



ASSOGESTIONI

associazione del risparmio gestito

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ESMA – European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

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Assogestioni's Reply to ESMA's Consultation Paper on Draft Regulatory Technical Standards under the ELTIF Regulation (ESMA/2015/1239)

Assogestioni¹ welcomes the opportunity to respond to ESMA's Consultation Paper on Draft Regulatory Technical Standards under the ELTIF Regulation (ESMA/2015/1239).

Q1: Do you agree that the abovementioned pieces of legislation and associated regulatory frameworks are relevant for the purpose of the present advice on Article 9(3) of the ELTIFs Regulation? Which other pieces of legislation and associated regulatory framework do you identify for that purpose?

In relation to the definition of "hedging", in draft RTS 1 ESMA proposes to use IFRS 9 after taking into account the definitions contained in: (i) the International Financial Reporting Standards (IFRS) 9; (ii) Regulation 149/2013 (EMIR delegated Regulation), and (iii) CESR's guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty risk for UCITS (CESR/10-788).

We agree with ESMA that Regulation (EU) No. 149/2013 is not relevant for an investment fund and that the "hedging" criteria developed within the UCITS framework do not suit the risks that ought to be covered by hedging arrangements due the different types of eligible assets (not only financial instruments) and its different scope (contribute to the financing of the Union's real economy).

¹ Assogestioni is the trade body for Italian investment management industry and represents the interests of members managing funds and discretionary mandates around € 1.717 billion (as of August 2015).



As regards IFRS criteria, we question whether such criteria should be included in the ELTIF framework for the following considerations.

In particular, we would like to recall that local accounting standards usually apply to investments funds, not IFRS. Asset managers have no particular experience and in-depth knowledge to understand the possible drawbacks of IFRS's adoption and to verify whether criteria for hedge accounting are actually in line with the risk management procedures already in place. For example, where all hedge accounting standards apply to identify whether an hedging position is considered admissible in the ELTIF framework, asset managers would first need to know the relevant principles applicable and then adapt, interpret and apply them taking also into account the local rules for the evaluation of the assets (NAV). In such a case, some criteria could conflicts with the existing local accounting rules or with the risk management procedure.

As a general consideration, for the sake of consistency and in order to avoid unnecessary burdens for asset managers that are not familiar with IFRS rules, the future ELTIF RTS should avoid to make reference to a general part of IFRS accounting rules.

Following the remark above, we conversely support a direct reference in the future regulatory technical standards to the principle that is behind such a choice: the hedging items should be larger than those referred to in the UCITS rules (i.e. also comprising loans, real assets, borrowing of cash) and the hedging activities should mitigate the risks.

In case the general reference to IFRS 9 is nevertheless maintained, we suggest to clarify the reference framework: in the Consultation paper, ESMA focuses only to the definition of "*hedging instruments*" and "*hedged items*", as per paragraphs from 6.1.1 to 6.3.7 of IFRS 9, while the text itself of the draft RTS seems to also require the application of all hedge accounting standards (chapter 6 and relative part in the appendix B) and, among others, of paragraph 6.4 "*Qualifying criteria for hedge accounting*". In addition and for the sake of clarity, we encourage ESMA to introduce a specific statement that clarifies that the reference to IFRS hedge accounting standards is only made for the purpose of identifying hedging activities and not for the valuation of the assets.

Q2: Do you think that the main risks that are necessary to be covered at the level of the ELTIF are currency, inflation and interest rate risks? If no, which types of risk would the manager of an ELTIF potentially have to cover in your view?

As further specified in our replies to Q3 and Q4, we believe that the scope of risks to be covered for hedging purposes should not be limited and, thus, should not lead to the identification of an exhaustive list of risks. No exhaustive list is foreseen in the UCITS and AIFMD frameworks and we believe that ESMA should refrain from inserting one in the context of the ELTIF regulation.



We agree with ESMA that currency, inflation and interest rate risks are amongst the risks that will require a hedging arrangement. However, we believe that these are not the only ones that are necessary to be covered. Amongst other risks which we deem the manager of an ELTIF potentially have to cover we mention credit risks.

For these reasons, we believe that the risks to be considered for hedging purposes should not be limited *ex ante* by the RTS.

Q3: Do you think that the approach to hedging should not limit *ex ante* the scope of risks that ought to be covered by the manager of the ELTIF?

Yes, we agree with ESMA's position that the scope of the risks that might have to be covered at the level of the ELTIF is indeed difficult to assess and limit *ex ante*. We therefore support that the approach to hedging should not limit *ex ante* the scope of risks to be covered.

Q4: On the contrary, do you think that the approach to hedging should be tailored to the specific case of ELTIFs, and their possible eligible investments? Do you think that in this case the risks that might have to be covered by the manager of the ELTIF should be limited to the types of risk that were mentioned in question 2?

Related to our reply to Q3, we believe that the future RTS should not limit the possibility to the ELTIF's manager to tailor the hedging policies based on the specific needs of each ELTIF: the choice of the risks to be hedged should remain in the discretion of the manager of the ELTIF. While we agree with the approach of ESMA's draft RTS to set the principles for the eligibility of a hedging arrangement, we are of the view that such indications should not be prescriptive as to limit the scope or hedged risks. It should be for the rules or instruments of incorporation of each ELTIF to specify the use of derivatives for hedging purposes, appropriately taking into account the characteristics of its underlying assets and investment strategy.

Q5: Do you identify any consequences in terms of costs or scope of the eligible investments of the ELTIF if the risks that might be covered at the level of the ELTIF are limited to those that were mentioned in the impact assessment of the Commission?

In terms of consequences deriving from the limitation in the scope of risks to be covered by hedging arrangements, we believe that such an approach could potentially have the result to: (a) increase risks for the ELTIF investors (by restricting the possibility to cover to only some predefined risk); and (b) lead to exclude particular asset classes (where some risk linked to the characteristic of the asset classes could not be hedged), limiting the investment options. Both these factors can lead to losses for investors and disadvantages for ELTIFs compared to other types of investment funds.



Q6: Do you agree with the proposed approach? Should you disagree, please provide reasons and propose an alternative approach and justify it.

We agree with the approach proposed by ESMA.

Q7: Do you agree with the risks identified and the related proposed criteria? Would you suggest the introduction of any additional/alternative risks/criteria? Please provide details and explain your position.

We agree with ESMA's draft RTS in the part that specifies that the risks to be taken into account for the purpose of the valuation of the market of potential buyers should only relate to the eligible investment assets as defined in Article 10 of the ELTIF Regulation.

As to the criteria mentioned in draft RTS 3, we suggest that the reference to risk in lit. (e) ("*[...] risk associated with legislative changes that could affect the market for potential buyers*") and lit. (f) ("*[...] political risk that could affect the market for potential buyers*") should not be included in the risks to be considered. Indeed, it could not always be feasible to assess these type of risks at a previous stage, i.e. at the time the schedule for orderly disposal is adopted - which needs to take place "*no later than a year before the end of the life of the ELTIF*", according to art. 21 paragraph 1 of the ELTIF Regulation.

In addition, we would also like to note that the risk contained in lit. (b) ("*whether the potential buyers are dependent on external financing*") could not always be possible to be assessed by the ELTIF manager. Indeed, at the time the valuation of potential buyers is to be carried out, it may not be possible for the manager to make such an assessment. Moreover, the source of financing of each buyer is not an information that can always be obtained by the manager. For these reason, we suggest ESMA to remove the reference to this risk from the list contained in draft RTS 3.

Q8: Do you agree with the proposed valuation criteria? Would you suggest the introduction of any additional/alternative criteria? Please provide details and explain your position.

In relation to the valuation criteria identified by ESMA in draft RTS 4, we agree with paragraph *sub* (a) that requires that the valuation shall take place no more than 6 months before the schedule referred to in Article 21(1) of the ELTIF Regulation.

As far as subparagraph *sub* (b) is concerned, it is not clear to us what purpose the reference to the definition of "fair value" of IFRS 13 (Fair Value Measurement) serves. In particular, it is not clear whether such reference is asking to apply IFRS 13 for the valuation of the assets. As already mentioned in our answer to Q1, local accounting (and valuation) rules generally apply to investments funds, not IFRS accounting rules. In order not to impose too burdensome requirements, as the criteria may differ (especially for not liquid asset), we would like to point out that the reference to the "Fair Value Measurement" as provided in IFRS 13 should only be



considered as one of the possible reference criteria when performing the valuation of the assets to be divested and also local accounting rules could also be applied.

ESMA should therefore not be prescriptive in this regard and a more general reference to the AIFMD provisions and valuation requirements deriving from L1 and L2 text of the AIFMD should also be provided as alternative valuation criteria in RTS 4. This would be in line with article 19 of ELTIF Regulation, which states that “[...] *a proper valuation of the assets of the AIF can be performed in accordance with this Article, the applicable national law and the AIF rules of instruments of incorporation*”.

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 ELTIFs Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose?

We agree with ESMA’s reference to the relevant pieces of legislation, regulation and L3 measures in relation to costs. We also agree with the approach indicated in the Consultation Paper which, given the still on-going discussions in relation to the content of the PRIIPs KID, refers to the disclosure requirements foreseen in the UCITS KII Regulation and related L3 measures as the basis discipline for the elaboration of the ELTIF RTS on costs.

Q10: Do you agree with the abovementioned assumptions?

Before providing an answer to the following specific question, we would like to make some preliminary comments on cost disclosure.

With specific regard to the disclosure of the overall costs to capital ratio for the ELTIF, RTS 5(11) indicates that “*the overall ratio shall be calculated at least once a year*”. In our understanding, it seems that the information on the overall ratio should be reviewed at least yearly and an update of the prospectus should be made where the changes are material. We question whether our understanding is correct and in such a case if an yearly frequency is appropriate, given the close-ended type and long-term nature of the fund.

Furthermore, we suggest to improve the structure of the draft RTS 5 itself to make it clearer how different types of costs should be disclosed. For example, paragraph 1 and 2 seem to be linked together. Point (c) under paragraph 2 seems to be linked to paragraph 3 and not to paragraph 2. Similar doubts arise on the correct reading of the following paragraphs. In addition, letter (e) in paragraph 12 seems to refer to art. 25(1)(e) in the ELTIF Regulation instead of “(e) *above*”.

To respond to the question, we agree with ESMA that it is appropriate to use the existing framework on cost disclosure under the UCITS directive as a basis for the ELTIF regulation on prospectus and that it may be necessary to reassess the cost disclosure requirements set out in these technical standards once the future



technical standards on the PRIIPs Regulation have been finalized, to align the information on costs contained in the two documents.

However, differently from the UCITS methodologies, the disclosure on costs borne indirectly by the investors, according to draft RTS 5, are all based on “capital” and not on the total net asset value (NAV). We understand that this reference to capital does not only cover the overall ratio indicator, as mentioned in art. 25(2) of the ELTIF Regulation, but also the representation of the different costs of art. 25(1), even though no explicit mention to “capital” is foreseen in such an article. To address this specific issue, we encourage ESMA to consider the possibility to express the list of costs in art. 25(1) of the ELTIF Regulation not in relation to the “capital” but in accordance with to the methodologies indicated in the fund rules.

Q11: 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?

As regards management fees and other costs including administrative, regulatory, depositary, custodial, professional service and audit costs, we notice that these costs are usually annual costs expressed as a percentage of an identified basis, as indicated in the fund rule. This could be the net asset value, the capital or another basis. As already indicated in our reply to Q10, we encourage ESMA to consider the possibility to express these costs not in relation to “capital” but in accordance with the methodologies indicated in the fund rules.

In case the reference to “capital” is nevertheless made, we agree with ESMA’s proposed definition of capital contained in draft RTS 5, paragraph 2, *et seq.*, for the purpose of the Section on costs (“*total capital contributions and uncalled committed capital*”), replacing the definition of capital indicated in art. 2, n. 1) of the ELTIF Regulation (“*aggregate capital contributions and uncalled committed capital, calculated on the basis of the amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors*”).

As regards performance fees (and the costs related to the acquisition of assets), it is important to highlight that the level of such incidental costs cannot be exactly asserted in the *ex-ante* disclosure and can lead to convey misleading information to investors. To better enhance investors’ understanding, we agree with ESMA to include a separate presentation of such costs, accompanied by a narrative explanation, as indicated in the Annex of the draft RTS.

It should also be noted that the performance fee structure may vary from an ELTIF to another and that the reference period may be also be longer than one year (for example, it could also be the entire life of an ELTIF). In such a case, assumptions on the duration of the period of the performance fees are necessary to calculate the corresponding annual cost.



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

We agree that performance fees should be taken into account. However, as stressed in our reply to the *ESA's Technical Discussion Paper on Risk, Performance Scenarios and Cost Disclosures in Key Information Documents for Packaged Retail and Insurance-based Investment Products* (JC/DC/2015/01)², given the contingent nature of such costs and in order not to convey misleading information to clients, these fees should be disclosed separately from other costs. For further considerations, please refer to our reply to Q13.

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

We support the indication of performance fees as costs excluded from the total cost indicator, as indicated in draft RTS 5, paragraph 12. Accordingly, the description of the table used for the illustration of the overall ratio should also be updated in the Annex, where the overall ratio aggregates all the costs and charged above, with the exclusion of performance fees. This approach is best suited to reflect the conditional nature of such costs.

Q14: Do you agree that the types of cost 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 Article 25(2), provided that this overall ratio is a yearly ratio?

Paragraph 54 refers to the cost of setting up the ELTIF and the distribution costs. We agree with ESMA that some assumptions on the duration of the investment is necessary to calculate these costs (that could be structured in different ways) in the numerator of the overall yearly ratio.

Q15: Do you agree that the types of costs mentioned in paragraph 54 57 may be considered as fixed costs in the case of an ELTIF?

We suppose that this question refers to paragraph 55-57 of the Consultation paper, and not to paragraph 54, as indicated in the text of the question, as the previous Q14 already deals with paragraph 54.

As a first comment, we would like to express some concerns in relation to the calculation of the overall ratio, provided that the overall ratio is a yearly ratio. In particular, as for paragraph 56, we deem it not necessary to divide the total value of the costs by the life of the ELTIF for the referred costs in paragraph 53, that are already expressed on a yearly basis (please also see our answer to Q11). Paragraph 12 of draft RTS 5 seems to support this approach where it states: "*The total costs shall equal the sum of the managements fees and the other costs as referred to in*

² Our reply is available at: <https://www.esma.europa.eu/consultation/Joint-Committee-consultation-Key-Information-Documents-PRIIPS#responses>.



(e) 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 [emphasis added]". Further clarifications by ESMA on this issue are welcome.

As regards paragraph 57, we agree with ESMA that, for costs related to the acquisition of assets, an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall ratio. We should also highlight that the cost related to the acquisition of assets and its estimation could be difficult to assess *ex ante*, given the broad range of assets that might fall in the scope of the eligible assets of an ELTIF.

Q16: Do you agree with the proposed requirements? Would you suggest the introduction of any additional/alternative requirements? Please provide details and explain your position.

Assogestioni agrees with the proposed list of requirements related to facilities to be made available to retail investors, which are in line with practices under the UCITS Directive.

We would like to highlight, however, that it should be made possible for the ELTIF manager to make use of either physical facilities or on-line and telephone facilities. We therefore suggest ESMA to expressly include such an option and modify the draft regulatory technical standard accordingly.

Q17: What would you consider as appropriate specifications for the technical infrastructure of the facilities?

In relation to the technical infrastructure of the facilities, as expressed in our reply to Q16, we believe that it could also be appropriate to allow the use of online/telephone instruments in order to make such facilities easily available to the retail.

Q18: In the event that the RTS enter into force after the date of application of the ELTIF Regulation and authorizations are granted between the date of application of the ELTIF Regulation and the date of application of the proposed RTS, do respondents see a need for specific transitional/grandfathering provisions for the proposed RTS?

Yes, we see a need for transitional provisions in case the RTS enter into force after the date of application of the ELTIF Regulation.

In addition, we encourage ESMA to clarify what discipline would apply to an ELTIF marketed to retail investors in the period between the application of the ELTIF Regulation and the application of the PRIIPs KID. Art. 23(1) of the ELTIF Regulation establishes that *"The units or shares of an ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document in accordance with Regulation (EU) n. 1286/2014"*. We ask whether the prospectus will be sufficient or whether a UCITS KIID will have to be provided.



Q19: Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the options as regards hedging? Which other costs or benefits would you consider in this context?

N/A.

Q20: Do you agree with the assessment of costs and benefits above for the proposal on the sufficient length of the life of the ELTIF? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

N/A.

Q21: Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the assessment of the market for potential buyers? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

N/A.

Q22: Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the valuation of the assets to be divested? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

N/A.

Q23: 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?

N/A.

Q24: Do you agree with the assessment of costs and benefits above for the proposal on the facilities available to retail investors? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs that the proposal would imply.

N/A.