

BVI's¹ response to the ESMA consultation paper on the draft regulatory technical standards under the revised ELTIF regulation

Question 5: Do you agree that the types of cost mentioned in paragraph 33 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall cost ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio? Would you see merit in specifying what is to be meant by the “setting-up” of the ELTIF, as referred to in Article 25(1)(a) of the ELTIF Regulation? If yes, could you indicate which elements of the “setting-up” of the ELTIF should be clarified?

While ESMA considers that the mentioned entry costs (costs of setting up the ELTIF and distribution costs) are to be regarded as “fixed costs”, we would like to point out that distribution fees are also paid from the ongoing management fee. These remunerate the quality of the distribution service. As long as the investor remains invested in the fund, the distribution partner is continuously remunerated. Even if it is technically a management fee within the meaning of Article 25 (1)(c), from which distribution fees are then paid in turn, it should at least be made clear that such distribution costs financed from the ongoing management fee shall be classified as "ongoing costs" and not as "fixed costs".

Question 9: Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation?

What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the abovementioned minimum holding period?

The criteria to determine a minimum holding period referred to in Article 3 of the draft RTS are relevant.

Paragraph 62 of the ESMA consultation paper on the draft RTS under the revised ELTIF Regulation recognizes that a minimum holding period could be different from one type of ELTIF to another as asset classes, sectors and markets will have an impact and therefore some may require longer or shorter minimum holding periods. We share ESMA's views as we believe that ELTIFs' variety of fund terms, asset classes (infrastructure, private equity, real estate, among others) and investment strategies call for common standards that are based on qualitative rather than quantitative criteria.

Setting a minimum holding period of three years for all ELTIFs, as proposed by ESMA as a default, unless the manager of the ELTIF is able to justify that it could be shorter, seems arbitrary and inconsistent with proven and tested market practice. Given the extreme range of typical liquidity of the

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eligible investment assets, an adequate minimum holding period could range between (close to) zero and more than two years.

We acknowledge that it is difficult for ESMA to set a specific minimum holding period figure for a multi-asset product whose assets might have very different liquidity profiles. Therefore, we see the abstract criteria formulated in Art. 3 as an important step, but not a sufficient one. We also miss a clear distinction between the ramp-up phase of the ELTIF and the subsequent lifecycle of an evergreen product.

As currently drafted, Article 3 of the draft-RTS is not sufficient to provide supervisory guidance that would prevent divergence in supervisory practices among NCAs.

We would like to illustrate this criticism with a concrete example and ask ESMA to consider whether, in ESMA's view, the application of the RTS would ensure uniform supervisory practice within the Member States. Suppose ELTIFs (open-ended and for retail investors) are to be launched in Austria, Germany and Spain which only invest in a single asset class, namely commercial real estate, what would be the appropriate minimum holding period? Obviously, this scenario aims to compare ESMA's approach with the national requirements for holding periods for real estate funds. From the point of view of a market practitioner, and most likely also the competent NCA, it would be logical to draw a comparison to existing fund types and relevant laws of the Member State of domicile to seek guidance and make a prudent decision on appropriate holding periods. Applicable national laws for retail real estate funds stipulate the following: Austria: Notification period 12 months, no minimum holding period. Germany: 24-month minimum holding period and 12-month notice period. Spain: Minimum holding period of three years. Thus, depending on where the ELTIF is launched, national legal guidance suggests a minimum holding period anywhere between Zero (+12 months notification) and 3 years (ex-notification). In our opinion, with a fund product designed by an EU regulation such as the ELTIF, there should also be a uniform supervisory approach. However, as the example above is intended to show, we run the risk that ELTIFs will be given a clearly national tinge, so that the place of domicile unintendedly become crucial.

Admittedly, the reversion to the national laws of the Member States represents an abridged view without the explicit consideration of the criteria of Article 3 of the draft RTS. Nonetheless, in the absence of practical guidance on minimum holding periods that are more specific to the different asset classes, we believe this would still be the most likely outcome. The possibility for managers of ELTIFs to justify a shortened holding period (Art. 3 para. 3 draft RTS), from our practical experience with NCA approaches, requires that the supervisors may rely on an examination matrix that can be used to check whether the justification is valid.

For these reasons, we believe that the RTS should provide more legal certainty regarding minimum holding periods particularly for very illiquid asset classes, such as real estate, in order to ensure uniform supervisory practice while maintaining an adequate level of flexibility on behalf of the ELTIF manager.

Q11: a) Do you agree with the proposed approach in relation to the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in points (b) and (c) of Article 18(2) - Article 18(6)(c) of the ELTIF Regulation?

Redemptions should be allowed on a daily basis. A minimum holding period combined with a robust liquidity management system makes a limitation of the redemption frequency obsolete.