ESMA empowerment under Article 25(3) on cost disclosure

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)?

AFG response

AFG agrees that the abovementioned regulations are relevant. However currently many other pieces of legislation about the cost disclosure are currently under discussion. Some discussions could result in structural changes regarding that topic, namely the Retail Investment Strategy. Similarly, the undue costs discussions reached no agreement in the frame of the latest AIFMD trilogues.

Consequently, AFG believes that it is urgent to wait until the industry reaches a global agreement. Otherwise, we cannot ensure that the specifications given by ESMA in the frame of these RTS will be compliant with the final outcome of these important negotiations.

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)?

AFG response

AFG agrees with ESMA that different types of costs coexist simultaneously. AFG understands that ESMA propose to include them in a consistent way in an overall cost ratio by considering the recommended holding period as it is used in the PRIIPS regulation as an assumption of the actual duration of investment.

AFG believes that this proposal can be seen as a new methodology of cost disclosure (with a yearly percentage of the capital of the ELTIF) along with the previous one (PRIIPS, …) which could lead to confusion for existing investors.

Moreover, percentages figures can vary with the size of the capital of the ELTIF regardless of the actual costs. This could potentially be misleading.

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 32(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?

AFG response
The overall ratio computation leads to the obligation to include different types of costs in one single figure. AFG believes that each type of costs should be expressed according to its nature. This oversimplification could potentially prove to be misleading. The prospectus of ELTIF should indicate a maximum rate by type of costs and expressed of percentage of Capital or investment value for transaction costs. Annual regulatory reportings with the actual costs are still a reliable source of information and comparison for investors.

Q5. Do you agree that the types of cost mentioned in paragraph 33 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?

AFG response
Regarding the cost of setting up it should be noted that ELTIF under the new regulation can be restructured (on liability and asset side) and subject to a new commercial push. Theoretically an ELTIF could potentially has numerous cycle of life. So it should be helpful to specify what is to be meant by setting up of the ELTIF, as referred in Article 25(1).

Q6. Do you agree that the types of costs mentioned in paragraph 36 may be considered as fixed costs in the case of an ELTIF?

AFG response

These costs should correspond to due diligences, advice and tax costs related to acquisition or disposal of assets. These amounts are generally fixed or a percentage of the investment value.

They should be expressed as a maximum of the investment value. The actual fees would be disclosed in the annual report

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?

AFG response

AFG is of the view that ESMA should include a specific grand-fathering clause in relation to the RTS under Article 25(3). Without such clause ELTIF would have to modify the cost disclosure methodology in the prospectus. And this modification could potentially prove to be misleading for the existing investors.

ESMA empowerment under Article 18 on redemption policy

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

AFG response

AFG believes that the circumstances listed in the proposed revised version of Article 2, provide enough coverage and flexibility for the assessment of the compatibility between the ELTIF and the life-cycle of the asset.

However circumstances of the point h of the Article 2 may be difficult to foresee, by nature.

CRITERIA TO DETERMINE THE MINIMUM HOLDING PERIOD (REFERRED TO IN POINT (A) OF PARAGRAPH 2

The proposed RTS related to these "*criteria to determine the minimum holding period referred to in point (a) of paragraph 2*" (Article 18(6)(a)) are included in Annex IV (article 3) of this consultation paper.

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 abovementioned minimum holding period?

AFG response

For sake of clarification, AFG understands the minimum holding period referred in the paragraph 2 as an initial lock up mechanism that hold only at the inception of the ELTIF. Indeed, this period cannot be associated to every single investment because such mechanism could not be easily processed from an operational perspective, especially with retail investors.

AFG believes that a minimum holding period should not be mandatory in the context of ELTIF. First of all, this could be considered as a constraint imposed to the first investors. Moreover, early redemptions rarely occur during the ramp up period (or preferably the initial investment period during the ELTIF inception phase) which usually corresponds to a commercial push in a favourable environment for the ELTIF strategy. And such early redemptions, if any, could easily be treated with the disposal of the instruments referred to in point (b) of Article 9(1) of the ELTIF Regulation (i.e. UCITS-eligible assets) invested mostly during the ramp up period and other asset- liability management tools (cash flow resulting amortizing debt instruments and recurring dividend resulting from equity instrument for instance).

AFG would like to remind that the PRIIPs Regulation is applicable when ELTIFs are marketed to retail investors. According to this regulation, a recommend holding period must be communicated to the future investors (through the KIID). The coexistence of two holding periods could potentially be a source of misunderstanding by retails investors.

AFG notes that §62 of ESMA's report and corresponding article 3 of the draft RTS, listing criteria to determine a holding period, are otherwise very flexible and recognize that such holding period is very dependent on each ELTIF's specific characteristics.

Regarding the notion of "aggregated concentration", it is very difficult to monitor it, as currently intermediaries and distributors which sell the fund units to investors do not provide fund managers with the knowledge of clients' types on a free cost basis. This aggregation by the fund manager itself could also be asked upfront at the launch of the fund, and as an expectation – as long as regulators do not oblige intermediaries and distributors to provide for more information to the fund managers on a free cost basis, regarding the knowledge of client types having invested in the fund.

Finally, in the context of the French market, ELTIF will be mostly commercialized through unit linked account. The minimum holding period mechanism won't be able to be mirrored by the insurance company. Indeed, a provision that limits for a period of time the redemption of unit account is not compliant with the current French insurance regulation. Consequently, a very limited number of ELTIF could potentially be marketed to the French retail market.

Most of the French retail funds that naturally aim to be eligible to the ELTIF label do not have currently any min holding period, but have other liquidity safeguards (gates, min liquid assets bucket, incitative notice periods or other combinations)

MINIMUM INFORMATION TO BE PROVIDED TO THE COMPETENT AUTHORITY OF THE ELTIF UNDER POINT (B) OF PARAGRAPH 2

The proposed RTS related to the "*minimum information to be provided to the competent authority of the ELTIF under point (b) of paragraph*" (Article 18(6)(b)), are included in Annex IV (Article 4) of this consultation paper.

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)?

AFG response

Overall, AFG agrees with the list of minimum information that managers should provide to competent authorities.

However, we note that Article 4, paragraph 2 of the draft RTS establishes that " …*the ELTIF should provide to the competent authority …. the update information, where possible, before the application of such material changes, and in any case not later than 10 days from the date the respective material changes became known or should have become known to the ELTIF manager*."

AGF believes a 10 days period is difficult to respect. We propose a 30 business days period instead. Also the portion " should have become known" should be removed from the sentence as it is difficult - if not impossible- to update information within a strictly set and rather short time period running from a start date that the manager does not actually know (but only should have become known)

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)

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)?

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 84?

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 88 to 91, 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?

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)?

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.

Please find below examples of current liquidity set-up of French wrappers meant to be eligible to ELTIF label.

Name	Asset class	Global Size in AuM	Portfolio makeup (between cash, equity, bond & illiquids) in %	Redemption frequency	Availability of LMTs, in particular minimum holding period redemption fees, other ADLs, or gates
Retail OPCI	Real estate	20 billions€	Target of 60% of real estate Target 40% of financial assets with a minimum of 5% of cash permanently	Bi monthly (highest possible frequency) to bi-annually (lowest possible frequency)	No min holding period Gates + incentive notice period for shared classes dedicated institutional investors
Evergreen FCPR	Private Equity / Infrastructures	Not available	Target 70% (Min 50%) of non-listed assets Target 30% (max 50%) of liquid assets with a minimum of 5% of cash permanently	Generally bi-monthly.	No min holding period Gates + possible lock-up period
OFS & FPS	Flexible : private equity, private debt, real estate, infrastructures, etc.	Not available	Flexible	Depends on the statutes of the fund	Possible Gates + possible lock-up period

AFG response

AFG recalls that IOSCO / FSB put forward that asset, liability and the redemption policy (including the liquidity management tools) are the three terms closely related with regards to liquidity risk management in funds. A sound and reliable liquidity risk management relies on the correct articulation of these aspects along with the liquidity profile of the ELTIF (both from asset and liabilities perspectives). All those elements should be considered holistically.

For instance, the redemption frequency should not be solely assessed without knowing the liquidity profile of the ELTIF and the LMTs available and described in the fund documentation.

It is the articulation of all these different elements that matters and allow the manager to demonstrate to the competent authority that the redemption policy and the liquidity management tools are appropriate. Consequently, many different combinations should be deemed possible, and thus a lot of situations may call for redemption frequencies more frequent than quarterly. For instance, retail OPCI (real state funds) and FCPR evergreen marketed to retail (Private equity , private debt or infrastructures assets) in France have fortnightly redemption frequencies.

Regarding the notice period, it should be noted that this is one LMT amongst others. It is part of a comprehensive list in the framework of the current review of AIFMD (annex V). According to the holistic approach and to the very diverse spectrum of type of assets eligible to ELTIFs, there is no reason to make this tool mandatory compared to other tools. Moreover, a 12 months' notice period would make a quarterly basis frequency redemption confusing for the investors (i.e., adding the two constraints may be very confusing).

Regarding the minimum amount of liquid assets in option 1, depending on the type of the other assets - which may have their own liquidity, too high a percentage could be inadequate for the ELTIF Some distributors are quite sensitive to that point and to the commercial consequences. For instances, figures proposed in option 1 do not seem to be fit for retail distribution. Consequently, Option 1 as presented is not a viable solution for ELTIFs. Calibrations are too strict and make a whole range, if not the vast majority, of type of retail AIFs not eligible to the ELTIF structure, thus hindering the objective of making ELTIF a successful brand.

In France, the retail distribution relies mostly on the insurance company. And the corresponding regulatory framework has some constraints that should be taken into account to ensure that ELTIFs can be actually sold to the French retail market.

AFG is in favor of option 2 as it closer to the market practice (please see AFG answer to question #12, below)

In conclusion, AFG believes that setting concomitant and additive limits for each of the redemption frequency, notice period or minimum amount of liquid assets is not the good approach. These are only part of a whole toolkit which has to be set up in a consistent and robust and tailored manner. Consequently, the competent authority should make an assessment of the global design of the ELTIF based on the information described in the Article 4 proposed by ESMA.

CRITERIA TO ASSESS THE PERCENTAGE REFERRED TO IN POINT (D) OF ARTICLE 18(2), TAKING INTO ACCOUNT AMONG OTHERS THE ELTIF'S EXPECTED CASH FLOWS AND LIABILITIES

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))?

AFG response

AFG understands the limitation of the maximum redemption referred to point (d) of Article 18(2) as a "permanent" cap which applies on each window of redemption according to the redemption frequency of the ELTIF. This is compliant with the market practice where the manager usually assesses the maximum amount of the size of redemption orders that can be processes for the next redemption date, in 3 months for a quarterly redemption frequency by example.

Consequently, AFG believes that the option 2 is more flexible and closer to the market practice. However, we put an emphasis on the fact that that the rules for setting a period of Y months should not be mechanical but should rather be flexible in order to take into account the other parameters which globally define the liquidity profile of the ELTIF.

As it is a permanent and foreseeable limitation, therefore this cap is not part of the tools that need to be "activated". Its application is a "business as usual" mechanism that should not be subject to a disclosure requirement to the competent authority nor to the shareholders when it occurs: it is part of the redemption policy of the ELTIF.

AFG welcomes the fact the percentage may vary, and this leeway should remain in the hands of the manager.

AFG strongly advices ESMA to not imposing the public disclosure of the occurrence when the percentage is reached. It could otherwise lead to arbitrage from some investors and/or a run of redemptions.

Finally with regards to the French retail market, AFG would like to remind that retail distribution of ELTF will be hardly successful because these rules are not compliant with the constraints stemming from the French insurance regulation (code des assurances). For instance, we would like to remind that notice periods (or even permanent redemption limit) are not currently compatible with the mode of distribution of life insurance unit-linked funds, in France.

The stacking of all these liquidity mechanisms (minimum holding period, notice period, maximum quarterly redemption frequency, permanent limitation of redemption) is far removed from the practice of the retail funds. Accordingly, the success of marketing ELTIF funds to retail investors may be very unlikely.

ESMA empowerment under Article 19 on the matching mechanism

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

AFG response

AFG believes that the principle-based approach is desirable. This approach will give the flexibility to adapt the mechanism to the wide variety of ELTIF.

AFG considers this mechanism as complementary to the redemption policy subject to Article 18 of the ELTIF regulation. This mechanism can provide some additional liquidity for the investors and as such it can be seen as a part of the liquidity toolkit of the ELTIF.

In that frame, AFG puts an emphasis on the existing secondary market of the French SCPI which must be preserved in order to make such fund eligible to the ELTIF label.

AFG would like to draw attention of ESMA on an existing mechanism in the USA where the manager keeps an order book twice a year.

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?

AFG response

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?

AFG response

AFG believes that the matching mechanism can be implemented during the valuation dates of the ELTIF as long as the execution price is based on the corresponding NAV. It may only deviate from the NAV between the valuation dates. This should mitigate the risk of arbitrage and should allow longer period of time of operation of this mechanism.

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?

AFG response

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?

AFG response

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?

AFG response