

## ESMA's draft regulatory technical standards under the revised ELTIF Regulation

### Feedback on Consultation Paper

The *Association française des Sociétés de Placement Immobilier* ("**ASPIM**") – the French association for real estate investment companies – promotes, represents, and defends the interests of its members, managers of alternative investment real estate funds (SCPI, OPCI and other AIFs).

Created in 1975, this not-for-profit Association represents companies that manage portfolios of real estate assets for an asset value of €314 bn (2022) for the French market. Its 107 members, Portfolio Management Companies, and other unlisted real estate investment funds are authorized entities accredited by the *Autorité des marchés financiers* (the "**AMF**") – the French Financial Markets Authority.

ASPIM welcomes the ambition of the European Commission to support long-term financing of the European economy. ASPIM is resolutely committed to promote the ELTIF label standards into the management of real estate AIFs and to ensure they are involved in completing ambitious goals on encouraging long-term investments in real assets, and in particular real estate assets, while also further deepening the single market by establishing an EU passport so ELTIFs can be marketed throughout the EU to professional and retail investors.

Despite its laudable intention, the ELTIF label is only too rarely being adopted by AIF managers of real assets. ASPIM will identify key structural barriers (and will detail it later to the ESMA, and in particular tax one) that limit the use of ELTIFs and offer some suggestions for addressing such barriers – focusing on the French real estate unlisted funds sector.

By way of introduction, and for ESMA's full understanding, ASPIM wishes to remind the following regarding French real estate funds:

Real estate investment company or “SCPI”	
<p><b>Fixed-capital SCPI (<i>société civile de placement immobilier à capital fixe</i>)</b></p>	<p>SCPI are companies which purpose is the direct or indirect acquisition and the management of real estate assets for renting.</p> <p>SCPI may offer their shares to the public <sup>(1)</sup>, subject to the visa of the AMF.</p> <p>SCPI shares may be subscribed to by both professional and retail investors. In order to offer its shares to the public during its lifetime, a fixed-capital SCPI must carry out a capital increase decided by the general meeting of its shareholders.</p> <p>A fixed-capital SCPI is a <u>close-ended</u> AIF. Shareholders have no right to redeem their shares before the SCPI liquidation.</p> <p>However, shareholders may sell all or part of their shares on the secondary market. The share price on the secondary market does not reflect the value fluctuations of the assets hold by the SCPI but depends on supply and demand (system of matching orders over a given period). The manager acts as a market maker but does not guarantee liquidity. Orders are entered in a register held at the SCPI's registered office, and are recorded chronologically.</p>
<p><b>Variable-capital SCPI (<i>société civile de placement immobilier à capital variable</i>)</b></p>	<p>Variable-capital SCPI may increase their capital at any time, up to the maximum authorised amount set by their articles of association.</p> <p>Although it has a variable capital, such SCPI is also a <u>close-ended</u> AIF, as the shareholders who wish to withdraw from the company during its lifetime are not reimbursed out of the SCPI's assets. As a matter of principle, the SCPI has no intrinsic liquidity mechanism. <u>To be executed, a withdrawal request shall be offset by a subscription order.</u> In this case, a shareholder may obtain the redemption of his/her shares provided that, in order to satisfy his/her withdrawal request, subscription requests are received for a sufficient amount. Shares repaid are cancelled.</p> <p>To this end, the manager keeps a withdrawals register. Withdrawal orders are recorded in chronological order and cleared on a monthly basis in priority by subscription requests, before the SCPI can increase its capital using the funds raised.</p> <p>The value of the shares is set by the SCPI's manager according to the real value of the assets held.</p> <p>In addition, to manage their liquidity, variable-capital SCPI may have other specific tools such as (i) redemption funds (<i>fonds de remboursement</i>) (which are financed by the proceed from the sale of assets or profit for the year of the SCPI allocated when the accounts are approved), and (ii) suspensions of the capital variability</p>

<sup>(1)</sup> However, SCPI shares are not negotiable securities (Article L. 211-14 of the French Monetary and Financial Code). They cannot be registered in a securities account. The issue to the public of non-tradable securities is not governed by Regulation 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71.

	and the opening of a secondary market, operating under the same conditions as those applicable to fixed-capital SCPIs.
<b>Real estate collective investment undertakings or “OPCI”</b>	
<b>OPCI (<i>organismes de placement collectif immobilier</i>)</b>	<p>OPCI are unlisted real estate funds, which main purpose is the acquisition or construction of buildings with a view to renting them, or the holding of stakes in companies whose main activity is real estate (<i>société à prépondérance immobilière</i>).</p> <p>OPCI legal regime is based on the UCITS model.</p> <p>The corporate purpose of OPCI is "<i>to invest in buildings that it rents out or has built exclusively with a view to renting them out, that it holds directly or indirectly, including those in a future state of completion (état futur d'achèvement), and to carry out all operations necessary for the use of these buildings or their resale, and, on an ancillary basis, to manage financial instruments and deposits</i>".</p> <p>At least 60% of the OPCI assets must be invested in buildings and similar real estate assets that it leases or has built with a view to leasing, that it holds directly or indirectly, including those in a future state of completion (<i>état futur d'achèvement</i>). The other assets, up to a maximum of 40% of the OPCI assets, constitute a "pocket" of financial instruments and liquid assets which enables the OPCI to finance its investors' redemption requests easily <sup>(2)</sup>.</p> <p>OPCI can take two legal forms:</p> <ul style="list-style-type: none"> <li>– SPPICAV: open-ended real estate investment company (<i>société de placement à prépondérance immobilière à capital variable</i>), incorporated as a limited company (<i>société anonyme</i>) or simplified joint stock company (<i>société par actions simplifiée</i>) with a legal personality;</li> <li>– FPI: real estate investment funds (<i>fonds de placement immobilier</i>), which is a co-ownership of property assets and financial instruments with no legal personality.</li> </ul> <p>OPCI must be approved by the AMF.</p> <p>OPCI units or shares may be subscribed to by professional or retail investors.</p> <p>OPCI are <u>open-ended</u> funds as they offer investors the right to redeem their units or shares at any time.</p>
<b>OPPCI (<i>organismes professionnels de placement collectif immobilier</i>) or Professional OPCI</b>	OPPCI are for " <i>professional investors</i> " within the meaning of MiFID 2 and for investors assimilated to professional investors (minimum subscription of €100,000).

<sup>(2)</sup> Therefore, OPCI have a corporate purpose broader than SCPI. It should be noted that for OPCI eligible for life insurance policies' units of account, the AMF requires that at least 40% of the OPCI assets constitute the "pocket" of financial instruments and liquid assets.

	<p>Regulations allow considerable freedom in defining the operating procedures for OPPCI, both in terms of investment rules <sup>(3)</sup> and liquidity <sup>(4)</sup>.</p> <p>OPPCI must be approved by the AMF.</p> <p>OPPCI may not have a lock-up period of more than 10 years, followed by a gating period of more than 8 years.</p>
<b>Other AIFs (<i>Autres FIA</i>)</b>	
<p>Other AIFs (<i>Autres FIA</i> in French) is a category that covers all investment vehicles set up in the form of companies incorporated under ordinary law (<i>société civile immobilière</i> or “<b>SCI</b>”, <i>société par actions simplifiée</i> or “<b>SAS</b>”, etc.) that meet the four criteria defining the concept of AIF which are set out in Article L. 214- 24, I of the French Monetary and Financial Code, which was transposed from Article 4. 1. a) of AIFMD <sup>(5)</sup>.</p> <p>Other AIFs offer a high degree of operating flexibility:</p> <ul style="list-style-type: none"> <li>– investors may be exclusively professional investors within the meaning of MiFID 2, or non-professional investors (subject to the article of associations of the Other AIF and the provisions relating to public offerings);</li> <li>– management of other AIFs' assets is characterised by a high degree of contractual freedom, within the limits of public policy rules. The nature of the assets, transactions, investment limits and risk management must be set out in the fund's investment policy;</li> <li>– the legislator has not defined the other AIFs' eligible assets: any type of asset, provided that the rules or the articles of association of the AIF provide so, is likely to be eligible (subject to approval by the manager);</li> <li>– the fund may be open-ended or close-ended. In the latter case, the fund rules or articles of association may provide for exit windows. If the other AIF is an open-ended fund, or if exit windows have been set, the redemption procedures are set out in the fund articles of association. If a capital variability clause has been adopted, this right of withdrawal is a matter of public policy, but the terms and conditions may be organised (notice period, lock-up period, etc.).</li> </ul> <p>Other AIFs have marketing authorisation, if they are marketed to investors, and are declared to the AMF.</p>	

**Q1: Do you agree with the proposed approach in relation to the RTS under the abovementioned Articles 9(3), 21, and 26(2) of the ELTIF Regulation?**

ASPIM agrees with the proposed approach.

**Q2: Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIF**

<sup>(3)</sup> The investment rules (real estate, financial, control or division of risk ratios) and leverage constraints may be defined contractually in the OPPCI prospectus.

<sup>(4)</sup> The procedures for redeeming shares may be adjusted and organized *via* gating (redemptions cap) and lock-up (redemptions freeze) mechanisms, which enables professional OPCIs to operate in practice as quasi-close-ended funds.

<sup>(5)</sup> AIF are vehicles which: (i) "raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors"; and (ii) are not UCITS.

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

In terms of comparability of AIFs, whether they are labelled ELTIF or not and whatever the typology of the underlying assets, the PRIIPs methodology should be applied, as soon as this is done, for ELTIF funds.

Especially regarding the real estate funds, there is one element specific to the real estate fund industry which created debate: the scope of "*costs and charges*" to be disclosed.

It is important for ASPIM to make a clear distinction between the various costs and fees related to the management of a fund itself (management fees, depositaries fees, entry fees...) that are a common and comparable to all investment vehicles; and expenses or investments of pure real estate nature (maintenance costs, refurbishment investments, etc.) which are generally a component of real estate valuation.

To maintain comparability between real estate funds and other investment funds, ASPIM is of the view in the PRIIPs KID to disclose the costs and charges related to the management of the fund itself and not the pure real estate expenses. This is equivalent to an equity fund which does not disclose the costs and expenses incurred by the companies it invests in although these costs, in theory, reduce the investment performance for the end investor.

**Q3: Do you agree with the abovementioned assumptions? In relation to the ELTIF cost ratio figures to be expressed as yearly percentages (of the capital of the ELTIF), would you see merit in expressing it instead in terms of maximum percentages (and, in the prospectus, only refer to the corresponding yearly figures included in the KID, or in the annual report of the ELTIF)?**

ASPIM agrees with the proposed approach.

Regarding the subscription costs, ASPIM is of the view to spread them on the recommended holding period basis.

Regarding the aggregated costs, ASPIM is of the view to compare it with the in the PRIIPs' KID cost other time table.

**Q4: Do you agree that the types of cost mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital? What are your views on the list of "other costs" referred to above in paragraph 31(b) which are suggested to be added, as compared to the list of "other costs" referred to in Article 25(1)(e) of the ELTIF Regulation?**

ASPIM agrees with the proposed approach.

**Q5: Do you agree that the types of cost mentioned in paragraph 32 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?**

ASPIM agrees with the proposed approach.

Regarding the costs of setting up the ELTIF, ASPIM is of the view to include them in the ongoing costs if they are paid by the ELTIF.

**Q6: Do you agree that the types of costs mentioned in paragraph 35 may be considered as fixed costs in the case of an ELTIF?**

ASPIM agrees with the proposed approach.

**Q7. Would you see merit in including a specific grand-fathering clause (in relation to the RTS under Article 25(3) of the ELTIF Regulation) for ELTIFs benefitting from the grand-fathering clause provided for in Article 2 of Regulation 2023/606?**

N/A.

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

ASPIM agrees with the proposed approach <sup>(6)</sup>. However, it should be confirmed that these criteria are not cumulative.

Article 18(2) of the ELTIF Regulation provides that the lifetime of an ELTIF has to be "compatible" with the life-cycles of each of its assets.

It is important for ASPIM to remind that the life of a SCPI/ OPCl/ certain Other AIFs <sup>(7)</sup> have a permanent lifetime (*i.e.* 99 years). Real estate assets are held for a long period which is, in general, shorter to the lifetime of the fund. The lifetime of a SCPI/ OPCl/ certain Other AIFs is not directly correlated to the life-cycle of its assets.

Therefore, ASPIM is of the view to confirm that **AIFs with a 99-year life (SCPI/OPCl or Other AIFs if the case may be) meet the compatibility requirement between (i) the life of the ELTIF, and (ii) the life-cycle of each of the individual assets of the ELTIF (buildings).**

**Q9: Do you agree with the proposed criteria to determine the minimum holding period (referred to in point (a) of paragraph 2 - Article 18(6)(a)) of the ELTIF Regulation? What are your views on the setting of a minimum of X years for all ELTIFs, irrespective of their individual specificities (with X equal to 3, for example), with respect to the abovementioned minimum holding period?**

SCPI
Articles 18(1) and 18(2) of the ELTIF Regulation identifies "close-ended funds" and "open-ended funds". If the ELTIF is an open-ended fund, it has to implement a reimbursement policy and liquidity management tools which are appropriate and compatible with the investment strategy of the ELTIF.
<b>SCPI (with fixed and variable capital) being close-ended funds, ASPIM is of the view to clarify that they are not subject to the obligation to set up (i) a redemption policy and liquidity management tools, and (ii) a "minimum holding period" (as provided for</b>

<sup>(6)</sup> The draft RTS detail the criteria to be taken into account in order to determine whether the lifetime of the ELTIF is compatible with the life-cycles of each of its assets included into its portfolio: liquidity profile, asset acquisition period, *etc.*

<sup>(7)</sup> For which the articles of association provide for a life of 99 years (which is in practice the case for other AIFs which units are listed in units-accounts of life insurance contracts).



by Article 18(6)(a) of the ELTIF Regulation)<sup>(8)</sup>. It is imperative for ASPIM that SCPI may be eligible to the ELTIF label given the size of their assets under management and the strategic nature of these AIFs subscribed by retail investors (directly or through life insurance contracts) in France. .

### **OPCI and OPPCI / Other AIFs**

It is provided for by the RTS, regarding open-ended funds, and so OPCI, OPPCI and other AIFs when they are considered as “open-ended” <sup>(9)</sup>, that:

- no matter the category of the assets held by the fund, the minimum holding period of the shares/units of the fund is 3 years;
- these 3 years start on the date of the fund’s creation and not on the date where each investor subscribes within the fund.

#### **ASPIM is of the view that:**

- there should be no uniform minimum holding period for all types of fund. The minimum holding period duration should be at the discretion of the ELTIF manager, taking into account the ELTIF's assets and investors' capacity <sup>(10)</sup>. This remark should be valid for existing and future funds.

Certain funds (and in particular OPCI) should be authorised not to implement a minimum holding period, provided that the liquidity stress tests submitted to the AMF ensure appropriate liquidity for investors.

ASPIM specifies that implementing a minimum holding period would be difficult to reconcile with the distribution of OPCI and Other AIFs by insurers in life insurance policies' units of accounts:

- under the current provisions of the French Insurance Code, an OPCI would not be eligible for the ELTIF label as it must be possible to redeem its units without restriction within a maximum period of two months;
  - with regard to other AIFs, even in the absence of specific constraints applicable to these vehicles, the French Insurance Code provides that in the event of a contract surrender request by the policyholder, the insurance or capitalization company must pay the surrender value of the contract within a period not exceeding two months <sup>(11)</sup>. Insurance contracts also generally stipulate the same timeframe for arbitration;
  - imposing a holding period would therefore restrict the proper marketing of funds, particularly *via* retirement saving plans (*Plans d'épargne retraite* or "**PER**") and life insurance contracts.
- it should be specified that **the 3-year holding period begins on the date of the ELTIF's creation**, and does not apply to each subscription.
  - it should be specified that **for any type of fund** (including OPCI) existing on the entry into force date of the ELTIF 2.0 Regulation, **there will be no obligation to provide for**

<sup>(8)</sup> Articles 3, 4, 5 and 6 of the RTS shall therefore not apply to SCPI.

<sup>(9)</sup> When referenced in units of account, other AIFs are open-ended funds. They offer the possibility for their investors (insurance companies) to redeem their shares or units.

<sup>(10)</sup> In this view, the duration of the minimum holding period has to be determined exclusively by the manager and it should be irrelevant to impose a uniform holding period to all ELTIFs.

<sup>(11)</sup> Article L. 132-21 of the French Insurance Code.

**a holding period.** Indeed, (i) existing funds will already have reached their critical size and diversification thresholds, and (ii) the managers of future ELTIF funds should be able to choose the tools they deem appropriate to manage the fund's liquidity.

- it should be confirmed that the criteria listed by the RTS to determine the minimum holding period duration (i) are non-cumulative, and (ii) do not all have to be systematically taken into account. Moreover, ASPIM finds it difficult to understand one of the listed criteria, namely criteria (d) of Article 3(1) of the RTS <sup>(12)</sup>. Indeed, it is difficult to establish a link between the frequency of assets' valuation and the minimum holding period.

**Q10: Do you agree with the proposed approach in relation to the minimum information to be provided to the competent authority of the ELTIF (referred to in point (b) of paragraph 2 - Article 18(6)(b) of the ELTIF Regulation)?**

**SCPI**

Certain information relating to the liquidity and redeem policies should be transmitted to the competent Authority (in particular, reporting during the life of the ELTIF on the implementation of these policies).

**ASPIM is of the view to specify that:**

- **this reporting obligation does not apply to SCPI**, since SCPI are close-ended funds;
- **this reporting obligation does not apply to SCPI** even if they set up a redemption fund (*fonds de remboursement* in French) (accounting item recorded under SCPI liabilities) <sup>(13)</sup>.

**OPCI and OPPCI / Other AIFs**

The draft RTS stipulate that when an ELTIF is authorized, and during the life of the fund if there is a material change in the liquidity management policy in place, the results, assumptions and data used, as well as the liquidity stress tests, must be communicated to the ELTIF's competent Authority.

**ASPIM is of the view that:**

- **the above-mentioned stress tests should be the same as those provided under AIFMD.**  
Otherwise, these new stress tests could be redundant with those already implemented under AIFMD, and could unnecessarily increase the obligations of managers.
- **it should be reminded that managers can make updates during the life of the fund as part of AIFMD reporting.** In this respect, ASPIM wishes to stress the importance of ensuring that there are no redundant reporting obligations between the AIFMD 2 (currently under discussion) and the ELTIF Regulation.

<sup>(12)</sup> "the valuation of the ELTIF's assets and the time needed to produce a reliable, sound and updated valuation of the investments".

<sup>(13)</sup> SCPI may set up redemption funds when their compensation mechanism runs into difficulties. Redemption fund is a unique liquidity mechanism: the assets sold replenish shareholders' equity (liabilities side of the balance sheet), not the fund's assets. As this is a repayment *via* a liability item, its implementation does not call into question the SCPI's classification as close-ended fund.



- the "**material change**" notion should be the same as the one provided by AIFMD <sup>(14)</sup>.

Article 4(2) of the draft RTS stipulate that the information should be provided to the Authority "*where possible, before the application of such material changes, and in any case not later than 10 days from the date the respective material change became known or should have become known to the ELTIF manager*". This wording calls for two observations from ASPIM: **(i)** this 10-day deadline is too short, and **(ii)** from an operational point of view, it is difficult to provide information on a change that the manager should have known about.

The draft RTS also provides that the manager should inform in advance the competent Authority "*if redemptions in line with the ELTIF redemption policy cannot be granted, explaining the reasons thereof*" <sup>(15)</sup>. In practice, such information would be difficult to provide **in advance**. In addition, ASPIM is of the view that such event should not create an obligation for the manager to inform the competent Authority; the manager should rather review its stress tests.

ASPIM also suggests to remove the possibility for the Authority to be provided with "*any other information considered necessary by the competent authority*" <sup>(16)</sup>, for a greater harmonisation among European Authorities.

### **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)?**

#### **SCPI**

ASPIM understands that these provisions do not apply to SCPI, since SCPI are close-ended funds.

#### **OPCI and OPPCI / Other AIFs**

Regarding the table on page 40 of the RTS, ASPIM notes that:

- with regard to the "*maximum redemption frequency*":  
Redemptions must be possible at a frequency shorter than quarterly. By way of illustration, real estate funds eligible for life insurance policies' units of account may have a weekly (other AIFs, notably) or bi-weekly (OPCI, notably) net asset value frequency and allow redemptions at each net asset value.
- with regard to "*mandatory notice periods*":  
Imperative or incentive notice periods should be possible. In addition, notice periods should be one possible liquidity management tool among others, without the manager being obliged to implement notice periods in order for the fund to be labelled "ELTIF".

<sup>(14)</sup> "For the purposes of Article 22(2) (d) and with reference to Article 23, "material change" means changes in information if there is a substantial likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment in the AIF, including for reasons that such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors in the AIF" (ESMA's technical advice to the European Commission on possible implementing measures of the AIFMD, Final Report, ESMA/2011/379, 16 November 2011, p.220).

<sup>(15)</sup> Article 4(4) of the RTS.

<sup>(16)</sup> Article 4(1)(g) of the RTS.

- with regard to "liquidity management tools":

Anti-dilution mechanisms, gates and notice periods should be possible liquidity management tools, without the manager being obliged to provide all these mechanisms. In addition, the manager should be able to propose other mechanisms (liquid asset pockets, dissuasive redemption fees, etc.). In any case, before implementing any liquidity management tool, it should be necessary to ensure that it is compatible with (i) the distribution channels envisaged for the fund (life insurance, etc.), and (ii) local regulations.

- with regard to gates:

It is mentioned that they would be applicable "in exceptional circumstances". Gating mechanisms that are triggered by the occurrence of objective circumstances set out in the fund documentation should be allowed. If gates are implemented following exceptional circumstances, the implementation of additional gates following objective circumstances should not be mandatory (*toolkit*).

**In any case, as envisaged as part of the revision of the AIFMD, it would be preferable for the proposed liquidity management tools not all to be mandatory, but for the fund manager to remain free to choose the liquidity management tools (*toolkit*) it deems appropriate in view of (i) the ELTIF's investment strategy, (ii) the underlying assets, or (iii) the capacity of the fund's investors <sup>(17)</sup>. Several combinations of tools should therefore be possible, to enable optimal articulation of ELTIFs' liquidity management policy, provided that they are compatible with local regulations and the fund's distribution channel(s).**

**Q11(b): What are your views on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs, irrespective of their individual specificities, as suggested in paragraph 84?**

**SCPI**

ASPIM understands that these provisions do not apply to SCPI.

**OPCI and OPPCI / Other AIFs**

It follows from the RTS that the redemption frequency for ELTIFs should be no more than quarterly, unless the fund manager can justify that this frequency can be higher considering the fund's specific features <sup>(18)</sup>. **Therefore, it seems possible to provide for redemption requests more frequently than once every 3 months, provided that this valuation is "substantial, relevant, reliable and up-to-date".**

**ASPIM is of the view to confirm that:**

<sup>(17)</sup> In that respect, the latest wording of Article 16 of the proposed AIFMD 2 stipulates that managers of open-ended funds should choose at least two liquidity management tools from among those listed in Annex V of the draft revision. This approach appears to be more flexible for managers: "After assessing the suitability in relation to the pursued investment strategy, the liquidity profile and the redemption policy, an AIFM that manages an open-ended AIF shall select at least two appropriate liquidity management tools from the list set out in Annex V, points 2 to 7, or possible use in the interest of the AIFM's investors. This shall not prevent an AIFM from using other tools that list, points 2 to 8".

<sup>(18)</sup> The draft RTS stipulate: "With respect to the frequency of redemptions, ESMA would also see merit in seeking the views of stakeholders on the setting of a maximum redemption frequency on a quarterly basis, for all ELTIFs. From a supervisory standpoint, ESMA sees indeed merits in the setting of such a common standard, because there are benefits in aligning the frequency of redemptions with substantial, relevant, reliable and up-to-date valuation, and for illiquid funds, such data is not available frequently. In that case, the redemption frequency would be, as a maximum, quarterly, except if the manager of the ELTIF is able to justify that it could be higher, taking into account the individual specificities of the ELTIF".

- units or shares may be redeemed more frequently than on a quarterly basis, where (i) it is justified by the composition of the fund's assets and liabilities, and (ii) provided for in local regulation.
- when reference is made to a valuation that is "*substantial, relevant, reliable and up-to-date*", this does not necessarily imply that a physical evaluation must be carried out at each redemption period: **the establishment of a net asset value in accordance with the rules set out in the AIFMD regulations, as may be specified locally, should be sufficient** <sup>(19)</sup>.

**Q11(c)(1): What are your views on the setting of a notice period of Y months for all ELTIFs (with Y equal to 12, for example)?**

**SCPI**

ASPIM understands that these provisions do not apply to SCPI, since SCPI are close-ended funds.

**OPCI and OPPCI / Other AIFs**

As indicated above, ASPIM is of the view to **validate that the notice period can be either imperative** <sup>(20)</sup> **or incentive** <sup>(21)</sup> <sup>(22)</sup>.

The notice period duration should be determined by the manager, taking into account (i) the fund's typology, and (ii) the investors' capacity. ESMA seems to suggest that a 12 months' notice would be appropriate. However, in practice, such a notice period is not always appropriate, and a notice period of a few days or weeks should be allowed, if deemed appropriate by the manager.

ASPIM also proposes to **remove the requirement to provide for a notice period**. The fund manager must be able to apply the liquidity management tools (toolkit) it deems appropriate, taking into consideration (i) the composition of the fund's assets, and (ii) the capacity and number of the fund's investors (see comments above).

In any case, liquidity management tools should take into account insurance constraints so as not to limit the marketing of funds *via* the essential channels of life insurance or PER. In particular, the possibility for insurance companies and mutuals to ensure liquidity on their own balance sheet should constitute one, among others, appropriate liquidity measure, as long as the application of this measure is deemed relevant and taken into account in liquidity stress tests <sup>(23)</sup>.

**Q11(c)(2): What are your views on the options 1 and 2, set out in paragraphs 88 to 91, in relation to the specific requirements/ circumstances where the notice period could be less than one year, and the numerical values of the parameters Z(1) to Z(4), under option 1, and Y, under option 2?**

<sup>(19)</sup> For instance, OPCI set up valuation committees every 15 days, but do not carry out such evaluations as frequently.

<sup>(20)</sup> Redemption requests are honored only after the notice period has ended.

<sup>(21)</sup> Redemption requests are either honored (i) free of charge after the notice period has ended, or (ii) without notice but with a penalty in return.

<sup>(22)</sup> The draft RTS stipulate: "*redemptions of the ELTIF units or shares shall only be possible after a certain notice period given by each investor to the manager of the ELTIF. The redemption policy shall therefore include a clear notice period given by investors in line with the liquidity of the underlying assets of the ELTIF*".

<sup>(23)</sup> In that respect, if the insurance company/ the mutual ensures liquidity on its own balance sheet, the manager should be able to take it into account while choosing the appropriate liquidity management tools. In this hypothesis, the manager could therefore implement fewer liquidity management tools than if there had been no insurance company/ mutual.

## SCPI

ASPIM understands that these provisions do not apply to SCPI, since SCPI are close-ended funds.

## OPCI and OPPCI / Other AIFs

ASPIM underlines that option 2 is more flexible <sup>(24)</sup>.

Option 1 does not seem suitable for retail investors marketing through life insurance contracts. In any case, ASPIM is of the view to allow the manager to choose between option 1 and option 2.

As a preliminary point, ASPIM recalls that it is opposed to the obligation to provide for a notice period (cf. Question 11 (c) (1) above).

**If the obligation to provide for a notice period were nevertheless to be maintained, at the very least its duration should be set by the manager on a case-by-case basis** (and not in a uniform manner for all funds), subject to justification. In any case, a less than 12 months' notice period should be allowed. **ASPIM suggests that this justification should be based on (i) the allocation of the ELTIF, (ii) the capacity of the ELTIF's investors, and (iii) the redemption modalities chosen.**

**Q11(d): In your view, how do these requirements on the redemption policy and liquidity management tools of the ELTIF would compare to those applying to existing long-term investment AIFs which would be similar to ELTIFs (e.g. in terms of eligible assets)?**

## SCPI

ASPIM understands that these provisions do not apply to SCPI, since SCPI are close-ended funds.

## OPCI and OPPCI / Other AIFs

ASPIM understands that:

- the fund documentation must include at least 3 liquidity management tools: gates, notice periods and an anti-dilution mechanism (swing pricing or redemption fees).
- gates can only be implemented in "*exceptional*" circumstances.

ASPIM stresses that ELTIFs, like any open-ended fund, must be able to use a wide range of liquidity management tools.

It is therefore important for ELTIFs to be able to provide for **gates whose implementation depends on the fulfilment of objective conditions, and not only in the event of**

<sup>(24)</sup> ESMA wishes to provide for the possibility of shortening the notice period to less than 12 months, under certain conditions. Two options are envisaged.

Option 1: ELTIF systematically retains a minimum portion of liquid assets to cover redemption requests at any time. The notice period would be reduced in proportion to the amount of liquid assets held by the ELTIF. The relation between the notice period and the minimum amount of liquid assets would be such as that any redemption request could be honored at any time, except in exceptional circumstances that cannot be anticipated by the manager, in which case the manager could activate a gate. The draft RTS propose, for example, that beyond one year's notice, the ELTIF is not required to hold liquid assets to honor redemption requests.

Option 2: if the notice period is less than 12 months, the ELTIF provides for a maximum amount of redemption requests that it can honor depending on the duration of the notice period and the frequency of redemptions. This second option does not require the ELTIF to hold a minimum percentage of liquid assets ("liquidity buffer"), i.e. UCITS assets.

**"exceptional" circumstances.** As discussed above, if gates are implemented following exceptional circumstances, the implementation of additional gates following objective circumstances should not be mandatory (*toolkit*).

ASPIM reminds that the solution, which consists of all ELTIFs to provide for, in their documentation, the three liquidity management tools above-mentioned, could raise difficulties for some existing and future funds:

- regarding existing funds:

ASPIM stresses that (i) OPCI are almost all eligible for life insurance policies' units of account, and (ii) French regulations require from these OPCI not to be subject to any restrictions that could prevent their units or shares from being redeemed within two months. (iii) In addition, regardless of the type of the fund, redemption requests under life insurance policies must be made within two months. That same rule generally applies to arbitrages carried out on contracts.

Should these regulations evolve, **the cumulative implementation of the three liquidity management tools requested by the ELTIF Regulation is likely to constitute an obstacle to the marketing of funds via insurance.**

In that respect ASPIM would like to:

- remind that some liquidity management tools (swing pricing and anti-dilution levies) are not suitable for certain types of funds; and
- clarify whether the redemption fees covered by the RTS are fixed or variable.

- regarding future funds:

It is important that managers should be able to choose the liquidity management tools they deem best suited to the composition of the ELTIF's portfolio and to the investors' capacity, in the interest of the fund's performance and efficient functioning.

In light of the above, ASPIM would like to clarify that liquidity management tools **are not all mandatory but, on the contrary, are implemented at the manager's discretion (toolkit).** Finally, for the sake of consistency, the liquidity management tools proposed under the ELTIF Regulation should be the same as those proposed by the revised AIFM Directive <sup>(25)</sup>. The tools should be chosen among those listed by the revised version of AIFMD, without any obligation to implement a minimum number of tools (flexible approach).

## Q12: Do you agree with the proposed criteria to assess the percentage referred to in point (d) of Article 18(2) - Article 18(6)(d)?

### SCPI

ASPIM understands that these provisions do not apply to SCPI, since SCPI are close-ended funds.

### OPCI and OPPCI / Other AIFs

ASPIM is of the view to clarify that liquid assets, within the meaning of Regulation 2015/760 (*i.e.* the assets referred to in Article 50(1) of the UCITS Directive), may be used to meet redemption requests, as well as other assets held by the ELTIF, which may, in compliance

<sup>(25)</sup> At this stage, Annex V of the revised version of AIFMD provides for the following liquidity management tools: suspension of subscription and redemption requests, caps on redemption requests, notice periods, redemption fees, swing pricing, anti-dilution levy, redemption in kind and, where applicable, side pockets.

with the redemption policy, the interests of unitholders or shareholders and the sound management of the fund, **be sold to meet redemption requests**.

The ELTIF's redemption policy should ensure that redemptions are limited to a percentage of the ELTIF's assets which takes into account the ELTIF's liquid assets **and other assets** <sup>(26)</sup>.

In addition, sources of liquidity can be of various kinds (loans, subscriptions, etc.).

ASPIM underlines that the liquidity pocket amount should be calibrated according to the level of gating implemented <sup>(27)</sup>.

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

**SCPI**

ASPIM agrees with the "*principle-based approach*", provided that the secondary market mechanism which exists in France for SCPI is not undermined by the approach which will ultimately be adopted in the RTS for ELTIFs.

As indicated in paragraph 111 of the RTS, SCPI have a secondary market which is governed by French law.

The functioning of the secondary market is described in the SCPI documentation.

**ASPIM is of the view that the rules governing the matching mechanism should provide for the possibility of processing orders chronologically, as is the case in SCPI, and not just on a *pro rata* basis.**

In addition, the secondary market is mainly set up in fixed-capital SCPI <sup>(28)</sup>.

In variable-capital SCPI, there is a compensated withdrawal mechanism (the "Compensation Mechanism"), which enables withdrawal and subscription orders to be matched, thus allowing shareholders who wish to do so to withdraw.

This Compensation Mechanism also works with a register and by processing orders in chronological order.

This Compensation Mechanism, which is governed by French law and is very common in France (as most SCPI have a variable capital), must be compatible with the provisions of the matching mechanism set out in the RTS.

**ASPIM** would like to remind ESMA of the importance for variable-capital SCPI to be eligible to the ELTIF label, which presumes that their matching mechanism (i.e. Compensation Mechanism) should be compatible with ELTIF. Indeed, they represent a very broad proportion of French real estate funds dedicated to retail investors.

**OPCI and OPPCI / Other AIFs**

ASPIM understands that the matching mechanism provided by the ELTIF Regulation enables the manager to set up a secondary market without any specific regulatory

<sup>(26)</sup> Taking into account the ELTIF's other assets is all the more justified where a notice period is implemented.

<sup>(27)</sup> A 1% gating implies at least 1% of cash/liquidity systematically available. Should a fund's NAV be calculated on a quarterly basis and with a 1% gating; every quarter, redemptions requests shall be honored up to 1%. The liquidity pocket should therefore systematically be at 2%, in order to honor the 1% redemption requests and maintain the 1% available cash objective.

<sup>(28)</sup> A secondary market may also be introduced in a variable-capital SCPI on an exceptional basis, if the mechanism for compensated withdrawals is blocked.



authorisation. Indeed, this secondary market would be organised by the manager and would not consist of an investment service <sup>(29)</sup>.

**Q14: Do you agree with the proposals suggested above and corresponding draft RTS, in relation to the transfer process for both exiting and potential investors, and the role of the manager of the ELTIF or the fund administrator in conducting transfers, and the matching of respective requests?**

**SCPI**

The operational rules and the role of the stakeholders do not seem to give rise to any particular discussions.

However, ASPIM is of the view to specifically clarify that the manager is not responsible for the determination of the transfer price, which results from the interplay of supply and demand (*a contrario*, the manager is responsible for the secondary market organisation).

It is important for ASPIM to remind that SCPI could represent a source of inspiration regarding the drawing of the rules for (i) a secondary market, or (ii) a Compensation Mechanism.

**OPCI and OPPCI / Other AIFs**

ASPIM agrees with the proposed approach.

However, it should be explicitly stipulated that the manager is not responsible for the determination of the transfer price.

**Q15(1): Do you agree with the proposed approach and corresponding draft RTS, in relation to the periods of time during which exiting and potential investors may request transfer of shares or units of the ELTIF? If both systems under Article 18(2) and 19(2a) coexist, how could the risk of arbitrage between different prices in the primary and the secondary markets be, in your view, mitigated?**

**SCPI**

ASPIM agrees with the draft RTS.

ASPIM points out that French SCPI (i) properly define in their documentation the frequency of securities transfer with regard to the matching mechanism (orders' matching period each month/ quarter), and (ii) avoid any conflict of interest in this respect given that the two mechanisms (Compensation Mechanism or secondary market) are not set up simultaneously.

ASPIM clarifies that the two mechanisms should not operate simultaneously, **unless they use the same "exit" value**. In such case, each time the net asset value is established, it could be interesting that, (i) as a first step, holders exit *via* the matching mechanism, and (ii) once this mechanism has been exhausted, redemptions are permitted by setting up the system provided under Article 18(2).

**OPCI and OPPCI / Other AIFs**

<sup>(29)</sup> The implementation of a secondary market shall not be constitutive of an investment service: it shall be deemed a liability management mechanism.

ASPIM agrees with the fact that the matching mechanism could constitute an additional liquidity measure for OPCI and other AIFs.

**Q15(2): How could (retail) investors be ensured that the purchase or sale of shares on the secondary market will be executed at prices that reflect the value of the ELTIF?**

**SCPI**

The price is strictly set by the secondary market (matching mechanism). Therefore, it does not necessarily depend on the ELTIF's valuation.

Regarding fixed-capital SCPI, the sale price on the secondary market is determined by matching buy and sell orders entered in the register, on which the largest quantity of shares can be traded. This is called the execution price. This price results from the interplay of supply and demand.

Regarding variable-capital SCPI (i.e. operating with a Compensation Mechanism), withdrawals offset by subscriptions cannot be made at a price which is higher than the subscription price less the subscription fee <sup>(30)</sup>.

**OPCI and OPPCI / Other AIFs**

ASPIM has no comment.

**Q16: Do you agree with the proposals above and the corresponding draft RTS, in relation to the determination of the execution price and the proration conditions and the level of the fees, costs and charge, if any, related to the transfer process?**

**SCPI**

Regarding fixed-capital SCPI, the execution price on the secondary market does not depend on the NAV, but on the supply and demand interplay.

Regarding variable-capital SCPI, the execution price depends on the subscription price. However, this subscription price, which depends on the reconstitution value of the SCPI (the reconstitution value is equal to the realisable value plus the amount of the fees associated with reconstitution of its assets), is set once a year.

ASPIM would like to ensure that the rules governing the setting of the execution price provided for in the RTS are compatible with those provided for under French law and which govern the determination of the price on the secondary market and in the context of the Compensation Mechanism.

ASPIM also wishes to confirm that orders can be processed chronologically, and not on a *pro rata* basis, in accordance with national regulations for SCPI.

**OPCI and OPPCI / Other AIFs**

ASPIM is of the view to rewrite Article 8(1) of the RTS as follows:

<sup>(30)</sup> Article 422-230 of the AMF General regulation.

*"Rules or instruments of incorporation of an ELTIF shall set out the rules determining the execution price related to the transfer process. ~~In times and situations where the NAV may not be reliable or appropriate, the execution price may be determined using other tools, provided that the fair treatment of all investors, including existing and remaining investors of the ELTIF, is ensured, especially when the ELTIF also allows for redemptions during the life of the fund according to article 18(2) of Regulation 2015/760~~".*

**Q17: Do you agree with the proposals above, and the corresponding draft RTS, in relation to the timing and the nature of the disclosure of information with respect to the transfer process conditions?**

ASPIM has no further comments.

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