/or clarification that Article 6(2) of the RTS can be interpreted so that the redemption percentage allowed is up to 55% on the basis that 45% of the ELTIF's capital is ring-fenced, but that 45% is only by reference to the UCITS (45% maximum) holding rather than based on there being a mandatory 45% UCITS/liquid investment bucket. Noting that the ELTIF manager has to take various factors into account when determining the redemption size (up to

55% of ELTIF's capital), for real estate ELTIFs these factors should include: 1) the life cycle of the ELTIF assets and the ELTIF's life, assessed in accordance with the redemption policy and valuation procedures; 2) the ELTIF's liquidity profile; 3) its assets and liabilities and risk of liquidity mismatches; 4) the position in the life of the ELTIF; 5) planned and expected frequencies of redemptions and the ELTIF's financial performance.

In any case, now that agreement on AIFMD II has been reached, we believe that the liquidity management provisions in it are sufficient for ELTIFs without further prescription, except possibly requiring ELTIF managers to implement the specific liquidity tools they set out. Having different and possibly inconsistent LMTs in AIFMD and ELTIF, with this one possible exception, would be unnecessarily burdensome without any obvious benefit.

Regarding anti-dilution measures, we do not think ELTIF managers should be required to employ at least one anti-dilution measure. Funds use a variety of LMTs to ensure fair treatment of investors and align the liquidity profile of the fund with the underlying assets and, furthermore, the ELTIF Regulation permits ELTIF managers to employ a full range of LMTs to achieve these ends. Ultimately, the responsibility for determining a fund's redemption policy should remain with the ELTIF manager, who is in the best position to consider how the redemption policy aligns with the nature of the assets, the liquidity needs of its investors and other LMTs employed by the fund. This approach would also be consistent with the recent revisions to the AIFMD, which also confirmed that liquidity risk management is primarily the responsibility of the AIFM and that prescribed use of LMTs (including anti-dilution mechanism) can be inappropriate and potentially counter-productive.

We would also highlight that the recent International Organization of Securities Commissions ("IOSCO") report on anti-dilution tools<sup>1</sup> recommended that asset managers make use of anti-dilution LMTs, but that competent authorities do not mandate their use. We do not believe there are any specific risks associated with the ELTIF that would warrant a departure from the approach recommended by IOSCO and the recently agreed approach under the AIFMD.

**b) What are your views on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs, irrespective of their individual specificities, as suggested in paragraph 83?**

We support ESMA's approach of having a quarterly maximum frequency for redemptions, but with the possibility for exceptions from this requirement where ELTIF managers justify more frequent redemptions taking into account the individual characteristics of the ELTIF.

It is common market practice for real estate fund assets to be valued quarterly and the proposed requirement would be consistent with the general industry approach. However, such an approach is not always the most appropriate depending on the nature of the ETLIF. Ultimately, the responsibility for determining a fund's redemption policy should remain with the ELTIF manager who is in the best position to consider how the redemption policy aligns with the assets, the liquidity needs of its investors and other LMTs used by the fund.

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<sup>1</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD739.pdf>

The exception for ELTIF managers is important because there are multiple scenarios whereby more frequent redemptions may be more appropriate for investors while still being compatible with the ELTIF's investment strategy.

**c) What are your views on the setting of a notice period of Y months for all ELTIFs (with Y equal to 12, for example)? What are your views on the options 1 and 2, set out in paragraphs 87 to 90, in relation to the specific requirements/circumstances where the notice period could be less than one year, and the numerical values of the parameters Z(1) to Z(4), under option 1, and Y, under option 2?**

We agree it could be acceptable for the mandatory redemption notice period [Y months] to apply to each investor's redemption requests, provided that shorter notice periods are allowed for ELTIFs in certain circumstances or under certain conditions. We would note our comments above (at Q11(a)) on the suggested optionality.

**d) In your view, how do these requirements on the redemption policy and liquidity management tools of the ELTIF would compare to those applying to existing long-term investment AIFs which would be similar to ELTIFs (e.g. in terms of eligible assets)?**

We do not express an opinion on this issue.

**Where possible, please support your answers by providing examples of current liquidity set-up for similar long-term funds marketed to retail investors, analyses of the data available to assess the value of ELTIF long term assets and the length of the valuation process.**

**Q12: Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) - Article 18(6)(d))?**

We do not express an opinion on this issue.

**Q13: Do you agree with the principle-based approach suggested above, in relation to the ESMA RTS under Article 19(2a)?**

We do not express an opinion on this issue.

**Q14: Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both existing and potential investors, and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests?**

We do not express an opinion on this issue.

**Q15: Do you agree with the proposed approach and corresponding draft RTS, in relation to the periods of time during which existing and potential investors may request transfer of shares or units of the ELTIF? If both systems under Article 18(2) and 19(2a) coexist, how could the risk of arbitrage between different prices in the primary and the secondary markets be, in your view, mitigated? How could (retail) investors be ensured that the purchase or sale of shares on the secondary market will be executed at prices that reflect the value of the ELTIF?**

In a conventional closed ended real estate fund, the fund is often not unitised and so the concept of issuing units/shares at a specific price is not relevant. However, the principle would still apply and, in that case, the typical equalisation mechanic where a share of net drawdowns plus interest rate amount added would achieve a minimum NAV commitment for new investors. However, this may not always be the case (e.g., where an asset increases in value during the launch period when investors subscribe at different times) and, as a result, the notion of new units not being issued below NAV without a Right of First Offer is potentially problematic.

We would add that, where ELTIF units are listed on a regulated market, the proposed approach and corresponding RTS should not apply.

**Q16: Do you agree with the proposals above and the corresponding draft RTS, in relation to the determination of the execution price and the proration conditions and the level of the fees, costs and charge, if any, related to the transfer process?**

We broadly agree with the proposals; however, we express caution that a standardised/default option in relation to determining the execution price would limit flexibility needed for the process to function fairly and efficiently.

**Q17: Do you agree with the proposals above, and the corresponding draft RTS, in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions?**

We do not express an opinion on this issue.

**Q18: Are you of the view that any of the requirements of the draft RTS under the amending ELTIF Regulation should be adjusted to take into account the specificities of listed ELTIF? If yes, could you specify which requirement should, in your view, be amended?**

We do not express an opinion on this issue.

**Q19: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the redemption policy of ELTIF under Article 18(2) of the ELTIF Regulation? Which other types of costs or benefits would you consider in this context?**

We do not express an opinion on this issue.

**Q20: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards the matching mechanism of ELTIF under Article 19(2a) of the ELTIF Regulation? Which other types of costs or benefits would you consider in this context?**

Matching mechanisms can be an important component within a broader liquidity risk management framework. We agree with the principles-based approach that ESMA has proposed for the matching mechanism and hope that this will support the development of secondary markets for ELTIF participations. Due to the relatively small scale of the current ELTIF market, there is no real secondary market today; however, if the sector grows as anticipated following the reforms introduced to the Regulation, this may change over time.

We would encourage ESMA to keep open the possibility of revisiting this element of the RTS in time to ensure that it remains supportive of the secondary market at a time when there is sufficient scale in the ELTIF sector for this to develop.

**Q21: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards common definitions, calculation methodologies and presentation formats of costs of ELTIFs? Which other types of costs or benefits would you consider in this context?**

We do not express an opinion on this issue.