

ELTIFs: Delegated Act (RTS) supplementing Regulation (EU) 2015/760

ECON Scrutiny Session of 30 September 2024

IN BRIEF

The review of Regulation (EU) 2015/760 (ELTIF Regulation) concluded in February 2023 with the adoption of the amending [Regulation \(EU\) 2023/606](#) (ELTIF 2.0), the aim of which was to increase the attractiveness of ELTIFs. ELTIF 2.0 is applicable since 10 January 2024. ELTIFs are the only type of fully harmonised alternative investment funds (AIFs) dedicated to long-term investments and they are open both to professional and retail investors.

Since the adoption of the original ELTIFs legal framework in April 2015 (ELTIF 1.0), only 57 ELTIFs (as of October 2021) had been launched with a relatively small amount of net assets under management (total assets under management are estimated at approximately EUR 2.4 billion in 2021). Such authorised ELTIFs were domiciled in only four Member States (Luxembourg, France, Italy and Spain), and the other Member States had no domestic ELTIFs. Among the main reasons for the insufficient uptake of ELTIFs in Europe the Commission had identified restrictive fund rules and barriers to entry for retail investors.

The reform of 2023 aimed to strike a balance that would help overcome the issue of restrictive rules and to enhance long-term investment in Europe and deepen the Capital Markets Union. The result was well received in the market, as it is proven by the fact that since 2023, the number of authorised ELTIFs has increased [significantly](#).

Regulation (EU) 2023/606 (ELTIF 2.0) mandated ESMA to adopt RTSs on various aspects of the amending Regulation. On 19 December 2023, ESMA submitted its draft RTS¹ to the Commission. Based on ESMA's draft RTS, on 6 March 2024 the European Commission has adopted the RTS "with amendments" citing multiple legal problems with the draft RTS and requested ESMA to resubmit the draft RTS within 6 weeks in line with the adoption procedure set out in Article 10(1) of [ESMA Regulation](#). Upon receiving an amended draft from ESMA, in line with the procedure under Article 10(1) of [ESMA Regulation](#), the Commission adopted on 19 July 2024 the RTS with the amendments it considered relevant and submitted the delegated act to the Parliament and to the Council for scrutiny. The scrutiny period ends on 21 October 2024. Before the formal adoption of the ELTIF delegated act, the Commission consulted the Expert Group of the European Securities Committee where the majority of Member States supported the RTS as amended by the Commission.

¹ See Final Report on draft regulatory technical standards under the revised ELTIF Regulation (ESMA34-1300023242-159). Available: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/investment-funds_en#policy-making-timeline (19.09.2024).

This briefing shall support **ECON's work on scrutiny of delegated acts**, in particular the discussion of 30 September 2024 on the Commission's Delegated Act under the ELTIF Regulation.

ITEM FOR DISCUSSION

[Commission Delegated Regulation \(EU\) .../... of 19.7.2024 supplementing Regulation \(EU\) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards specifying when derivatives will be used solely for hedging the risks inherent to other investments of the European long-term investment fund \(ELTIF\), the requirements for an ELTIF's redemption policy and liquidity management tools, the circumstances for the matching of transfer requests of units or shares of the ELTIF, certain criteria for the disposal of ELTIF assets, and certain elements of the costs disclosure.](#)

PROCEDURE

On 19 December 2023, ESMA submitted, after a public consultation and the subsequent analysis of contributions received, a draft RTS specifying, among others, obligations of ELTIFs and of their managers concerning the hedging of derivatives, redemption policies and liquidity management tools, the trading and issuance of units or shares of ELTIFs, and transparency-related requirements².

In response to the draft RTS submitted by ESMA, the Commission adopted on 6 March 2024 a decision to endorse the draft RTS with amendments, citing certain legal and policy concerns, including what the Commission considered to be non-compliance of ESMA's draft RTS with the mandate specified in the revised ELTIF Regulation³.

On 19 April 2024, ESMA's Board of Supervisors adopted and resubmitted to the European Commission an amended draft for the ELTIF RTS, within the required period of six weeks laid down in Article 10(1) of the ESMA Regulation⁴.

On 29 May 2024, the European Commission consulted on its own initiative the Expert Group of the European Securities Committee ('EGESC') on the draft Commission Delegated Regulation. The majority of Member States' experts that expressed their views supported the proposed draft Commission Delegated Regulation citing a range of legal and economic reasons.

In accordance with Article 10(1), subparagraph 6, of Regulation (EU) 1095/2010 (ESMA Regulation), the Commission adopted the RTS with the amendments it considered relevant.

² See Final Report on draft regulatory technical standards under the revised ELTIF Regulation (ESMA34-1300023242-159). Available: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/investment-funds_en#policy-making-timeline (19.09.2024).

³ See European Commission's letter to ESMA pertaining to the adoption of ELTIF RTS with amendments (C(2024) 1375 final). Available: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/investment-funds_en#policy-making-timeline (19.09.2024)

⁴ See Opinion on ELTIF regulatory technical standards under the revised ELTIF Regulation (ESMA34-1300023242-167). Available: <https://www.esma.europa.eu/press-news/esma-news/esma-proposes-changes-eltif-technical-standards> (19.09.2024).

A relevant part of the procedure leading to the adoption of the Commission Delegated Regulation took part during the previous legislature, right ahead of the electoral recess period of the European Parliament. This session is intended to support the new Parliament in the exercise of its scrutiny rights.

MAIN DISCREPANCIES BETWEEN THE COMMISSION AND ESMA CONCERNING THE DRAFT RTS OF 19 DECEMBER 2023

In the [Annex](#) to the Communication to the Commission on the intention to adopt with amendments the Commission Delegated Regulation supplementing Regulation (EU) 2015/760, the Commission has elaborated on the differences between the original ESMA draft RTS and the amended version proposed by the Commission on 6 March 2024. In that document, the Commission identified various areas where the ESMA draft RTS was not in line with the level 1 ELTIF 2.0 Regulation and gave its reasons why amendments would be needed:

- **Ex post notification of material changes to the redemption policy:** it should be noted that *ex post* notification was not in line with Article 5(4) ELTIF Regulation whereby any subsequent modifications to the authorisation documentation must be immediately notified to the competent authority;
- **Mandatory notice periods for investors:** according to the Commission, such mandatory notice periods would imply that the RTS mandated *the notice period was effectively constituting a general requirement for all ELTIFs* whereas linking the notice period with the requirement on minimum liquid assets (Article 5(5) and (6) of the draft RTS) would further deprive the ELTIFs of flexibility; moreover reading various rules in conjunction (Article 3 on determination of the minimum holding periods and Article 5(3) of the draft RTS) *could lead to a misleading interpretation that a minimum holding period is mandatory for all ELTIFs* and depends on the notice period;
- **Liquidity buffer:** the requirement on a minimum percentage of liquid assets of 40% was not in line with ELTIF Regulation. According to the Commission, *the proposed requirements should be more proportionate in relation to the obligation that the ELTIF has in place an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF* provided for in Article 18(2), point (b), ELTIF Regulation. The Commission reminded that Article 13(1) only contains a requirement *that ELTIFs invest 55% of the capital in eligible investment assets*. Finally, it should be noted that there are no requirements on the percentage of UCITS-eligible, i.e. liquid assets, set out in Article 9(1), point (b), ELTIF Regulation, apart of concentration limits;
- **Mandatory anti-dilution liquidity management tool:** the requirement to put in place an anti-dilution liquidity management tool contradicted the legal requirement for an ELTIF to have *appropriate liquidity management tools that are compatible with the long term investment strategy* (Article 18(2), point (b), ELTIF Regulation) thus leaving no discretion to ELTIF managers to choose between liquidity management tools;
- **Mandatory redemption gates** that are linked to notice periods and to certain specific circumstances were at odds with Article 18(2), ELTIF Regulation, which entitled ELTIFs to allow redemptions during the life of of the ELTIF provided that, among other conditions, the redemption policy of the ELTIF ensures that redemptions are limited to a percentage of the UCITS-eligible, i.e. liquid assets of the ELTIF. The legal mandate granted to ESMA under Article 18(6), first subparagraph, point (d), ELTIF Regulation solely encompassed the development of

technical standards specifying the “*criteria to assess the percentage referred to in Article 18(2), first subparagraph, point (d)*” (meaning the percentage of the UCITS-eligible, i.e. liquid assets) rather than setting out additional requirements;

- **Cost disclosure provisions** were not sufficiently aligned to [PRIIPS Regulation](#), MIFID and AIFMD which was the aim of the amendment to Article 25(2), ELTIF Regulation.

Furthermore, the Commission’s decision of 6 March 2024 contained an annex with annotated draft RTS, which contained the proposed **two alternative methodologies which ELTIFs 2.0 could select to determine the maximum percentage of redeemable liquid assets**:

- **the first methodology** being calibrated as function of the redemption frequency and the extended notice period of the ELTIF (**Annex I of the Commission’s draft RTS**); and
- **the second methodology** being calibrated as function of the redemption frequency and the minimum percentage of the ELTIF’s liquid assets (**Annex II of the Commission’s draft RTS**).

ESMA agreed to most of the amendments by the Commission (amendments in simple track changes contained in the [opinion](#) of 19 April 2024) while **maintaining** its provisions on **notification of material changes** to the redemption policy; **mandatory notice periods for redemptions, deletion of Annex I** (inserted by the Commission on determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 as function of the redemption frequency and the extended notice period of the ELTIF), **modifying Annex II of the Commission’s RTS** (on determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of Regulation (EU) 2015/760 as function of the redemption frequency and the minimum percentage of liquid assets of the ELTIF) and reintroducing a provision on **redemption gates**.

AMENDMENTS BY THE COMMISSION REJECTED BY ESMA IN ITS OPINION

Some of the amendments rejected by ESMA [in its opinion containing the amended RTS of 19 April 2024](#) deserve a closer look.

ESMA proposed to delete **Annex I** on determination of the maximum percentage referred to in Article 18(2), first subparagraph, point (d), of the ELTIF Regulation as proposed by the Commission on 6 March 2024 and reintroduced the related earlier provisions.

According to ESMA, Annex I did *not make it mandatory for the ELTIF manager to hold minimum percentages of liquid assets*. That option also implied *that in certain circumstances (e.g. no notice period and weekly redemption frequency) the maximum amount that [could] be redeemed is less than 2%, which [did not] seem compatible with the fact that retail investors may invest in ELTIF given they may not be aware nor understand that redemptions could be limited to that extent* (point 27(a) of the Opinion). In this point, the ELTIF 2.0 Regulation contains an exhaustive set of rules for retail investor protection: the comprehensive MiFID II suitability test, the obligation to have in place a depositary, the requirement of express consent, the investor alerts, the right for a 2-week withdrawal by retail investors, disclosure requirements, etc. **More restrictive rules based on retail investor protection** via a level 2 act would run counter to the aim of the ELTIF 2.0 reform and would thus be **out of the scope of the mandate given by the co-legislators**. **The co-legislators did not differentiate between redemption policies and liquidity management tools for ELTIFs marketed to retail investors and ELTIFs marketed to professional investors in level 1**, owing to the fact that simplifying the access of retail investors was one of the aims of the reform and retail investor issues were discussed at length.

As pointed out above, ELTIF Regulation does not impose a minimum liquidity buffer requirement nor a specific set of liquidity management tools. In accordance with Article 18(2), point (b), ELTIF Regulation, the manager of the ELTIF needs to be able to demonstrate to its competent authority that the ELTIF has in place *an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF*. In accordance with Article 18(2), first subparagraph, point (d), redemptions have to be limited to a percentage of UCITS-eligible (i.e. liquid) assets of the ELTIFs. **For the reasons above, the Commission correctly reinstated in its adopted Delegated Act Annex I as one possible way to determine the maximum percentage referred to in Article 18(2), first subparagraph, point (d), ELTIF Regulation.**

ESMA considered the redemption **notice periods** as *a key element of the redemption policy* (point 19 of the Opinion). It took note that *the majority of respondents to the ESMA consultation were not in favour of an approach under which a mandatory notice period would be set for all ELTIFs* (point 22 of the Opinion). Nevertheless, for various policy objectives (point 23 of the Opinion) ESMA *put forward an option under which, depending on the length of the notice period, ELTIF managers shall hold a minimum percentage of liquid assets, and, at the same time, different percentages of maximum amount of liquid assets that can be redeemed are also applied to them* (point 24 of the Opinion).

Furthermore, in Annex II, ESMA kept “the **notice period**” instead of “redemption frequency” because *if the reference to redemption frequency was to be kept, ELTIF managers would not have time to stagger the sales of assets, if all redemption requests were formulated one day before the redemption day* (point 27(b) of the opinion). The notion of staggering the sales of (long-term) assets seems to be in contradiction with the purpose of the ELTIFs and the *expressis verbis* requirement in ELTIF 2.0 Regulation that redemptions are to be limited to a percentage of UCITS-eligible, i.e. liquid, assets (Article 18(2), point (d) of ELTIF 2.0 Regulation). In consequence, Annex II has also been reinstated in the DA as adopted by the Commission.

With regard to **redemption gates**, ESMA kept a provision replacing the obligation with a discretionary decision to implement such redemption gates by ELTIF managers (Article 5(9) of ESMA draft RTS; see also point 45 of the Opinion) and elaborated its reasons for doing so (specifically point 43 of the Opinion). In the DA as adopted by the Commission, a reference to redemption gates is missing since it is obvious that if *the manager of the ELTIF may also at its discretion select and implement other liquidity management tools* (Article 5(9) of DA) it is up to the ELTIF to decide which liquidity management tools it implements and whether one of those tools could be redemption gates. In conclusion, nothing in the DA as adopted by the Commission forbids the ELTIF managers to introduce redemption gates.

Items covered in the Delegated Act and the empowerments

The list of items distinguishes between the empowerments under the original 2015 ELTIF Regulation (the so-called ELTIF 1.0) and the empowerments introduced by the amending Regulation (EU) 2023/606 (the so-called ELTIF 2.0). Due to transitional provisions, different sets of rules will in general apply to those ELTIFs authorised before 10 January 2024 (ELTIF 1.0 and [Commission Delegated Regulation \(EU\) 2018/480](#)) and those authorised after 10 January 2024 (ELTIF Regulation as consolidated and the DA under discussion or ELTIF 2.0 framework), although the ELTIFs 1.0 can choose to be subject to ELTIF 2.0 framework. This is justified by the somewhat different nature of ELTIFs 1.0 and ELTIFs 2.0 sought after by the ELTIF regulatory reforms.

1. The use of financial derivative instruments solely for hedging purposes (Article 1 DA - Article 9(3) of ELTIF 1.0 ; *regulated slightly differently in Article 1 of [Commission Delegated Regulation \(EU\) 2018/480](#)*)
2. Circumstances in which the life of an ELTIF is compatible with the life-cycles of each of its individual assets (Article 2 DA - Article 18(6), first subparagraph ELTIF 2.0)
3. Criteria to determine the minimum holding period (Article 3 DA - Article 18(6), second subparagraph, point (a) ELTIF 2.0)
4. Minimum information about the redemption policy and liquidity management tools to be provided to the competent authority (Article 4 DA - Article 18(6), second subparagraph, point (b), ELTIF 2.0)
5. Requirements concerning redemption policy and liquidity management tools (Article 5 DA - Article 18(6), second subparagraph, point (c), ELTIF 2.0)
6. Criteria to determine the percentage of liquid assets being a limitation to redemption (Article 6 DA - Article 18(6), second subparagraph, point (d), ELTIF 2.0)
7. Matching of transfer requests (*Article 7 DA - Article 19(5) ELTIF 2.0*)
8. Determination of the execution price and the pro-ratio conditions where transfers are matched as referred to in Article 19(2a) of Regulation (EU) 2015/760, and the level of the fees, costs and charges, if any, related to the transfer (*Article 8 DA - Article 19(5) ELTIF 2.0*)
9. Information that ELTIFs need to disclose to investors when transfers are matched as referred to in Article 19(2a) of Regulation (EU) 2015/760 and the timing of such disclosure (*Article 9 DA - Article 19(5) ELTIF 2.0*)
10. Criteria for the assessment of the market for potential buyers (*Article 10 DA - Article 21(3) ELTIF 1.0 - regulated slightly differently in Article 3 of [Commission Delegated Regulation \(EU\) 2018/480](#)*)
11. Criteria for the valuation of the assets to be divested (*Article 11 DA - Article 21(3) ELTIF 1.0 - regulated in Article 4 of [Commission Delegated Regulation \(EU\) 2018/480](#), editorial differences in wording*)
12. Common definitions, and calculation methodologies and presentation formats of costs (*Article 12 DA - Article 25(3) ELTIF 1.0, not regulated in an earlier delegated act; the justifications for that are contained in point 17ff of [ESMA Consultation Paper of 23 May 2023](#)*)

Procedural issues

Under Article 290 TFEU, the Parliament may object to the above mentioned delegated act, but cannot amend it. The Commission has informed the Parliament that the deadline for objections by the Parliament and the Council is three months from the date of notification, i.e. until 21 October 2024, unless one of the legislators decides to extend the scrutiny period once by another three months. If the ECON Committee considers it appropriate, it may table a reasoned motion for a resolution to plenary objecting to the delegated act within the scrutiny period, stating the reasons for Parliament's objections to the above mentioned delegated act and possibly incorporating a request to the Commission to submit a new delegated act taking into account Parliament's recommendation ([Rule 114\(3\)](#) of the Rules of Procedure).

State of play

The DA, as adopted by the Commission is currently under scrutiny by the European Parliament and the Council.

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