

GREAT FUND INSIGHTS

ELTIF 2.0 essentials: unlocking access of *EU retail* *investors* to private capital

JULY 2024

Introducing *ELTIF 2.0*

AMENDMENT OF THE ELTIF REGULATION

The European long-term investment fund (**ELTIF**) is an EU fund regime that was introduced in 2015 to boost long-term investments in the European real economy. In its initial version, the ELTIF regime has not been very successful. As of October 2020, there were only 28 ELTIFs across the EU.

EU institutions recognised that the limited success of ELTIFs was mainly due to the overly prescriptive investment rules and complex marketing rules. In 2021, the European Commission (**EC**) initiated a review of the ELTIF regime with a view to make it more appealing.

This process led to the adoption in March 2023 of a regulation amending [Regulation \(EU\) 2015/760](#) on ELTIFs (the **ELTIF Regulation**). The new rules which came into force on 10 January 2024 make the ELTIF regime more flexible and attractive. By broadening the scope of eligible assets, allowing funds of funds, relaxing investment limits and borrowing rules, and removing barriers for marketing to retail investors¹, the amending regulation addresses many of the shortcomings of the initial ELTIF Regulation.

The new regime distinguishes between ELTIFs marketed to retail investors (**Retail ELTIFs**) and those marketed to professional investors only (**Non-Retail ELTIFs**). In particular, all diversification requirements have been waived for Non-Retail ELTIFs.

The number of ELTIFs has more than quadrupled since the EC published its proposal, with the number of funds increasing from 28 in October 2020 to 125 as of June 2024². As at June 2024, ELTIFs have been established in the following Member States: Luxembourg (84 ELTIFs), France (20 ELTIFs), Italy (13 ELTIFs), Ireland (6 ELTIFs) and Spain (2 ELTIFs).

Tax incentives have been adopted in certain Member States to foster the development of ELTIFs. For instance, Luxembourg ELTIFs benefit from an exemption from the subscription tax (*taxe d'abonnement*).

The ELTIF 2.0 is a game-changer in the retailisation of alternatives in the EU, as it gives alternative asset managers unprecedented cross-border access to EU retail investors. The ELTIF 2.0 is the only alternative investment fund vehicle that can avail of an EU retail marketing passport. The ELTIF therefore bridges the gap between UCITS, which can only invest in liquid assets but benefit from a retail investor passport and AIFs, which may pursue alternative investment strategies but only have a professional investor passport.

ENTRY INTO FORCE OF ELTIF 2.0 AND GRAND-FATHERING PERIOD

The amended ELTIF Regulation entered into force on 10 January 2024.

ELTIFs that were authorised before that date benefit from a five-year grand-fathering period to comply with the new rules if they raise capital beyond 10 January 2024 or are exempted if they do not raise capital anymore.

It is also possible for existing ELTIFs authorised before 10 January 2024 to opt in for the new rules to benefit from them.

¹ Retail investors are investors that are not a professional investor under AIFMD.

² ESMA maintains an ELTIF register : <https://www.esma.europa.eu/document/register-authorized-european-long-term-investment-funds-eltifs>

Authorisation *process*

Only EU AIFs managed by an EU authorised AIFM^{4,5} may be authorised as ELTIFs.

In an umbrella AIF, it is possible to have only one or more sub-funds authorised as ELTIFs.

Luxembourg ELTIFs are typically established⁶ as Part II UCIs⁷ (which represent 78% of the existing Luxembourg ELTIFs), RAIFs (18%) and SIFs⁸ (3%).⁹ All Luxembourg ELTIFs, including RAIFs, must be approved by the CSSF.

In Italy, ELTIFs are typically set up as mutual funds (*fondi comuni di investimento*) and must be approved by the Bank of Italy.

Under the old regime, an AIFM intending to manage an ELTIF based in another Member State was subject to the approval of the ELTIF's national competent authority (**NCA**). This is no longer the case, although the ELTIF NCA may still ask the AIFM's NCA to confirm that the AIFM's authorisation in its home Member State covers the relevant strategy of the AIF to be managed.

In practice, to avoid any delay with the ELTIF application, the AIFM should:

- (a) verify before the submission of the application that it has the necessary licence to manage AIFs deploying the relevant strategy;
- (b) if relevant, notify its NCA of any new delegation of functions or services; and
- (c) consider any update to its policies and procedures depending on the type of ELTIF to be managed (eg open-ended ELTIF or Retail ELTIF).

The French and Luxembourg competent authorities, the AMF and the CSSF, have recently updated their ELTIF application forms to reflect the recent amendments to the ELTIF Regulation.

The NCA must in principle respond to the applicant within two months of receiving a complete application¹⁰.



⁴ Alternative investment fund manager within the meaning of the Alternative Investment Fund Managers Directive 2011/61/EU, as amended (AIFMD).

⁵ or are authorised as an internally-managed AIF.

⁶ But ELTIFs can take other forms as well (eg, a SICAR (*société d'investissement en capital à risque*) or a limited partnership that is not subject to a specific product law).

⁷ Luxembourg funds governed by Part II of the Luxembourg act of 17 December 2010 on undertakings for collective investment, as amended.

⁸ Specialised investment funds.

⁹ Statistics as of June 2024.

¹⁰ Or within three months if the AIF is internally-managed.

Investment rules

ELIGIBLE INVESTMENT ASSETS

List of eligible assets

An ELTIF must invest at least 55% of its “Capital” in eligible investment assets, ie:

- (a) equity, quasi-equity and/or debt instruments¹¹ issued by qualifying portfolio undertakings;¹²
- (b) loans issued to qualifying portfolio undertakings;
- (c) units or shares of other ELTIFs, EuVECA¹³ EuSEFs¹⁴, or other EU AIFs that:
 - (i) are managed by an EU AIFM,
 - (ii) invest in “eligible investment assets”; and
 - (iii) do not invest more than 10% of their assets in other funds¹⁵
- (Other AIFs)¹⁶;
- (d) real assets; and
- (e) simple, transparent and standardised securitisations (**STS Securitisations**),¹⁷ where underlying exposures consist of commercial, residential or corporate loans or trade receivables.

Capital

The “**Capital**” of an ELTIF is defined as “*the aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors*”.

Target Date

The 55% investment limit must be complied with by a date (the **Target Date**) specified in the ELTIF’s documents, which must not be later than the earlier of:

- (a) five years from the authorisation of the ELTIF; and
- (b) half of the ELTIF’s life.

The Target Date may be postponed in exceptional circumstances with the approval of the NCA.

Qualifying portfolio undertaking

A “**qualifying portfolio undertaking**” is an undertaking which:

- (a) is not listed or has a market capitalisation of not more than EUR1.5 billion at the time of the initial investment by the ELTIF;

- (b) is not a collective investment undertaking;
- (c) is not a financial undertaking¹⁸, except if such financial undertaking either:
 - (i) has been organised or registered less than five years before the date of the investment by the ELTIF¹⁹; or
 - (ii) exclusively finances qualifying portfolio undertakings or eligible real assets;
- (d) is established either (i) in the EU; or (ii) in a third country which is not:
 - (x) identified as a high-risk third country under the EC list as per the delegated act of the AMLD²⁰; or
 - (y) included in the list of non-cooperative jurisdictions for tax purposes.

Real asset

A “**real asset**” is an “*asset that has an intrinsic value due to its substance and properties*”. Some examples of real assets that an ELTIF can invest in are immovable property (including commercial and housing), infrastructure assets, other assets (intellectual property, vessels, equipment, machinery, aircraft or rolling stock) and water, forest, building and mineral rights. By contrast, investments in works of art, manuscripts, wine stocks and jewellery are excluded.

¹¹ Including bonds issued under EU legislation on environmentally sustainable bonds (green bonds).

¹² Loans must not have a maturity longer than the life of the ELTIF.

¹³ ie European venture capital funds under Regulation (EU) 345/2013.

¹⁴ ie European social entrepreneurship funds under Regulation (EU) 346/2013.

¹⁵ ELTIFs may therefore not invest in funds of funds.

¹⁶ The ELTIF Regulation does not specify that the EU AIFM must be an EU authorised AIFM. Investment in EU AIFs managed by a registered (ie *de minimis*) EU AIFM should therefore be permitted. EU internally-managed AIFs should be allowed as well, although they are not referred to expressly by the ELTIF Regulation. By contrast, ELTIFs may invest neither in non-EU AIFs, nor in EU AIFs managed by a non-EU AIFM.

¹⁷ In order to be eligible for an ELTIF, securitisations must comply with the applicable STS eligibility criteria and other requirements of the EU Securitisation Regulation (**Regulation (EU) 2017/2402**).

¹⁸ The term “financial undertaking” encompasses in particular credit institutions, investment firms, insurance undertakings, management companies and AIFMs. Financial holding companies and mixed-activity holding companies within the meaning of EU Regulation 575/2013 (**CRR**) are also financial undertakings.

¹⁹ This derogation aims at allowing ELTIFs to invest in FinTechs.

²⁰ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.



LIQUID ASSETS

ELTIFs may also invest in UCITS and UCITS eligible assets (ie, UCITS eligible transferable securities, money market instruments, deposits, financial derivative instruments and funds). As from the Target Date, UCITS eligible assets may not represent more than 45% of the Capital of the ELTIF.

INVESTMENTS IN TARGET FUNDS

Look-through requirement

ELTIFs that invest in Other AIFs and/or UCITS (“target funds”) must look through the target funds to:

- (a) assess the percentage of their assets which are invested (directly or indirectly) in “eligible investment assets” which must represent at least 55% of the ELTIF’s Capital by the Target Date;
- (b) (for Retail ELTIFs) aggregate direct investments and investments of target funds for the purpose of applicable risk diversification requirements; and

- (c) calculate the maximum amount of borrowing permitted.

According to the ELTIF Regulation “for the purpose of determining compliance with the [55% rule], investments by ELTIFs in [target funds] shall only be taken into account to the extent of the amount of the investments of those [funds] in [eligible investment assets]”. In other words, an ELTIF may invest in an Other AIF which does not exclusively invest in eligible investment assets but it is only the portion of that Other AIF’s portfolio that is invested in eligible investment assets that will count towards the 55% rule.

In complying with the obligation to look-through target funds, ELTIFs may rely on information updated at least on a quarterly basis or, if the information is not available that frequently, on the basis of the most recent available information.

Master-feeder structure

Master-feeder structures are also permitted, provided that both the master and the feeder funds are ELTIFs.²¹

INVESTMENTS THROUGH INTERMEDIARY VEHICLES

ELTIFs may invest via intermediary entities, such as SPVs, securitisation or aggregator vehicles and holding companies.

DERIVATIVES AND SFTs

The use of derivatives and securities financing transactions (**SFTs**)²² by ELTIFs is highly restricted:

- (a) ELTIFs may only use derivatives for hedging purposes;
- (b) derivatives may not relate to more than 10% of the assets of the ELTIF;
- (c) the counterparty risk for the ELTIF vis-à-vis any single counterparty resulting from OTC derivatives and SFTs may not exceed 10% of the ELTIF’s Capital;
- (d) ELTIFs may not enter into short sale transactions; and
- (e) ELTIFs may not take direct or indirect exposure to commodities.

²¹ The attractiveness of ELTIF master-feeder structures is therefore limited and we do not expand in this brochure on the rules applicable to ELTIF master-feeder structures.

²² Securities lending, securities borrowing, repurchase transactions and similar transactions.

DIVERSIFICATION REQUIREMENTS AND ACQUISITION LIMITS FOR RETAIL ELTIFs

Contrary to Retail ELTIFs, Non-Retail ELTIFs are not subject to any diversification requirement or maximum acquisition limit²³.

A Retail ELTIF may not invest more than:

- (a) 20% of its Capital in equity, quasi-equity or debt instruments issued by, or loans granted to, any single qualifying portfolio undertaking;
- (b) 20% of its Capital in any single real asset;
- (c) 20% of its Capital in any single Other AIF or UCITS;
- (d) 10% of its Capital in UCITS eligible transferable securities or money market instruments with any single body²⁴;
- (e) 20% of its Capital in STS securitisations (in aggregate).

In addition, a Retail ELTIF may not acquire more than:

- (a) 30% of the shares or units issued by any single target fund (Other AIF or UCITS);
- (b) (when investing in UCITS eligible assets) 10% of the non-voting shares, debt securities or money market instruments of a single issuing body.

The diversification (20%) and acquisition limits (30%) do not apply to a feeder ELTIF investing in a master ELTIF.

The diversification and concentration rules no longer apply when the ELTIF liquidates its assets to redeem investors at the end of the ELTIF's life.



²³ This is without prejudice to any risk diversification requirement that may apply under applicable local law. For instance, a Luxembourg ELTIF established as a SIF will be subject to the maximum 30% concentration rule which applies under the act of 13 February 2007 on specialised investment funds.

²⁴ This 10% limit is raised to 25% for bonds issued by an EU credit institution, which is subject by law to special public supervision designed to protect bondholders.

Risk diversification requirements	Retail ELTIFs	Non-Retail ELTIFs
Maximum investment in instruments issued by or loans granted to a single qualifying portfolio undertaking	20%	Unrestricted
Maximum investment in a single real asset	20%	Unrestricted
Maximum investment in a single ELTIF, EuvECA or EuSEF, EU AIF or UCITS	20%	Unrestricted
Maximum investment in UCITS transferable securities or money market instruments issued by any single body	10%	Unrestricted
Maximum investment in bonds issued by an EU credit institution subject to supervision designed to protect bondholders	25%	Unrestricted
Maximum aggregate value of investments in STS Securitisations	20%	Unrestricted
Counterparty risk in the context of OTC derivatives or SFTs (per counterparty)	10%	Unrestricted
Acquisition limits		
Percentage of the shares or units of a single ELTIF, EuvECA, EuSEF, EU AIF or UCITS which may be acquired by an ELTIF	30%	Unrestricted
Percentage of the non-voting shares, debt securities or money market instruments of a single issuing body which may be acquired by an ELTIF (when investing in UCITS eligible assets)	10%	Unrestricted

BORROWING RULES

ELTIFs can borrow cash if they meet the following conditions:

- (a) the borrowing does not exceed 50% (for Retail ELTIFs) or 100% (for Non-Retail ELTIFs) of their net asset value. The limit applies as from the date specified in the ELTIF's rules or instruments of incorporation, which date may not be later than three years from the start of the ELTIF's marketing;
- (b) they borrow cash to invest or provide liquidity (including to pay fees and expenses) where they do not have sufficient cash or cash equivalents available;
- (c) they borrow cash in the same currency as the assets to be acquired or they appropriately hedge the currency risk exposure if they borrow in another currency; and
- (d) the borrowing has a maturity which does not exceed the ELTIF's life.

ELTIFs may give a security over their assets and undrawn commitments in favour of their creditors. Any borrowing that is fully covered by investors' undrawn commitments (ie subscription line) is not taken into account for the purpose of the 50%/100% borrowing limit referred to under item (a) above.

The borrowing limit may be suspended for up to 12 months where the ELTIF raises additional capital or reduces its existing capital.



Term and *liquidity*

TERM

An ELTIF must be established with limited duration. The rules or instruments of incorporation of the ELTIF must indicate a specific date for the end of the life of the ELTIF, subject to potential extensions. It is therefore not possible to set up ELTIFs as true evergreen funds (ie funds with an unlimited term).

However, the practical implications of such prohibition are very limited as ELTIFs may be established with a very long term (eg, more than 50 years).

The term of an ELTIF must be sufficient to cover the life cycle of each of the individual assets it holds. This condition is deemed met where²⁵:

- (a) the term of the ELTIF is aligned with the investment horizon date of the asset which has the longest investment horizon at the time of the ELTIF application; and
- (b) any investment made after the authorisation of the ELTIF has a residual investment horizon within the remaining life of the ELTIF at the time that investment is made.

CLOSED-ENDED VS. OPEN-ENDED ELTIF

In principle, an ELTIF must be closed-ended.

An ELTIF may however be structured as an open-ended AIF if:

- (a) redemptions before the Target Date are subject to a minimum holding (ie lock-up) period;
- (b) the ELTIF has appropriate liquidity management tools in place; and
- (c) the ELTIF has a redemption policy, which ensures that redemptions are limited to a percentage of the “liquid assets” of the ELTIF (ie the UCITS eligible assets). If redemption requests exceed such percentage, redemptions must be carried out on a pro rata basis.

ESMA has been mandated to develop draft regulatory technical standards (RTS) on (i) open-ended ELTIFs, including criteria to determine the appropriate length of the minimum lock-up period, and (ii) the optional liquidity window mechanism.

PREFERENTIAL SUBSCRIPTION RIGHT

An ELTIF may only issue new units or shares at a price below their net asset value if it offers a preferential subscription right to its existing investors.

REDEMPTIONS IN KIND

Redemptions in kind are only permitted if the following cumulative conditions are met:

- (a) redemptions in kind are expressly foreseen in the ELTIF rules or instruments of incorporation;
- (b) all investors are treated fairly;
- (c) the relevant investor(s) ask(s) in writing to be redeemed in kind (and investors may therefore always require a redemption in cash); and
- (d) the assets distributed in kind are freely transferable.

²⁵ According to Commission Delegated Regulation (EU) 2018/480 of 4 December 2017.



FREE TRANSFERABILITY AND LISTING

Interests in an ELTIF must be freely transferable to third parties other than the ELTIF manager, subject to the conditions set out in the ELTIF's prospectus.²⁶

Interests in an ELTIF may be listed on a regulated market or multilateral trading facility.

MATCHING EXITING INVESTORS WITH SUBSCRIBING INVESTORS

The ELTIF's rules or instruments of incorporation may provide for a liquidity window mechanism with a full or partial matching of exiting and subscribing investors organised by the ELTIF manager, subject to the implementation of an appropriate policy. This policy must clearly specify the criteria for matching requests, such as the transfer process, role of the ELTIF manager, execution price, pro rata conditions, timing and costs as well as ensure the fair treatment of investors.

The RTS will specify the circumstances to use the matching mechanism and disclosures requirements.



²⁶ In our view, this does not prevent the ELTIF's documents from providing that: (i) the proposed transferee must be an eligible investor; and (ii) transfers of undrawn commitments are subject to the prior approval of the board or the general partner of the ELTIF.

Marketing

AIFMD PRE-MARKETING

ELTIF managers are subject to the AIFMD pre-marketing regime, which is limited to professional investors. An ELTIF manager can therefore test the interest of professional investors established in any Member State in relation to an ELTIF that either is not yet established or has not yet been passported in the relevant Member State.

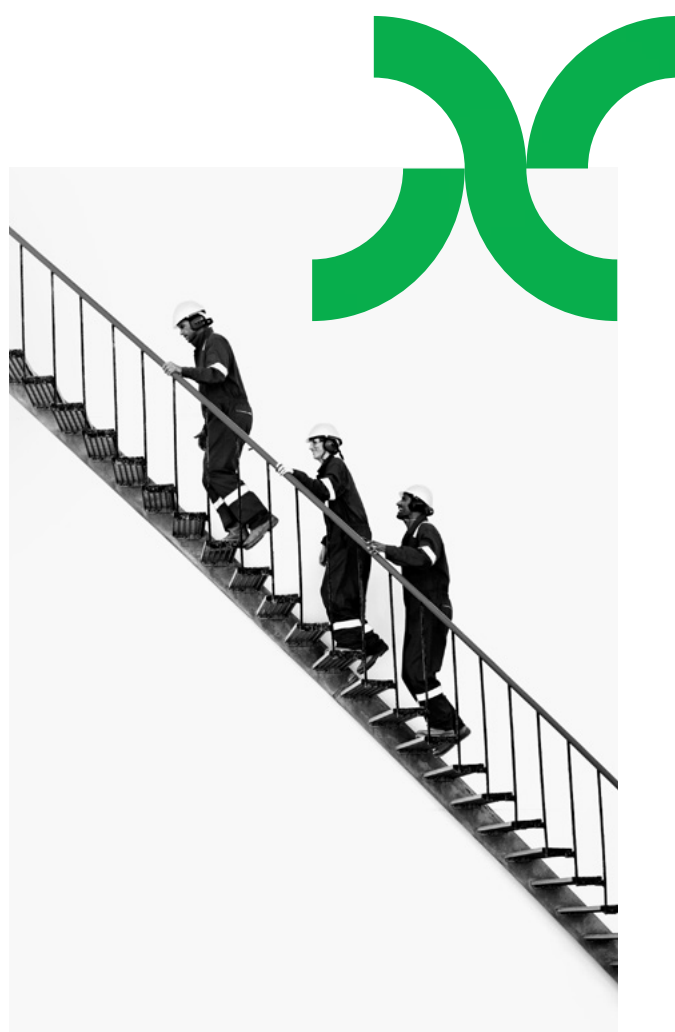
The information communicated to prospective investors in the context of pre-marketing must not enable investors to make an investment decision.

AIFMD MARKETING NOTIFICATION PROCESS

ELTIFs must follow the passporting process under Article 31 of the AIFMD, including when marketing to retail investors in the EU.

As a reminder, the ELTIF manager must notify its NCA that it intends to market the ELTIF along with the necessary documents and information such as the notification letter, ELTIF's rules or instruments of incorporation, name of depositary, Member States in which the ELTIF is intended to be marketed, information on the ELTIF available to investors, the disclosures required under article 23 of the AIFMD and the marketing arrangements.

The ELTIF manager's NCA will notify the relevant NCAs of the host Member States within 20 working days from the receipt of a complete notification and simultaneously inform the ELTIF's manager that it can start marketing the ELTIF.



ADDITIONAL REQUIREMENTS WHEN MARKETING TO RETAIL INVESTORS

Suitability test

ELTIFs can only be marketed to retail investors if the distributor or the ELTIF's manager carry out an assessment of suitability under MiFID II²⁷. The assessment is required whether the retail investor acquires units or shares of the ELTIF directly or through the secondary market.

If the distributor or the ELTIF's manager considers that the ELTIF is not suitable for the relevant retail investor²⁸, the latter may only invest in the ELTIF if it confirms that it understands the risks of investing in an ELTIF.

The distributor or the ELTIF's manager must keep a record of the suitability assessment and the retail investor's consent, if applicable.

Additional protection rights

Retail ELTIFs are subject to certain requirements that aim at investor protection:

- (a) the depositary must be an EU credit institution that cannot transfer its responsibility to any sub-custodian if the assets are lost;
- (b) the depositary and its sub-custodians cannot re-use the ELTIF's assets;
- (c) all investors (in the same class) must be treated equally and not get any preferential treatment or specific economic benefits;
- (d) retail investors' liability is limited to their capital commitment;
- (e) retail investors can cancel their subscription and get their money returned without any penalty during the subscription period and for at least two weeks after their subscribe; and
- (f) retail investors must be able to file complaints in one of the official languages of their country/Member State, which the ELTIF manager must document in a complaint procedure.

Marketing documents

ELTIF managers and their distributors must clearly inform investors about certain features and risks of the ELTIF (including for Non-Retail ELTIFs) in their marketing materials. For example, the marketing document must include a prominent statement on the illiquid and long-term nature of the ELTIF, its term and possible extension if any, the contemplated distributions if any, its hedging policy, the risks of investing in real assets or the invested jurisdictions.

ELTIFs must also comply with the **ESMA guidelines on marketing communications under the Regulation on cross-border distribution of funds**. These guidelines set out common standards and principles to ensure fair, clear and not misleading communications for funds and additional requirements for targeting retail investors.

²⁷ The Markets in Financial Instruments Directive 2014/65/EU.

²⁸ Which can only be the case if the suitability assessment was not provided in the context of investment advice (as the MiFID firm or AIFM may not recommend an investment which it does not deem suitable for the relevant investor).

Reporting and *disclosure obligations*

PROSPECTUS AND ANNUAL REPORT

ELTIFs must publish a prospectus, which must contain all the information required for an investor to make an informed judgement about the proposed investment and the associated risks as well as a specific statement on how the ELTIF's investment objectives and strategy for achieving the objectives qualify the fund as long-term in nature.

The prospectus should have a prominent indication of:

- (a) the categories of assets and jurisdictions in which the ELTIF can invest,
- (b) the illiquid nature of the ELTIF; and
- (c) the different costs borne directly or indirectly by investors, for instance by using bold, a box or a larger font size.

Particular attention must be paid to the requirements regarding the cost disclosures which must be regrouped under specific prescribed headings, and whose presentation and calculation will be aligned with PRIIPs Regulation³⁰ (including for Non-Retail ELTIFs)³¹.

The prospectus must also disclose an overall ratio of costs to the Capital of the ELTIF.

The prospectus of an ELTIF must comply with the additional disclosure requirements which apply to closed-ended funds under the Prospectus Regulation^{32,33}.

The ELTIF's annual report must contain additional information, such as a cash flow statement, information on any participation in instruments involving EU budgetary funds, information on each qualifying portfolio undertakings, the value of invested assets and on the jurisdictions in which the assets are located.

The prospectus and the annual report of the ELTIF should be available free of charge upon request of investors.

PRIIPS KIDS FOR RETAIL ELTIFs

Before investing in a Retail ELTIF, retail investors must receive a key information document in accordance with PRIIPs Regulation.

³⁰ Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

³¹ i.e. costs of setting up the ELTIF, costs related to the acquisition of assets, management and performance-related fees, distribution costs and other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs.

³² Prospectus Regulation (EU) 2017/1129.

³³ But, for the avoidance of doubt, an ELTIF must not issue a prospectus compliant with the Prospectus Regulation, unless it makes a non-exempted public offer of securities or seeks a listing on a regulated market.



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