Consultation Paper

Draft regulatory technical standards under Article 25 of the ELTIF Regulation

28 March 2019 | ESMA34-46-89

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **29 June 2019.**

Responses to this consultation paper can be sent using the response form, via the ESMA website, under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice.

Who should read this paper

This document will be of interest to (i) ELTIF managers and their trade associations, (ii) alternative investment funds managers and their trade associations, as well as (iii) institutional and retail investors investing into ELTIFs and their associations.

Table of Contents

1 Executive Summary

Reasons for publication

Article 25(3) of Regulation (EU) 2015/760 ("ELTIF Regulation") (see Annex III to this paper for the full text of this Article) provides that ESMA shall develop draft regulatory technical standards (RTS) to determine the costs disclosure requirements applicable to ELTIF managers. This consultation paper represents the second stage in the development of the draft RTS[1] and sets out proposals on which ESMA is seeking the views of external stakeholders.

Contents

Section 2 explains the background to our proposals. Sections 3 to 4 give detailed explanations on the content of the proposals and seek stakeholders' input through specific questions.

Annex I sets out the list of questions contained in this paper and Annex II includes the feedback statement of the questions included in the consultation paper ESMA published on the ELTIF cost disclosure in 2015, as referred to in the footnote below.

Annex III contains the legislative mandate to develop draft RTS.

Annex IV provides for the cost-benefit analysis related to the draft RTS.

Annex V contains the full text of the draft RTS.

Next Steps

Responses to this consultation paper will help ESMA in finalising the draft RTS to be submitted to the European Commission for endorsement.

[1] ESMA has already published in July 2015 a consultation paper on ELTIF cost disclosures (ESMA/2015/1239): https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1239.pdf

2 Background

1. On 26 June 2013, the European Commission adopted a legislative proposal for a new investment fund framework designed for investors who want to put money into companies and projects for the long term ("ELTIF Proposal").[2]

2. On 10 March 2015, the European Parliament adopted a legislative resolution on the ELTIF Proposal.[3] This position was adopted at first reading following the ordinary legislative procedure. Under the same procedure, the Council adopted the ELTIF Regulation on 20 April 2015.[4] The ELTIF Regulation was published in the *Official Journal* on 19 May 2015 and entered into force on 9 June.

3. Articles 9(3), 18(7), 21(3), 25(3) and 26(2) of the ELTIF Regulation provide that ESMA shall develop draft RTS on various subjects that are critical for the functioning of the Regulation. The RTS should determine (i) the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, (ii) the circumstances in which the life of an ELTIF is considered sufficient in length, (iii) the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets, (iv) the costs disclosure and (v) the facilities available to retail investors.

4. ELTIFs are designed to increase the amount of non-bank finance available for companies investing in the real economy of the European Union. They are also intended to allow investors to put money into companies and infrastructure projects for the long term. As such, ELTIFs are an important element of the efforts being put in place at European level to boost long-term investments.[5]

5. Mindful of the importance of the ELTIF Regulation in this context, ESMA consulted stakeholders on the proposals set out below shortly after the publication of the ELTIF Regulation in the *Official Journal* and its entry into force[6]. ESMA published its final report on the draft RTS under Articles 9(3), 18(7), 21(3), and 26(2) of the ELTIF Regulation on 8 June 2016[7].

6. With respect to the RTS under Article 25(3) of the ELTIF Regulation, the ELTIF Regulation specifies that "*When developing these draft regulatory technical standards, ESMA shall*

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[2] COM(2013) 462 final.

[3] P8_TA(2015)0047, available at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0047.

[4] PE-CONS 97/14, available at http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%2097%202014%20INIT.

[5] See, inter alia, The European Commission Green Paper ‚Building a Capital Markets Union (COM(2015)63 final).

[6] https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1239.pdf

[7] https://www.esma.europa.eu/sites/default/files/library/2016-935_final_report_on_eltif_rts.pdf (the feedback statement of this consultation paper on ELTIF cost disclosure is included in the Annex II of this paper)

take into account the regulatory technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014)". Therefore, it was considered necessary to wait for the finalization of the PRIIPs RTS before the work to develop these RTS could continue.

7. The corresponding PRIIPs Delegated Regulation[8] was published in the Official Journal of the EU dated 12 April 2017 and is due to be revised in the course of 2019, as indicated in the final report following a Joint Committee consultation paper concerning amendments to the PRIIPs KID[9]

8. Taking into account the new regulatory framework put in place in the context of the PRIIPs Regulation, and in particular because of the differences between the new framework of cost disclosure introduced by the PRIIPs Regulation as compared to the existing cost disclosure requirements of the UCITS KII, ESMA is now consulting stakeholders on the amended proposals set out below on the requirements on cost disclosure under Article 25(3) of the ELTIF Regulation.

3 Common definitions, calculation methodologies and presentation formats of costs

3.1 Level 1 provisions

9. Article 25 of the ELTIF Regulation reads as follows:

Cost disclosure

1. The prospectus shall prominently inform investors of the level of the different costs borne directly or indirectly by the investors. The different costs shall be grouped according to the following headings:

(a) costs of setting up the ELTIF;

(b) costs related to the acquisition of assets;

(c) management and performance related fees;

[8] Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0653&from=EN

[9] https://eiopa.europa.eu/Publications/Reports/2019-02-08%20Final_Report_PRIIPs_KID_targeted_amendments%20%28JC%202019%206.2%29.pdf

(d) distribution costs;

(e) other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs.

2. The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF.

3. ESMA shall develop draft regulatory technical standards to specify the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2.

When developing these draft regulatory technical standards, ESMA shall take into account the regulatory technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014.

10. The ‘capital’ of the ELTIF as referred to in the aforementioned Article 25(2) is defined in Article 2(1) of the ELTIF Regulation:

    ‘capital’ means 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.

3.2 Proposed regulatory technical standards

11. ESMA notes that the PRIIPs Delegated Regulation (2017/653) referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/201410 (the PRIIPs Regulation) mentioned in Article 25(4) of the ELTIF Regulation was published in the Official journal of the EU on 12 April 2017. ESMA also notes that in the final report[11] following a Joint Committee consultation paper concerning amendments to the PRIIPs KID,) the ESAs have indicated that they would suggest amendments to the PRIIPs Delegated Regulation in the course of 2019 and that these amendments would relate in particular to performance scenarios and costs. ESMA finally notes that the UCITS exemption included in article 32 of the PRIIPs Regulation is likely to be extended until 31 December 2021 (amendments to the PRIIPs Regulation included in the political agreement on the proposals on facilitating cross-border distribution of investments reached by co-legislators on 5 February 2019[12]) .

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[10] 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)

[11] https://www.esma.europa.eu/press-news/esma-news/esas-publish-recommendations-changes-priips-key-information-document

[12] https://www.romania2019.eu/2019/02/05/capital-markets-union-political-agreement-on-simpler-and-quicker-cross-border-distribution-of-investment-funds/

12. The cost disclosure requirements referred to in Article 8(5) of the PRIIPs Regulation are specified in Article 5 and in the Annex VI and VII of the PRIIPs Delegated Regulation. Points 24 to 26 of Annex VI in particular suggest common definition and calculation methodologies of performance fees and carried interest of investment funds while points 1 to 6 include lists of one-off and ongoing costs for the purpose of that Regulation.

13. ESMA also notes that the requirements of the PRIIPs Delegated Regulation in relation to cost disclosure were partly inspired by the existing rules on cost disclosure under the UCITS Directive, and more especially the CESR guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document. In order to best meet the requirements of Article 25(3) of the ELTIF Regulation, and in order to ensure consistency between the different EU regulatory frameworks, ESMA is therefore of the view that it is also appropriate to refer to some extent to the work on cost disclosure under the UCITS Directive.

14. More generally, ESMA is of the view that existing relevant pieces of EU legislation and the associated regulatory framework include:

    a. The aforementioned requirements on cost disclosure of the PRIIPs Delegated Regulation (2017/653);

    b. CESR's guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document (10-674);

    c. CESR's template for the key investor information document (10-1321);

    d. Implementing Regulation 583/2010 as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (hereafter the KII Regulation) of the UCITS Directive.

Q1. **Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, 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**?

15. Under Article 25(3) of the ELTIF Regulation ESMA is requested to develop draft RTS to specify:

    a. the common definitions;

    b. calculation methodologies [of the costs referred to in paragraph 1 of Article 25];

    c. presentation formats of the costs referred to in paragraph 1 of Article 25;

    d. and the overall ratio referred to in paragraph 2 of Article 25.

16. It is to be noted that the overall ratio referred to in paragraph 2 of Article 25 of the ELTIF Regulation differs from the summary cost indicators defined in the PRIIPs Delegated Regulation (in points 61 to 89 of the Annex VI of this Delegated Regulation). These summary cost indicators are reduction in yield indicators while the ELTIF overall ratio is defined as a “total cost ratio” (cost / capital). ESMA is therefore of the view that the PRIIPs methodologies on the total cost indicator need to be adjusted for the purpose of the overall ratio referred to in paragraph 2 of Article 25 of the ELTIF Regulation since that overall ratio needs to be defined as a ratio over the capital of the ELTIF (as opposed to a difference between two internal rate of returns[13]).

17. The PRIIPs Delegated Regulation defines the way to calculate certain cost components, which could be equally relevant for the purpose of Article 25 of the ELTIF Regulation. This is the case for performance related fees and carried interest (in points 24 to 26 of the Annex VI of this Delegated Regulation), and for transaction costs (in points 12 and following of Annex VI of this Delegated Regulation, and in particular in point 19).

18. The PRIIPs Delegated Regulation suggests in points 1 to 5 of Annex VI a detailed list of cost components which are to be included in the list of one-off and ongoing costs for the purpose of the calculation of the PRIIPs summary cost indicators. However, this list differs from the list of costs included in Article 25(1) of the ELTIF Regulation and the interaction between those two ways of categorizing cost may not be straightforward. The list of costs included in points 1 to 5 of Annex VI of the PRIIPs Delegated Regulation could, however, be used to determine the cost components which for inclusion in the “other costs” referred to in Article 25(1) (e) of the ELTIF Regulation.

19. ESMA is therefore of the view that points 1 to 26 of Annex VI of the PRIIPs Delegated Regulation should be taken into account. ESMA is also of the view that elements of paragraphs 2 to 9 of the CESR guidelines on the methodology for calculation of the ongoing charges figure in the key investor information document (KIID) (the CESR guidelines) could also be taken into account. This should be complemented by information on the types of cost (costs of setting up the ELTIF, distribution costs, certain types of costs related to the acquisition of assets) included in Article 25(2) of the ELTIF Regulation that were not referred to in the CESR guidelines.

20. ESMA is of the view that, as specified above, the reduction in yield indicator defined in points 61 to 94 of Annex VI of the PRIIPs Delegated Regulation could not be directly used. Therefore, parts of paragraphs 10 to 18 of the CESR guidelines should instead be taken into account. More specifically, with respect to the overall ratio mentioned in Article 25(2) of the ELTIF Regulation, ESMA considers that some of the costs covered by Article 25(2) are entry costs borne by the investor, and that a specific methodology should therefore be set up to include such costs in the overall ratio, together with the other types of costs that are on-going charges, in a consistent way. In that respect, it might be necessary to make

[13] The PRIIPs RIY is defined as difference between two internal rate of returns, please see paragraphs 61 and followings of Annex VI of the PRIIPs delegated Regulation.

an assumption on the duration of the holding period of the investment, and the amortization methodology for these costs. A reasonable assumption would appear to be that the duration of the holding period of the investment equals the life of the ELTIF as referred to in Article 18(2) of the ELTIF Regulation.

21. However, in the case of ELTIFs marketed to retail investors, there should be in the prospectus narratives presenting both the PRIIPs RIY figure and the ELTIF overall cost ratio figure, and explanations of any potential differences between those figures.

22. ESMA is also of the view that the costs listed in Article 25(1) are the costs borne by the ELTIF (the fund, taken as a whole), as opposed to the fees paid by a specific investor investing in this ELTIF.

Q2. **Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree with the abovementioned assumptions? In particular, do you agree with the proposal included in paragraph 21 above? With respect to the overall cost indicator, would you see merit in aligning the level 1 framework on cost disclosure under the ELTIF Regulation with the PRIIPs level 2 framework on cost disclosure ?**

23. More specifically, ESMA considers that the following types of costs mentioned in Article 25(1) of the ELTIF Regulation are annual costs (‘ongoing charges’ and incidental costs such as performance-related fees), that could be for example expressed as a percentage of the capital, and where an assumption on the duration of the investment is not necessary to calculate the corresponding costs to be included in the numerator of the overall ratio referred to in Article 25(2), provided that this overall ratio is a yearly ratio:

    a. management and performance related fees (as referred to in Article 25(1)(c)). In relation to performance fees, the definition and calculation methodologies could be those included in points 24 to 26 of Annex VI of the PRIIPs Delegated Regulatoin;

    b. other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs (as referred to in Article 25(1)(e)). These other costs would include the relevant corresponding cost components mentioned in points 4 and 5 of Annex VI of the PRIIPs Delegated Regulation.

Q3. **Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, 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**?

24. In contrast, ESMA considers that the following types of cost are fixed/one-off costs (entry costs) where an assumption on the duration of the investment is necessary to calculate the corresponding costs to be included in the numerator of the overall ratio referred to in Article 25(2), provided that this overall ratio is a yearly ratio:

    a. costs of setting up the ELTIF (as referred to in Article 25(1)(a));

b. distribution costs (as referred to in Article 25(1)(d));

Q4. Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree that the types of cost mentioned in paragraph 24 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 ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio?

25. ESMA considers that, when applicable, exit costs should be indicated.

26. Provided that the overall ratio mentioned in Article 25(2) is a yearly ratio the costs mentioned in paragraph 24 should be calculated by dividing the total value of these costs by the life of the ELTIF (in years).

27. Regarding the costs related to the acquisition of assets as referred to in Article 25(1)(b), ESMA is of the view that, due to the nature and overall strategy of an ELTIF as defined in the ELTIF Regulation, the part of these costs that are fixed / one-off (i.e. the costs related to the acquisition of the main assets of the portfolio of the ELTIF) largely exceeds the part of these costs that are ongoing charges. As a result, ESMA considers that these costs should be calculated following the same methodology that will apply to the types of costs listed in paragraph 24. ESMA also considers that the methodology set out in points 19 b) and 20 of Annex VI of the PRIIPs RTS could be used in relation to the calculation of the costs related to the acquisition of assets.

Q5. **Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree that the types of costs mentioned in paragraph 27 may be considered as fixed costs in the case of an ELTIF**?

28. In relation to the presentation formats of the costs referred to in paragraph 1 of Article 25, ESMA is of the view that the presentation format included in Annex VII of the PRIIPs Delegated Regulation cannot be easily used since it relies on the use of the reduction in yield indicator (please see above). ESMA is of the view, therefore, that the costs section of CESR's template for the KIID could be used as a basis. However, ESMA also considers that the detailed design of the presentation formats should not be standardized in the RTS because the purpose and issues at stake in relation to the prospectus of the ELTIF are different from those in relation to the PRIIPs KID.

Q6. Do you agree with the views expressed in paragraph 28 on the presentation formats of the costs in the context of the ELTIF cost disclosure?

Q7 Given that the RTS enter into force after the date of application of the ELTIF Regulation and authorisations have been granted between the date of application of the ELTIF Regulation and the date of application of the proposed RTS, do you see a need for specific transitional/grandfathering provisions for the proposed RTS?

4 Annexes

4.1 Annex I

Summary of questions

Q1 Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, 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?

Q2 Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree with the abovementioned assumptions? In particular, do you agree with the proposal included in paragraph 21 above? With respect to the overall cost indicator, would you see merit in aligning the PRIIPs level 2 framework on cost disclosure with the level 1 framework on cost disclosure under the ELTIF Regulation (or the other way round)?

Q3 Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree that the types of costs mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital?

Q4 Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree that the types of costs mentioned in paragraph 24 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 ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio?

Q5 Taking into account the new cost disclosure framework introduced by the PRIIPs Regulation, do you agree that the types of costs mentioned in paragraph 27 may be considered as fixed costs in the case of an ELTIF?

Q6 Do you agree with the views expressed in paragraph 28 on the presentation formats of the costs in the context of the ELTIF cost disclosure?

Q7 Given that the RTS enter into force after the date of application of the ELTIF Regulation and authorisations have been granted between the date of application of the ELTIF Regulation and the date of application of the proposed RTS, do you see a need for specific transitional/grandfathering provisions for the proposed RTS?

Q8 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?

Annex II

Feedback statement - questions (9 to 15 and 23) related to Article 25 of the ELTIF Regulation included in the consultation paper published by ESMA in July 2015 (ESMA/2015/1239)

Q9: 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?

Respondents generally agree with the legislative framework proposed by ESMA. In particular, the vast majority of respondents share the idea that while the ELTIFs will have to follow the PRIIPs framework it would be better to have a temporary phase in which ELTIFs apply the provisions set out in the UCITS framework. This is justified on the basis of the idea that the introduction of a new framework, that is only temporary, will increase costs and lead to confusion market participants and investors. In addition to this, according to one respondent, adopting the UCITS KIID will facilitate and accelerate the acceptability of ELTIFs products. However, any reference to the UCITS framework should not be a mere copy and paste but rather it should be adapted to ELTIFs necessities.

Finally, one respondent thinks that it is important to guarantee consistency between different EU regulatory frameworks. To do so, given that ELTIFs are AIFs it is also appropriate to use the AIFMD framework.

ESMA's response: While respondents have generally agreed with the legislative framework proposed by ESMA, given the PRIIPs level 2 framework on cost disclosure was not fully clarified when the consultation paper on ELTIF was published by ESMA in 2015, ESMA is of the view that it is important to seek again the views of stakeholders on this issue.

Q10: Do you agree with the abovementioned assumptions?

Several respondents agree with the idea of align the cost disclosure rules for ELTIFs with the equivalent requirements for UCITS as specified by the corresponding CESR guidelines. However, two of them specify that once the PRIIPs RTS have been finalised, the information in the two documents should, if possible, be aligned to ensure legal consistency. One respondent, always referring to the CESR's guidelines agrees that methodologies to calculate the ongoing charges figure in the KIID should be taken into account.

Two respondent stress the point that double counting of cost items has to be avoided and remind, for example, that is important to note that retrocessions are generally not debited to the fund on a separate basis. Other costs, such as legal cost might be considered both setting up cost or administrative cost.

With respect to the overall cost ratio, one respondent says that this is meaningless for ELTIFs as far as they are closed-ended funds, because of the assumptions on the duration of the holding period of assets that would have to be made. These assumptions would be so theoretical that the information would be rather poor. On the other hand, other respondents agrees that the overall cost ratio has to include one-off costs such as entry costs charged by the fund and they agree with ESMA that the estimation should be done doing the assumption that the investment horizon equals the life of the ELTIF.

One respondent indicated that performance fees as costs should be excluded from the total cost indicator because they depend on the future return of the fund.

Regarding amortised costs, one respondent was of the view that since ELTIFs are a long-term investment, certain costs should indeed be amortised over that specific duration and included pro rata as part of the overall annual ratio. They agree with ESMA's assumption that the duration of the holding period equals the life of the ELTIF especially in relation to fixed costs. One respondent disagrees that these costs need to be incorporated into one single overall ratio since their inclusion may limit comparability between ELTIFs with varying fixed entry costs. In their view, these fixed costs should be separate from on-going costs in order to improve comparability.

Several respondents support ESMA's understanding that the costs listed in article 25(1) are the costs charged by the fund if they are borne by the investor. Therefore the overall cost ratio according to article 25(2) should comprise all these costs that are not charged by the fund. Another respondent, recommends ESMA to consider the possibility to express the list of costs in article 25(1) of the ELTIF not in relation to capital but in accordance with the methodologies indicated in the fund rules.

Q11: Do you agree that the types of costs mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital?

There is a broad agreement around the assumption that such costs can be expressed as a percentage of the annual capital. Twelve respondents out of fifteen agree on this view.

One respondent raises the concern that has to be considered the situation of existing AIFs that will apply for the ELTIF passport and might be subject to accounting national existing rules which specify that on-going charges have to be expressed as a percentage of the net assets of another aggregate of assets.

Regarding performance fees, one respondent states that these should be not seen as costs but rather sharing of the increase on the fund NAV that benefits the investor in the first place. According to another respondent, performance fees may be applied to certain categories of ELTIFs but as they are not expressed as a percentage of NAV but usually as a percentage of the over performance they would not include them in the ongoing charges percentage. Two respondent agree with ESMA on a separate presentation of performance fees due to their incidental nature that can lead to convey misleading information to investors.

The costs related to acquisition of assets and administrative fees are considered by two respondents as not predictable in advance. Therefore, they are of the view that it might be good to have a clarification if when these costs are not available to the ELTIF manager. Up-front charges, according to another response, should preferably be identified as such and not included in ongoing charges.

Q12: Do you think that performance related fees would be relevant costs to be taken into account in the case of ELTIFs?

Four respondents agree with the idea that ELTIFs can charge performance related fees to the investors. One specifies that the inclusion of performance fees into the costs of the ELTIFs has already been provided for by the ELTIF Regulation while another one specifies that these can be charged only when appropriately structured and subject to suitable disclosure.

Another respondent also indicates that given the contingent nature of such performance fees, in order to avoid misleading information to clients these have to be disclosed separately from other costs.

Finally, a group of three respondent indicate that performance fees are not costs per se because they are a proportion of the wealth generated by the fund manager and are based on the growth in the NAV while another one points out the non-relevance of performance fees because of the very long-term characteristics of the ELTIF and of its management.

Q13: How would you include performance related fees in the overall ratio referred to in paragraph 2 of Article 25?

All the thirteen respondents indicate that performance fees should not be included in the overall ratio and they be rather disclosed separately. This is due to the fact that these costs have been described as incidental an volatile and therefore an inclusion would mean giving a misleading and not transparent information to the investor. According to another respondent, if these have to be included the methodology to be followed should be the one used in the corresponding CESR guidelines in relation to new funds or unsuitable ex-post figures can form the basis for calculating an estimated performance fee for inclusion in the overall ratio. This calculation should be done annually. Finally, one respondent mentions that it might be useful to show the variability of these performance fees and so it could be useful to show the fees charged in the last three years when updating the prospectus and the KIID.

Q14: Do you agree that the types of costs mentioned in paragraph 54 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 ratio mentioned in Article25(2), provided that this overall ratio is a yearly ratio?

Four respondents believe that the inclusion of these costs in an overall cost ratio does not make sense. One respondent indicates that these costs are quite negligible with regards to the global AUM and when taking into account the length of an ELTIF, while another one states that it is better to exclude them since their inclusion may limit comparability between ELTIFs with varying fixed costs. Finally, one respondent is of the view that the type of costs mentioned in paragraph 54 should be considered as one-off charges and since the objective of an overall ratio should be to present to potential investors the level of ongoing costs and charges they will bear when investing in an ELTIF, the ratio should not include one-off charges.

Eight respondents agree with the idea that setting up costs (or establishment costs and acquisition costs) are fixed costs for the purpose of the ELTIF. Regarding distribution costs, again these eight respondents partially agree with ESMA since four believe that distribution cost can be either fixed but also variable and this depends on how these are calculated. For example, two respondents are of the view that these costs are often calculated on an ad valorem basis while other two stress the point that distribution costs can be fixed or variable depending on their structure. The other four are in line with ESMA's proposal.

Q15: Do you agree that the types of costs mentioned in paragraph 54 may be considered as fixed costs in the case of an ELTIF?

Three responded limited their answer to the general statement that they agree with the question, while one respondent only said that it disagrees. Two respondent said that costs related to the acquisition of assets are fixed costs. One respondent specified that these are long-term assets, however the cost related to the acquisition become variable when the acquisition related to other assets that are eligible up to 30% of the ELTIF's assets if those assets were actively traded on markets.

Regarding the costs ratio, two respondents agreed that exit costs should be quoted separately to the overall costs ratio. Another one, did not agree that cost of setting up the ELTIF fund and distribution should be included in to the overall ratio. In particular, costs in paragraph 54 should be considered as one-off charges rather than fixed costs.

Finally, one respondent agreed that the yearly ratio should be calculated by dividing the total value of the referred costs by the life of the ELTIF expressed in years. Moreover, they agree that there should be no detailed design of the cost presentation. Finally they suggest that a statement stating that the detailed design should be at the discretion of the ELTIF manager, to avoid a situation where NCAs determine further details at national level creating an incoherent application of the ELTIF Regulation, would be welcomed.

ESMA's response to questions 10 to 15: While ESMA has taken into account the feedback from stakeholders on questions 10 to 15, given that the PRIIPs level 2 framework on cost disclosure was not fully clarified when the consultation paper on ELTIF was published by ESMA in 2015, ESMA is of the view that it is important to seek again the views of stakeholders on these issues, some of which have been discussed in the Annex VI of the PRIIPs Delegated Act (and given in particular that the UCITS exemption in the PRIIPs Regulation has been extended by 2 years until 31/12/2021).

4.2 Annex III

Legislative mandate to develop technical standards

The Regulation (EU) No 1095/2010 establishing ESMA empowered the latter to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory standards by means of delegated acts under Article 290 TFEU.

- Article [25(3)] of the ELTIF Regulation provides that:

  ESMA shall develop draft regulatory technical standards to specify the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2.

  When developing these draft regulatory technical standards, ESMA shall take into account the regulatory technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014.

  ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 2015.

  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.

4.3 Annex IV

Cost-benefit analysis

1. Introduction

1. The ELTIF Regulation sets out a comprehensive framework for the regulation of ELTIFs within Europe. ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.

2. The ELTIF Regulation establishes uniform rules regarding the operation of ELTIFs, in particular on the composition of their portfolio and the investment instruments that they are allowed to use in order to gain exposure to long-term assets. It mandates ESMA to develop RTS on certain aspects of its functioning which do not involve policy choices.

3. This consultation paper sets out proposals for the RTS required under Article 25 of the ELTIF Regulation which relate to the definitions of, and calculation methodologies for, costs borne by investors, as well as presentation of cost disclosures.

4. This draft CBA is qualitative in nature. However, specific questions have been introduced in the text below in order to elicit market participants' input on the quantitative impact of the proposals. Should relevant data be received through the consultation process, ESMA will take it into account when finalising its RTS and will include it in the CBA accompanying the final report.

2. Technical options on the common definitions, calculation methodologies and presentation formats of costs

5. The following options were identified and analysed by ESMA to address the policy objectives of the RTS required under Article 25 of the ELTIF Regulation.

6. In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant provisions of the ELTIF Regulation.

Policy Objective	Under Article 25, the ELTIF Regulation indicates that the prospectus of the ELTIF shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investors. The ELTIF Regulation specifies that the different costs shall be grouped according to the following headings: a. costs of setting up the ELTIF; b. the costs related to the acquisition of assets; c. management and performance related fees;

	d. distribution costs; e. other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs. Under Article 25(3) of the ELTIF Regulation ESMA is requested to develop draft RTS to specify: a. the common definitions; b. calculation methodologies [of the costs referred to in paragraph 1 of Article 25]; c. presentation formats of the costs referred to in paragraph 1 of Article 25; d. and the overall ratio referred to in paragraph 2 of Article 25.
Baseline scenario	The baseline scenario should be understood for this CBA as the application of the requirements in the Level 1 Regulation (i.e. the provisions of Article 25 of the ELTIF Regulation) without any further specification. This would leave discretion to ELTIF managers to determine the definitions, calculation methodologies, and presentation formats of the different types of cost mentioned above, as well as the calculation methodology of the overall ratio referred to in paragraph 2 of Article 25. This could clearly lead to a lack of harmonisation in the application of a key provision of the ELTIF Regulation. Indeed, the investors of an ELTIF would not be able to compare the costs of different ELTIFs, since the cost disclosure as presented in the prospectus of the ELTIF would be likely to differ, at least from one Member State to another. Uncertainty on the above-mentioned item could for instance lead to a situation where some Member States would adopt stricter rules than others on cost disclosure, leading to greater uncertainty for investors of ELTIFs in the different Member States who would not know the extent to which the costs of the ELTIF as presented in the prospectus reflect a specific feature of the ELTIF in which they would invest or to a certain extent a specific feature of the cost disclosure regulatory framework in place in the Member State of this ELTIF. For instance, some Member States could consider that only some types of cost should be disclosed or aggregated in the above-mentioned overall ratio,

	while other Member States would consider that all types of cost should be disclosed and included in this overall ratio. This would clearly lead to a situation where the cost figures of the prospectus of ELTIFs of different Member States would not be comparable, which would be particularly problematic in the context of the EU passport.
Options	The RTS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across Member States, which will help ensure that the cost disclosure information as presented in the prospectus of the ELTIF is harmonised. This should reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the Level 1 Regulation. In order to address the problem and comply with the objectives identified above, ESMA not only considered the idea of providing clarification on the criteria which may be extracted from the Level 1 provisions, but also identified some topics for which additional guidance could be beneficial for the purposes of harmonised application of the ELTIF Regulation. These topics were as follows: i) The extent to which the cost disclosure framework could be aligned with the cost disclosure information that is requested by the PRIIPs Regulation; ii) The extent to which the cost disclosure information as requested by the ELTIF Regulation could be similar to the cost disclosure information as presented in the UCITS KIID.
Preferred Option	ESMA decided to consult on the option in which the cost disclosure information as requested by the ELTIF Regulation is similar to the cost disclosure information as presented in the UCITS KIID, notably because the cost disclosure framework as requested by the PRIIPs Regulation is not fully consistent with Article 25 of the ELTIF Regulation. However, parts of the section on cost disclosure of the PRIIPs Delegated Regulation could be referred to in the ELTIF RTS.

3. Assessment of the impact of the various options

Options	Qualitative description
Benefits	The impact of the final RTS should not be material in most of the Member States, since ESMA's proposal is to consider that the scope of cost disclosure information to be covered by the manager of an ELTIF should be similar to the cost disclosure information as presented in the UCITS KIID. The main benefits of the option proposed are to: i) standardise the operational and regulatory processes that the managers of an ELTIF will set up to disclose the costs for the ELTIF in the prospectus, as well as to standardise the cost disclosure information in itself for the investors of the ELTIF; and ii) take full advantage of the existing cost disclosure framework under the UCITS KIID.
Costs	ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the ELTIF Regulation, except the clarification that the cost disclosure information mentioned in the ELTIF Regulation should be similar to the cost disclosure information as presented in the UCITS KIID. As compared to the baseline scenario, it is indeed unlikely that: i) on their own initiative and without further coordination, all Member States implement in the same way the cost disclosure requirements of Article 25 of the ELTIF Regulation; and ii) this same approach would prove to be less costly for the manager of the ELTIF than the approach taken by ESMA in the present CP.

Q8. 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?

4.4 **Annex V**

Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No …/..

of […]

supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council on European long-term investment funds with regard to regulatory technical standards on cost disclosure

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/760 of the European Parliament and of the Council on European long-term investment funds[14], and in particular Article 25(3) thereof,

Whereas:

(1) In order to promote a common approach to the application of Regulation (EU) 2015/760, the criteria to be used for the costs disclosure requirements should be clarified.

(2) The disclosure of costs encompasses all costs borne directly or indirectly by the investors. The disclosure of costs related to retail ELTIFs will be subject to the requirements of Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which implies that a Key Information Document needs to be provided to retail investors in addition to the prospectus.

[14] OJ L123, 19.5.2015, p. 98.

(3) It is important to clarify that the costs to be disclosed are the different costs borne directly or indirectly by the investors. These costs may be expressed or calculated in a variety of ways (e.g. a flat fee, a proportion of assets, a charge per transaction etc.).

(4) The list of the costs set out in this Regulation should be exhaustive in the sense that all costs that are borne by the investor should be included.

(5) It is important to clarify that the 'other costs', including administrative, regulatory, depository, custodial, professional, service and audit costs, as referred to in this Regulation also comprise all payments to any person providing outsourced services, such as providers of valuation and fund accounting services, and shareholder service providers, such as the transfer agent and broker dealers that are record owners of the ELTIF' shares and provide sub-accounting services to the beneficial owners of those shares. All these costs should be assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.

(6) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[15], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Common definitions, calculation methodologies and presentation formats of costs

1. The costs of setting up the ELTIF comprises all administrative, regulatory, depositary, custodial, professional service and audit costs related to the setting up of the ELTIF irrespective of whether they are paid to the manager of the ELTIF or to any third party.

2. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed capital.

3. The costs related to the acquisition of assets comprises all administrative, regulatory, depositary, custodial, professional service and audit costs related to the acquisition of the assets of the ELTIF. These costs shall be calculated according to the methodology set out in point 19 b) and 20 of Annex VI of the PRIIPs Delegated Regulation (2017/653).

[15] OJ L 331, 15.12.2010, p. 84.

4. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed capital.

5. The management and performance related fees comprises all payments to the manager of the ELTIF, including any person to whom this function has been delegated, except the fees that are related to the acquisition of assets. These costs include also carried interest as referred to in point 25 of Annex VI of the PRIIPs Delegated Regulation.

6. The management fees shall be expressed as a percentage of the total capital contributions and uncalled committed capital of the ELTIF over a one-year period.

7. The performance related fees and carried interest should be calculated as specified in points 24 and 25 of Annex VI of the PRIIPs Delegated Regulation.

8. The distribution costs comprise all administrative, regulatory, professional service and audit costs related to distribution.

9. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed capital.

10. Other costs, including administrative, regulatory, depositary, custodial, professional, service and audit costs comprises all payments to the following persons, including any person to whom they have delegated any function:

    (a) the depositary;

    (b) the custodian(s);

    (c) any investment adviser.

11. These costs do not include the costs related to the setting up the ELTIF, the acquisition of assets and management and performance related fees.

12. These costs also comprise all payments to any person providing outsourced services to any of the above, and all payments to legal and professional advisers, audit fees, registration fees, regulatory fees.

13. These costs shall be expressed as a percentage of the capital of the ELTIF, that is its total capital contributions and uncalled committed capital over a one-year period.

14. The overall ratio of the costs of the ELTIF shall be the ratio of the total costs to the capital of the ELTIF, calculated according to the following paragraphs. The ratio shall be expressed as a percentage to two decimal places.

15. The overall ratio shall be calculated at least once a year.

16. The total costs shall equal the sum of the management and performance related fees and the other costs as referred to in paragraph 10 above, plus the sum of the costs of setting up the ELTIF, the costs related to the acquisition of assets and the distribution costs, divided by the life of the ELTIF.

17. If one type of cost is covered by two or more types of costs as referred to in the paragraphs 1 to 10 above, that type of cost shall only be accounted for once in the calculation of the overall ratio mentioned in paragraph 14.

18. The capital shall relate to the same period as the costs. Until the capital of the ELTIF is known, the capital shall be the minimum target capital under which the ELTIF will not start operations.

19. The ratio shall be based on the most recent cost calculations which the management company has determined. The costs are assessed on an 'all taxes included' basis.

20. The costs section of the prospectus of the ELTIF shall contain a presentation of costs in the form laid down in the Annex.

21. In the case of ELTIFs subject to the requirements of the PRIIPs Regulation, the prospectus of the ELTIF shall include narratives presenting both the PRIIPs RIY figure and the ELTIF overall cost ratio figure, and explanations of any potential differences between those figures.

Article 2

Entry into force

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

It shall apply from [date].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [date]

For the Commission

The President

[For the Commission

On behalf of the President

[Position]

ANNEX

PRESENTATION OF COSTS

Presentation formats

The costs of setting up the ELTIF shall be presented as follows:

One-off costs	
The costs of setting up the ELTIF	%

A narrative explanation shall accompany this figure to detail the contents of these costs.

The costs related to the acquisition of the assets of the ELTIF shall be presented as follows:

The costs related to the acquisition of assets	%

A narrative explanation shall accompany this figure to detail the contents of these costs.

The distribution costs referred shall be presented as follows:

Distribution costs	%

A narrative explanation shall accompany this figure to detail the contents of these costs.

The management fees referred shall be presented as follows:

Charges taken from the ELTIF over a year	
Management fees	yearly %

A narrative explanation shall accompany this figure to detail the contents of these costs.

The other costs shall be presented as follows:

Other costs	yearly %

A narrative explanation shall accompany this figure to detail the contents of these costs.

The performance fees shall be presented as follows:

Charges taken from the ELTIF under specific conditions	
Performance fees	yearly %

A narrative explanation shall accompany this figure to detail the contents of these costs.

The different costs shall be presented in a table structured in the following way:

One-off costs	
The costs of setting up the ELTIF	%
The costs related to the acquisition of assets	%
Distribution costs	%

Charges taken from the ELTIF over a year	
Management fees	yearly %
Other costs	yearly %

Charges taken from the ELTIF under specific conditions	
Performance fees	yearly %

Aggregate all the costs and charges mentioned above	
Overall ratio	yearly%