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*Committee on Budgets*

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**2013/0214(COD)**

28.11.2013

# **OPINION**

of the Committee on Budgets

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council  
on European Long-term Investment Funds  
(COM(2013)0462 – C7-0209/2013 – 2013/0214(COD))

Rapporteur: Eider Gardiazábal Rubial

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## SHORT JUSTIFICATION

EU institutions agreed to encourage the development of appropriate multiannual financial instruments acting as catalysts for public and private investors, to pursue long-term EU policy objectives rooted in the real economy. This house acknowledged at the same time that co-financing and so-called innovative financial instruments will generate their full impact only if the overall legal and regulatory environment is conducive to their development.

It expressed its fears that, in practice, projects offering short- to medium-term returns might continue to be favoured and that investment in projects fundamental to the achievement of the EU's strategic objectives for intelligent, sustainable and inclusive growth may not be realised because of market fragmentation, and because public funds are lacking.

It called on the Commission to submit quickly proposals to facilitate the release of savings, and underused resource at present, to support long-term projects which generate sustainable growth in the Union<sup>1</sup>.

This new legislative proposal setting up an EU wide regulatory framework for long-term investment funds is thus highly welcome; still your rapporteur considers that its proper implementation will require that appropriate means and coordination are provided for.

It is in particular desirable to strengthen supervision to ensure that LTIFs will help put finance at the service of the real economy for projects with European added value. Some adjustments are thus proposed.

## AMENDMENTS

The Committee on Budgets calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1**

#### **Proposal for a regulation Recital 1**

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<sup>1</sup> P7\_TA-PROV(2012)0404 European Parliament resolution of 26 October 2012 on innovative financial instruments in the context of the next Multiannual Financial Framework (2012/2027(INI))

*Text proposed by the Commission*

(1) Long-term finance is a crucial enabling tool for putting the European economy on a path of sustainable, smart and inclusive growth and for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance to various infrastructure projects or unlisted companies of lasting duration that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the *Union economies*.

*Amendment*

(1) Long-term finance is a crucial enabling tool for putting the European economy on a path of sustainable, smart and inclusive growth *in line with the Europe 2020 strategy* and for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance to various infrastructure projects or unlisted companies of lasting duration that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the *Union's real economy and the implementation of its policies*.

## **Amendment 2**

### **Proposal for a regulation**

#### **Recital 3**

*Text proposed by the Commission*

(3) Financing for projects, regarding transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), roll-out of new technologies and systems that reduce use of resources and energy or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect.

*Amendment*

(3) Financing for projects, regarding transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), roll-out of new technologies and systems that reduce use of resources and energy or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect. *For certain projects they could make use of resources such as innovative financial instruments to supplement public funding eroded by the sovereign debt crisis.*

### Amendment 3

#### Proposal for a regulation

##### Recital 6

###### *Text proposed by the Commission*

(6) In the absence of a Regulation setting out rules on ELTIFs, diverging measures might be adopted at national level, which are likely to cause distortions of competition resulting from differences in investment protection measures. Diverging requirements on portfolio composition, diversification and eligible assets, in particular the investment in commodities, create obstacles to the cross-border marketing of funds that focus on non-listed undertakings and real assets because investors cannot easily compare the different investment propositions offered to them. Divergent national requirements also lead to different levels of investor protection. Furthermore, different national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of derivative financial instruments, rules applicable to short selling or securities financing transactions lead to discrepancies in the level of investor protection. In addition, different requirements on redemption and/or holding periods impede the cross-border selling of funds investing in non-listed assets. Those divergences can undermine the confidence of investors when considering investments in such funds, and reduce the scope for investors to choose effectively between various long-term investment opportunities. **Consequently**, the appropriate legal basis for this Regulation is Article 114 of the Treaty, as interpreted by consistent case law of the Court of Justice of the European Union.

###### *Amendment*

(6) In the absence of a Regulation setting out rules on ELTIFs, diverging measures might be adopted at national level, which are likely to cause distortions of competition resulting from differences in investment protection measures. Diverging requirements on portfolio composition, diversification and eligible assets, in particular the investment in commodities, create obstacles to the cross-border marketing of funds that focus on non-listed undertakings and real assets because investors cannot easily compare the different investment propositions offered to them. Divergent national requirements also lead to different levels of investor protection. Furthermore, different national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of derivative financial instruments, rules applicable to short selling or securities financing transactions lead to discrepancies in the level of investor protection. In addition, different requirements on redemption and/or holding periods impede the cross-border selling of funds investing in non-listed assets. **By increasing legal uncertainty, those** divergences can undermine the confidence of investors when considering investments in such funds, and reduce the scope for investors to choose effectively between various long-term investment opportunities. **Member States should accordingly not be allowed to stipulate additional requirements in the area covered by this Regulation and** the appropriate legal basis for this Regulation

*should be* Article 114 of the Treaty, as interpreted by consistent case law of the Court of Justice of the European Union.

#### Amendment 4

##### Proposal for a regulation

##### Recital 16

###### *Text proposed by the Commission*

(16) The definition of what constitutes a long-term investment is broad. Without necessarily requiring long-term holding periods for the ELTIF manager, eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns. As a result such assets do not suit investments with redemption rights.

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#### Amendment 5

##### Proposal for a regulation

##### Recital 32

*Text proposed by the Commission*

(32) Notwithstanding the fact that ELTIFs do not offer redemption rights before the end of life of the ELTIF, nothing should prevent an ELTIF from seeking admission of these shares or units to a regulated market as defined in Article 4(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,<sup>10</sup> to a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC, or to an organised trading facility as defined in point (...) of Regulation (...), thus providing investors with an opportunity to sell their units or shares before the end of life of the ELTIF. The rules or instruments of incorporation of an ELTIF should therefore not prevent units or shares from being admitted to or from being dealt in regulated markets, nor should they prevent investors from freely transferring their shares or units to third parties who wish to purchase those shares or units.

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<sup>10</sup> OJ L 145, 30.4.2004, p.1.

*Amendment*

(32) Notwithstanding the fact that ELTIFs do not offer redemption rights before the end of life of the ELTIF, nothing should prevent an ELTIF from seeking admission of these shares or units to a regulated market as defined in Article 4(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,<sup>10</sup> to a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC, or to an organised trading facility as defined in point (...) of Regulation (...), thus providing investors with an opportunity to sell their units or shares before the end of life of the ELTIF. The rules or instruments of incorporation of an ELTIF should therefore not prevent units or shares from being admitted to or from being dealt in regulated markets, nor should they prevent investors from freely transferring their shares or units to third parties who wish to purchase those shares or units. ***However, ELTIF activities on these markets should be regulated and should, for example, be excluded from the composition of derivatives.***

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<sup>10</sup> OJ L 145, 30.4.2004, p.1.

## **Amendment 6**

### **Proposal for a regulation**

#### **Recital 35**

*Text proposed by the Commission*

(35) Given the specific characteristics of ELTIFs, as well as the targeted retail and professional investors it is important that solid transparency requirements be put in place that are capable of allowing prospective investors to make an informed

*Amendment*

(35) Given the specific characteristics of ELTIFs, as well as the targeted retail and professional investors it is important that solid transparency requirements be put in place that are capable of allowing prospective investors to make an informed

judgement and be fully aware of the risks implied. In addition to the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should necessarily include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council and Commission Regulation (EC) No 809/2004. For the marketing of an ELTIF to retail investors it should be mandatory to publish a key information document (KID) in accordance with Regulation No [...] of [...] of the European Parliament and the Council. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF.

judgement and be fully aware of the risks implied. In addition to the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should necessarily include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council and Commission Regulation (EC) No 809/2004. For the marketing of an ELTIF to retail investors it should be mandatory to publish a key information document (KID) in accordance with Regulation No [...] of [...] of the European Parliament and the Council. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF *and mention any participation in instruments involving EU budgetary funds.*

## **Amendment 7**

### **Proposal for a regulation Recital 38**

#### *Text proposed by the Commission*

(38) ESMA should be able to exercise all the powers conferred under Directive 2011/61/EU with respect to this Regulation.

#### *Amendment*

(38) ESMA should be able to exercise all the powers conferred under Directive 2011/61/EU with respect to this Regulation *and be endowed with all resources necessary for this purpose, in particular human resources.*

## **Amendment 8**

### **Proposal for a regulation Recital 42**

#### *Text proposed by the Commission*

(42) The new uniform rules on ELTIFs respect the fundamental rights and observe

#### *Amendment*

(42) The new uniform rules on ELTIFs respect the fundamental rights and observe



the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data. The new uniform rules on ELTIFs should be applied in accordance with those rights and principles,

the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably ***access to services of general economic interest***, consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data. The new uniform rules on ELTIFs should be applied in accordance with those rights and principles,

## **Amendment 9**

### **Proposal for a regulation**

#### **Article 5 – paragraph 2 – point d**

*Text proposed by the Commission*

(d) the EU AIFM has not provided the documentation referred to in Article 4(2).

*Amendment*

(d) the EU AIFM has not provided the documentation referred to in Article 4(2), ***or any clarification or information requested thereunder.***

## **Amendment 10**

### **Proposal for a regulation**

#### **Article 10 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

(c) it shall be established in a Member State, or in a third country provided that ***the*** third country:

*Amendment*

(c) it shall be established in a Member State, or in a third country provided that ***that Member State or*** third country:

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 10 – paragraph 1 – point c – point ii a (new)**

*Text proposed by the Commission*

*Amendment*

***(ii a) is not a country in which there are no or nominal taxes, in which there is a lack of effective exchange of information with foreign tax authorities, a lack of transparency in legislative, judicial or***

*administrative provisions, or no requirement for a substantive local presence, or which promotes itself as an offshore financial centre.*

## Amendment 12

### Proposal for a regulation Article 16 – paragraph 2

*Text proposed by the Commission*

2. The life of the ELTIF shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset, and the stated investment objective of the ELTIF.

*Amendment*

2. The life of the ELTIF shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset, and the stated investment objective of the ELTIF. ***In this connection, if it emerges that the duration of the ELTIF is no longer adapted to asset life cycles or the profitability of the projects concerned by it, the ELTIF manager may, exceptionally, increase or reduce its life cycle. He shall, within a reasonable period, inform investors of the new ELTIF expiry date.***

## Amendment 13

### Proposal for a regulation Article 16 – paragraph 4

*Text proposed by the Commission*

4. Investors shall always have the option to be repaid in cash.

*Amendment*

4. Investors shall always have the option to be repaid in cash, ***subject to any restrictions applicable to cash payments in the various Member States.***

## Amendment 14

### Proposal for a regulation

#### Article 21 – paragraph 4 – point f a (new)

*Text proposed by the Commission*

*Amendment*

*(fa) mention any participation in instruments involving EU budgetary funds.*

## Amendment 15

### Proposal for a regulation

#### Article 28 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. ESMA shall have the powers necessary to carry out the tasks attributed to it by this Regulation.

1. ESMA shall have the powers ***and resources*** necessary to carry out the tasks attributed to it by this Regulation.

## PROCEDURE

<b>Title</b>	European Long-term Investment Funds
<b>References</b>	COM(2013)0462 – C7-0209/2013 – 2013/0214(COD)
<b>Committee responsible</b> Date announced in plenary	ECON 4.7.2013
<b>Opinion by</b> Date announced in plenary	BUDG 4.7.2013
<b>Rapporteur</b> Date appointed	Eider Gardiazábal Rubial 11.7.2013
<b>Date adopted</b>	27.11.2013
<b>Result of final vote</b>	+: 27 –: 1 0: 1
<b>Members present for the final vote</b>	Marta Andreasen, Zuzana Brzobohatá, Jean Louis Cottigny, Jean-Luc Dehaene, James Elles, Göran Färm, José Manuel Fernandes, Eider Gardiazábal Rubial, Salvador Garriga Polledo, Jens Geier, Ingeborg Gräßle, Lucas Hartong, Jutta Haug, Monika Hohlmeier, Sidonia Elżbieta Jędrzejewska, Ivailo Kalfin, Sergej Kozlík, Jan Kozłowski, Jan Mulder, Vojtěch Mynář, Juan Andrés Naranjo Escobar, Dominique Riquet, Oleg Valjalo, Angelika Werthmann
<b>Substitute(s) present for the final vote</b>	Maria Da Graça Carvalho, Frédéric Daerden, Jürgen Klute, Paul Rübig
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Juozas Imbrasas