

**TARGETED CONSULTATION
ON THE INTEGRATION OF EU CAPITAL MARKETS**
Issued by the European Commission on 15 April 2025

EUSIPA REPONSE

EUSIPA answers added to below questions **in blue**.

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RESPONDING TO THIS CONSULTATION

Is there a **need for greater proportionality in the EU regulatory framework** related to the trade, posttrade, asset management and funds sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If yes, please explain and provide suggestion on what form it should take.

1	2	3	4	5	No opinion
	X				

Yes, EUSIPA is of the opinion that there is a clear but also continuous need for a well-calibrated level of proportionality within the EU regulatory framework as it applies to the asset management, including funds and structured products. This necessity is particularly evident in the structured products industry, which encompasses a wide array of investment solutions, including listed and unlisted instruments, and a variety of legal wrappers such as funds, certificates (structured notes), and insurance-based products often specifically designed in the national-market context.

Structured products are by design diverse in their risk-return profiles, underlying exposures, and distribution formats. They serve a broad spectrum of investors, ranging from retail to institutional, and are marketed across jurisdictions with differing market infrastructures and investor preferences. This intrinsic heterogeneity calls for a regulatory approach that is sensitive to the various classes of product risk/yield profiles and their respective market function as well as the investor sophistication found in each market. Further aspects such as the national tax regime and specific market traditions/features at both the investor and issuer side, play a significant role too.

Proportionality is a cornerstone of EU law, enshrined in Article 5 of the Treaty on European Union and supported by EUSIPA in that sense. Its application is not only a legal obligation but also a practical necessity in order to ensure that regulation supports rather than stifles market development, investor choice, and cross-border investment flows. Any regulation that is disproportionate to the risks posed by a product or its target market can lead to unintended consequences such as reduced product availability (on the national level), higher costs for investors, and fragmentation of the single market.

While national authorities have an important role to play in applying and supervising regulatory requirements in ways that are sensitive to local market realities, certain core aspects of proportionality can and should be considered under a harmonization prism at the EU level. These include:

- **Disclosure and transparency requirements:** An EU-anchored and well-tiered approach which does not allow for a high level of national deviation (gold-plating), unless justified for national market reasons and which differentiates between product risk/yield levels, distribution model, and investor type can enhance the relevance and practical usability of point-of-sale information, as particularly demonstrated under frameworks such as PRIIPs and the prospectus law, thereby helping investors to better find the product matching their needs also outside their home market.
- **Product governance rules:** These rules should reflect the risk and yield characteristics of structured products, including the asset-class typical safeguards embedded within their design (especially for structured investment -read non-leverage- products), rather than apply a one-size-fits-all model used in the context of other asset classes that differ from Structured Products.

- **Calibrated reporting:** Streamlining and standardizing product reporting obligations across jurisdictions can reduce operational burden without compromising regulatory oversight. As for the asset management industry, including structured products, reference is being made at the works done at the end of FinDatEx (see information templates under www.findatex.eu) that are of a particular relevance in this regard and should be considered as source of input also in further regulatory/supervisory projects about to be implemented, such as the European Single Access Point (ESAP).
- **Supervisory convergence and industry input consideration:** ESMA and EIOPA have important roles in fostering consistent interpretation and enforcement of proportionality principles across Member States, which is essential to avoid regulatory arbitrage and ensure a level playing field. A senseful and undogmatic division of responsibilities between the European and national level as well as a market-adequate consideration of works done at industry level at various ends, such as standardising information (e.g. via FinDatEx, see previous point) or the implementation of regulatory requirements where guidance is missing (such as defining the ESG contribution of structured products) can add a tremendous contribution to the marketplace.
- **European level consistency when considering national market specifics:** A more calibrated and procedure-wise better clarified cooperation between ESMA and the EU Commission, which extends in particular to all sorts of preparatory work for upcoming legal acts is of a particular importance as the occasional absence of such clarification, with particular regard to national market specifics, can have a highly detrimental effect on the quality of EU capital market (legislation), as has been forcefully demonstrated by the many flaws underpinning the assumptions made in the wake of the Retail Investment Strategy project, resulting in its current stalling.

Summarizing, a more proportional regulatory framework, grounded in the EU Treaty principle of proportionality and responsive to the structure and diversity of the structured products industry in particular but also the asset management sector in general, will better serve both investors and providers. **This must be achieved through a combination of sufficiently flexible national rules that cater for specifics but do not create new “gold-plating” as barrier, as well as a stronger EU-level coherence in particular when it comes to preparing new legislation.**

The overall aim should be to uphold investor protection and market integrity, while enabling innovation, product choice, and cross-border investment - key pillars of a robust Savings and Investment Union.

Are there areas that would benefit from simplification in the interplay between different EU regulatory frameworks (e.g. between asset management framework and MiFID)? Please choose from 1 (strongly agree) to 5 (strongly disagree) or ‘no opinion’. If you agree, please explain and provide suggestions for simplification. Also if possible present estimates of the resulting cost savings.

1	2	3	4	5	No opinion
	X				

Yes, EUSIPA is of the conviction that such areas do indeed exist.

By way of an illustrative example we wish to highlight the governance of products enhancing ESG purposes. For such products, qualitative and quantitative aspects (relating to the measuring the ESG contribution) are set out for defining sustainability preferences as part of the target market specifications the in MIFID II and the IDD frameworks, while the relevant SFDR rules, due to the limitation of the SFDR scope, cannot be applied to these products. Such major inconsistencies lead in practice to a high level of legal uncertainty hampering both, an adequate implementation of the target market criterion (under MIFID and IDD) as well as (an insufficient) support of interested investors in their product selection at the ESG end.

Would the [key information documents for packaged retail and insurance-based investment products \(PRIIPs KID\)](#) benefit from being streamlined and simplified? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestions for simplification. Also indicate what should be prioritised and if possible present estimates of the resulting cost savings.

1	2	3	4	5	No opinion
				X	

EUSIPA does not agree with the statement that there is a need for the PRIIPs KID to be streamlined or simplified. From our perspective, the rules on level 1 and 2 represent a workable compromise between technical correctness and depth of information, on the one end as well as an acceptable level of understandability for the average retail customer on the other.

It should further be borne in mind that any revision of this highly refined and in above sense calibrated and balanced Key Information Document, would always trigger massive cost and management implications given its standardised use for millions of products. As the current implementation rules were finalised only after intense technical discussions between all market stakeholders, we do not see how any “streamlining” could add value to the marketplace nor how doing such would lead to any cost savings.

Note though that an unrelated item of discussion for lawmakers may be the extension of the scope of the existing KID to other assets (under a strict safeguarding of the current segmentation and methodology), which however is not asked for at this question.

Do you have other recommendations on possible streamlining and simplification of EU law, national law or supervisory practices and going beyond cross-border provision?

From the perspective of EUSIPA it would be worth considering the **introduction of a framework or a set of principles dealing with gold-plating of EU rules by national member states**, in particular if the relevant legal act is a regulation meant to minimize national-law originating deviations.

The main reasons for this demand are the following:

- **To prevent market fragmentation and inconsistency:** All too often, national gold-plating, often engaged on without any discernible reason when comparing a given national market to others (without such rules), leads to a divergent regulatory situation in practice that has a huge

potential to undermine the EU single market, to hinder cross-border activity (mostly by discouraging competitors from entering a specific -overregulated- market), and more generally to create unequal regulatory burdens for firms operating in different EU member states.

- **To foster the credibility of EU legislation and improve retail protection and participation:** Allowing unchecked national additions risks discrediting the EU's efforts to build a coherent and integrated financial services market for the ultimate benefit of European retail investors. A common framework enhances transparency, justifies legitimate national measures, and strengthens trust in the EU regulatory process which as must be said, has recently suffered a heavy loss with particular projects such as the EU Retail Investment Strategy.
- **To enhance innovation and competitiveness:** Excessive or uncoordinated national requirements can stifle innovation, especially but not only for financial service provider seeking to engage upon new business lines/opportunities or in new EU markets, by creating business barriers to any effort of scaling activities across the EU (e.g. in the area of product governance where prospectuses are being passported via one EU legislation and legal certainty for their use on other markets is key) and increasing compliance costs without adequate benefits.

In light of the current need to build an effective and efficient EU capital market rather than accepting that industry and customers have to deal with a number of single national capital markets, EUSIPA would encourage the EU Commission to verify whether for national gold-plating legislation there can be a **set of EU framework principles against which such legislation is being tested in terms necessity and adequacy**.

The before should not only but with a certain focus apply to EU law in the form of directly applicable EU regulations. It could well extend also to national rules not referring directly to the EU legal act at stake but being used as a back door to erect national legal barriers (e.g. prospectus law being amended by national marketing laws which foresee an “approval to market a product”, rendering the EU wide-passporting of the prospectus de facto often obsolete.)



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EUSIPA is listed in the transparency register of the EU under number 37488345650-13.
For further information, please visit our website www.eusipa.org.