European Structured Investment Products Association (EUSIPA)

Submission of a consultation response

Topic	Savings and Investment Union
Context	Call for evidence EU Commission launched 03 February
Deadline for filing	07 March 2025

EUSIPA takes pleasure in answering the call for evidence of the EU Commission aiming to gather facts and reflections on the project of a future "Savings and Investment Union" contributing to the envisaged related Communication to be issued later in 2025.

With a view to enhancing the competitiveness of the EU's regulatory landscape in the area of retail financial services and taking the SIU project into particular consideration, EUSIPA wishes to mark up the following aspects that may inform the further thinking and planning of the EU Commission.

About EUSIPA

EUSIPA, founded in 2009, represents the interests of the European structured products business. The focal point of our activities are structured investment products and leverage instruments, such as warrants. EUSIPA aims to create an attractive and fair regulatory framework for these financial products. The umbrella association acts as a contact for politicians, the EU Commission and the European Securities and Markets Authority (ESMA) in all questions concerning structured products. Greater protection for investors as well as a comprehensible and transparent product landscape are important concerns for the association.

Together with its current 10 member associations from Austria, Belgium, France, Germany, Italy, Luxembourg, The Netherlands, Sweden, Switzerland and the United Kingdom, EUSIPA is actively engaged in promoting Europe-wide standards throughout the sector. These include clear product classification, standardised technical terms, and a broad commitment among the member associations to abide by a code of conduct for the sector.

More information can be found under www.eusipa.org.

EXECUTIVE SUMMARY

Comment 1 - More flexibility at the retail point-of-sale | principles instead of details

The value of many interactions between financial services and investors would substantially profit from establishing, going forward, framework rules with principles allowing for a certain flexibility rather than continuing to pass overly detailed and highly prescriptive micro-regulation that increasingly deters retail investors from engaging on the capital markets. National gold-plating in the EU currently often prevents efficient distribution of investment products to retail customers. A good example of the past where, except for the taxonomy itself, framework rules would have been advisable, is the distribution of ESG financial products to retail investors.

An area where, going forward, one-sided (meaning risk-biased), overly detailed and prescriptive rules are to be avoided (e.g. by "smart" framework rules), is the judgement of product features on their Value-for-Money especially insofar as any such judgement refers to an assumed complexity/simplicity of product features.

Comment 2 - Taxation relief is a as core investment driver. Tax-privileged investment schemes for retail customers must be held open to all asset classes for avoiding market distortions.

As part of EU lawmaking, the massive impact of national taxation (relief) on retail investment behaviour must be better evaluated and considered in relevant legal acts. The, often detrimental, side impacts of national tax relief on cross-border investment flows must not result in an endeavour to force such investment flow, as wishful as it may be in theory from the EU perspective, through excessive regulatory advances in other areas, such as cost-only focussed Value-for-Money rules, excessive disclosure of information, wide-ranging advisory obligations and others, none of which bring noteworthy benefits to investors in practice or lead to cross-border investments.

Comment 3 - Structured investment products have key features that make them highly suited for tax- or otherwise privileged long-term investment and savings schemes.

Key arguments for considering structured products as eligible assets for tax- or otherwise privileged long-term investment (and/or pension savings) schemes are that:

- Structured products are mitigating risk as their yield expectation typically takes the space between a full exposure on the one hand, as direct investments in stocks or delta 1 instruments (ETFs) and fully capital-protected instruments such as cash holdings, on the other. This mitigation or "in between" function is why they exist.
- Structured products always deliver a clearly predictable yield under a certain (predefined) market scenario. They can be easily set up and tailored to all market expectations and risk levels.
- Many structured products allow to forecast a certain minimum return level as they have a fixed monthly/annual payout (coupon) and a full or partial capital protection.
- Structured products are responsive to taxation law requirements.

Finally, Structured Products are also important in terms of cost considerations. In particular the absence of %-wise charged ongoing management fees make Structured Products especially attractive in the cost management of an investment portfolio.

Comment 1

More flexibility at the retail point-of-sale | harmonised principles instead of details

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An area where, going forward, one-sided (meaning risk-biased), overly detailed and prescriptive rules are to be avoided (e.g. by "smart" framework rules), is the judgement of product features on their Value-for-Money especially insofar as any such judgement refers to an assumed complexity/simplicity of product features.

Details:

According to the experience of EUSIPA and our members, many retail investors shy away from engaging on capital markets already due to the confrontation with compulsory (product) information.

There are two main reasons for this. One is that, pursuing the goal of ultimate technical correctness, **key product information material has become unreadable** for most retail customers. Good and well-known examples are the legal language-heavy securities prospectus and the mathematically overburdened PRIIPs Key Information Document (KID).

The second reason is that, leaving even aside the challenge of its understandability, most information **material is heavily biased towards alerting readers of risks** potentially related to their investment without setting the risk into a correlation to the potential yield.

The impacts of the two mentioned aspects (excessive technical depth of information and excessive risk focus) is the more powerful in practice as both aspects are brought about by way of **highly detailed regulation**, emanating firstly from the EU level that needs to be complied with and to which are then added national rules (so called "gold-plating") which further complicate the framework.

A good **example**, applicable across the EU, of where overly detailed rules are massively deterring investment is the area of ESG financial products. The inconsistency between the SFDR and MIFID rulesets in terms of quantitative aspects which the latter required but the former did not relate to, results up until today in a highly confusing advisory conversation on ESG products.

Many of these products could in our eyes have been made available much easier to the wider investor public had the Commission, Parliament and members states rather left it with the EU taxonomy and abstained from establishing complex or unclear concepts under the SFDR.

For the distribution of ESG products it may have been more advisable to come up with an EU-wide harmonised and highly standardised categorisation using simple-to-understand differentiators rather than the sophisticated incoherent rules spread across different legal texts we have today.

For the above reasons, EUSIPA strongly encourages the EU Commission to resort in the future as a general principle to rules that aim at setting a framework while leaving an as large part as possible of the implementation to market participants.

Doing so would not only free up resources on all sides but allow the public institutions to focus on markets / market segments where this implementation challenge is not successfully handled and where there would of course be ample of room to intervene (in such a situation) on the regulatory level.

Going forward, an area where we see room for applying the above idea (of resorting to frameworks/principle-based regulation) more concretely, would be the challenge of **assessing product features on their (assumed) simplicity / complexity** as a field where detailed regulation was in the past and is most likely also in the future **misguided**.

We mention this for two reasons. On the one hand we understand the comments currently made in the public debate on the SIU suggesting that "simple products" for retail investors are somehow desirable. **On the other hand, we again warn against equating complexity with riskiness.** Very simple products can be very risky while features adding to complexity often protect investors (such as protection against capital loss, issuer default or currency devaluation) making products less risky. We warn against repeating mistakes of the past (MIFID itself shows that complexity -and reversely simplicity- defies for many reasons a legal definition). While we will abstain from repeating all the arguments made on this topic here again, we wish to simply encourage the EU Commission to take a new road here in the future.

More precisely and with regard to distribution rules at the retail point of sale, EUSIPA would suggest leaving it in **principle to the industry:**

- **to demonstrate why a certain product (or product feature) is being considered useful from a risk/yield (or Value-For-Money) perspective, and,**
- **why a certain product feature is being seen (from a "technical understandability" perspective) as adequate**

To be marketed/offered to a specific (group of) retail investor(s).

A set of EU-originating framework principles, that is **not to be added on by national gold-plating** rules, could capture the specific criteria for, the scope/depth and also timeline of assessing/testing and reviewing the product (or product feature) in this regard.

Any such framework rules may then also replace those currently relating to the legislative effort of defining "Value for Money", in particular in the format of peer-group comparisons and

national/European benchmarks, as were brought forward in the Retail Investment Strategy (RIS) proposals which were igniting a fierce (and ongoing) debate on whether they are actually in practice applicable at all.

Comment 2

Taxation relief is a core investment driver. Tax-privileged investment schemes for retail customers must be held open to all asset classes for avoiding market distortions.

As part of EU lawmaking, the massive impact of national taxation (relief) on retail investment behaviour must be better evaluated and considered in relevant legal acts.

The, often detrimental, side impacts of national tax relief on cross-border investment flows must not result in an endeavour to force such investment flow, as wishful as it may be in theory from the EU perspective, through excessive regulatory advances in other areas, such as cost-only focussed Value-for-Money rules, excessive disclosure of information, wide-ranging advisory obligations and others, none of which bring noteworthy benefits to investors in practice or lead to cross-border investments.

Details:

Taxation relief has been for centuries, if not longer the principal instrument to channel cash holdings of the retail population at large into politically supported investment purposes of whatever kind. National taxation rules continue to serve that purpose today and will foreseeably do so also in the future.

With a particular regard to the massive investment needs currently arising in the EU from (i) defense-related spending, (ii) the maintenance of public (non-digital) infrastructure, (iii) the upgrade of digital infrastructure and (iv) the pension funding gap closure, the budgetary planning of member states over the coming years is bound to activate the cash holdings existent with private households, which entails the entire EU retail investor population.

Given the above financing needs, the most feasible approach lies almost necessarily[1] with **encouraging retail investment in public (capital) markets**. Another angle might be related to the investment in government bonds as main refinancing instrument for public purposes,

[1] The cash assets available at the level of private household grow in the EU at around 1-1.2 trillion Euros a year (measured by the Gross Household Adjusted Disposable Income (GHI) divided by the annual Average Household Savings Rate). Tapping these reserves cannot be done by increasing the taxation of the income flowing towards private households. Due to the exorbitantly high level of salary costs, especially in countries as Germany and France but also others as Belgium, where these costs range between 52 and 55%, this seems not a politically feasible approach.

outside taxation. New government debt though is not likely to be the only (or even main) solution as it increases the debt level of EU member states that in most EU countries already is very high[2].

It is for that reason that, by following the above logic it seems inevitable for most EU member states to resort to tax incentives for capital market investments of retail investors.

- On tax privileged investment schemes

From the perspective of market participants which issue financial products such as structured investment products, above situation leads to important macroeconomic considerations that should imperatively inform the future EU rule-making.

The most important ones are:

- **The need to properly understand and consider the limits to a cross-border offering to (and investment by) retail customers, given that such limits mainly are due to tax reliefs being linked to the specific jurisdiction/market where taxes are being declared by the investor,**

- **To strictly avoid new regulation meant to remedy alleged shortcomings in cross-border investments, which actually is caused by taxation relief rules, in a sense that (instead of addressing the tax challenge) excessive rules are being passed for the distribution of financial products adding to information, disclosure and advisory duties,**

- **The need to keep/incentivise, also under new EU law, always as large as possible the scope of eligible instruments under any national tax-privileged investment schemes so to avoid market distortions through investor bias and by doing so, ultimately maintaining a level-playing field**

The most obvious implication of a retail investment landscape shaped by taxation (reliefs) is the need to keeping the scope of financial instruments eligible for any tax benefits as open as possible. **With regard to structured products** this means that **this asset class should fully form part of eligible assets under national investment and saving schemes**.

Granting such a wide scope has been practised with much success already in the well-known Swedish investment scheme but also in equivalent schemes of other countries such as Poland. Both even go beyond structured investment products, allowing also structured leverage products to be invested in.

As far as, outside any legal wrapper or product asset class, the choice of underlyings is concerned, EUSIPA has well taken note of the already existing limitations, e.g. of tax privileged investment schemes in France, in which only underlying funds are admitted that have at least an exposure of 75% EU/EEA listed companies regarding their portfolio or tracked index composition.

[2] A notable exception is Germany where there are however clear constitutional limits to debt increases.

While we have some reservations on strict quantitative reservations in principle, EUSIPA would think that **they are still a wiser regulatory tool compared to limiting eligible assets/product wrapper formats.**

Comment 3

Structured investment products have key features that make them highly suited for tax- or otherwise privileged long-term investment and savings schemes.

Key arguments for considering structured products as eligible assets for tax- or otherwise privileged long-term investment (and/or pension savings) schemes are that:

- **Structured products are mitigating risk as their yield expectation typically takes the space between a full exposure on the one hand, as direct investments in stocks or delta 1 instruments (ETFs) and fully capital-protected instruments such as cash holdings, on the other. This mitigation or "in between" function is why they exist.**
- **Structured products always deliver a clearly predictable yield under a certain (predefined) market scenario. They can be easily set up and tailored to all market expectations and risk levels.**
- **Many structured products allow to forecast a certain minimum return level as they have a fixed monthly/annual payout (coupon) and a full or partial capital protection.**
- **Structured products are responsive to taxation law requirements.**
- **Finally, Structured Products are also important in terms of cost considerations. In particular the absence of %-wise charged ongoing management fees make Structured Products especially attractive in the cost management of an investment portfolio**.

Details:

- Risk Mitigation, Capital Protection and Performance

Most structured investment products, such as capital-protected notes, offer risk-mitigation features that can be highly beneficial to long-term investors.

The incorporation of such features into tailored investment offerings was actually the main reason for structured products coming into existence for the broader retail market in the 1990ies.

Investors were looking for an investment format that offered either:

- A certain participation in the capital markets evolution without exposing them to the full downside, as funds or a direct investment would have done, or/or in addition to this,
- a steady yield in sidewards moving markets where a direct investment in a share or index would not have yielded anything or substantially less.

The above aspects are always balanced in the thousands of variations of structured products coupling, for example, a specific cap level (read maximum payback) with a floor protection (read maximal loss) and a guaranteed payout, mostly fixed on an annual basis in advance within a certain timespan.

EUSIPA is of the clear view that elements as **loss limitations (including a full capital protection) and fixed annual coupon (or interest) payments are of a high added value, in particular for long-term savings and investment purposes**.

- Diversification benefits

Structured products can provide exposure to multiple asset classes, strategies, or risk factors in a single instrument. This diversification can enhance the risk-return profile of a pension or long-term savings portfolio compared to holding only selected stocks, bonds or ETFs.

With regards to ETFs, which are as Structured Products also passive investment instruments (in contrast to actively managed funds, for example) it should be noted that ETFs also offer a high level of diversification, e.g. regarding the underlying index whose performance they track. **ETFs lack however the fixed monthly/annual payout** that most structured investment products have and which in itself (read: independent of the chosen underlying) is often an important risk diversification tool for most portfolios.

- Yield enhancement in low-interest environments

Some structured products, like yield-enhancing certificates, generate returns even in sideways or slightly declining markets. This can be particularly useful for pension schemes, where stable returns are preferable over long periods and in particular when assets are being chosen that are less volatile.

- Investment scheme attractiveness due to products matching tax rules

Structured products support, due to the many options available when calibrating their payout profile, the ambition to provide in a given market exactly those product formats that qualify for the relevant tax law requirements set by legislator and administration.

Their inclusion thus contributes to avoiding legal uncertainties both at the end of the tax administration as well as on the investor side.

To illustrate, above mentioned structural flexibility relates (outside the choice of the underlying) to construing the product yield solely as (or as part of):

- **A regular annual coupon payment, which is often sensitive to withholding tax on dividends (and its relief),**

- **A redemption of the underlyings value increase, which is often sensitive to capital gains tax (and its relief) and, or,**

- **The use of a specific legal wrapper structure, e.g. those wrappers prescribed under national law for insurance products, the investment in which often is sensitive to personal income tax (and its relief).**

By the inclusion of structured products into the range of eligible assets in an investment scheme, the tax administration can therefore set additional and cost-efficient incentives (see below) for investors to engage.

- Easy market access, cater to specific investment needs and allow financial innovation

Structured products provide access to investment themes, indices, or asset classes that may not be easily investable through traditional ETFs or direct equity investments.
They can easily meet very specific investment needs, be tailored to all sorts of investment objectives and risk preferences of investors.

This can enhance investment opportunities for long-term savers.

- Costs: Structured Products - a cost-efficient alternative to actively managed funds

Structured products can serve as cost-effective investment instruments compared to actively managed funds, making them a compelling addition to tax-privileged long-term savings and pension schemes.

- Lower or no ongoing costs

Unlike actively managed mutual funds, which charge annual management fees (typically 1-2%), structured products generally do not have recurring fees. Instead, costs are often embedded in the initial structuring of the product. This eliminates the continuous drag of high expense ratios, making structured products a more predictable and transparent investment option for long-term savers.

- Similar characteristics as delta-1 funds without active fees

Many structured products, such as index-linked certificates or capital-protected notes with a capped performance, provide passive exposure to underlying markets without the need for active management.

Investors can thus gain similar benefits as ETFs or index funds but without ongoing management costs, making structured products a more cost-efficient alternative to traditional active funds.

- No performance fees or hidden costs

Actively managed funds often charge performance fees or have hidden costs related to frequent trading (transaction fees). Structured products are typically designed with a clear cost structure upfront, ensuring investors know their exact expenses and eliminating the risk of excessive management costs eroding returns.

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