EFSA

European Forum of Securities Associations

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Simplification agenda: EFSA priorities on the EU legislative process, RIS and transaction reporting framework

The European Forum of Securities Associations (EFSA) welcomes the European Commission's commitment to reducing unnecessary regulatory burdens for issuers, investors and financial institutions, with a view to strengthening the Union's competitiveness. In EFSA's view, a legal framework that is simple, stable and proportionate is key to enabling EU financial markets to better support the financing of the European economy, including strategic investments in technology, energy and defence.

In today's context of heightened geopolitical rivalry, where the Union's economic power is severely tested, improving access to EU capital markets should be considered a strategic priority for Europe's future.

EFSA's support for regulatory simplification should not be construed as a call for deregulation. Rather, it stems from a firm belief that the cumulative complexity of the EU's regulatory framework has, over time, created disproportionate administrative burdens, higher costs, and increased legal uncertainty for market participants. These effects have, in many instances, acted as barriers to entry, deterring issuers from listing in the EU, discouraging retail participation in financial markets, and weakening the global competitiveness of EU-based investment firms.

Against this backdrop, EFSA fully endorses the conclusions set out in the "Less is More" report[1] and strongly supports efforts to streamline and clarify the Union's regulatory landscape to foster more dynamic, accessible, and resilient EU capital markets.

We believe that such an objective requires a holistic and forward-looking approach, one that considers not only existing rules, for which we support the objectives of the various Omnibus initiatives, but also current legislative negotiations and future regulatory initiatives.

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[1] Less is More report, 2025.

In this note, we first put forward proposals to improve the existing EU legislative process to achieve a simpler, more proportionate and stable regulatory framework for future legislation and in the second part we set out simplification recommendations for the Retail Investment Strategy (RIS) and call for a simplification of the transaction reporting framework.

I.STREAMLINING THE EU LEGISLATIVE PROCESS

- *Improving the independence and relevance of impact assessments*

Currently, the EU staff in charge of drafting legislative proposals is also responsible for drafting impact assessments. To avoid any potential conflict of interest and ensure the full independence of these critical processes we consider they should be allocated to separate teams within the European Commission's services.

We consider that effects on competition should be a key element of the impact assessment of new or amended EU-rules, and we support the idea of a "Competitiveness test". Considering the global nature of financial markets, it is important that the European Commission forthcoming work on the simplification agenda takes due regard to the developments in both the US and UK.

Moreover, it should be ensured that stakeholders are given sufficient time to respond to consultation papers (incl. to provide relevant data) and that the questions asked are clear and unambiguous.

There should be consumer testing, of all disclosure requirements, including of all asset classes in scopes. This is important in order to ensure that disclosure requirements are relevant taking the characteristics of different financial instruments into account. In order to avoid overlaps and inconsistencies it is also important to take a holistic approach of disclosure requirements in different EU-regulations.

- *Reviewing texts only where necessary*

The periodic review clause embedded in every piece of EU legislation very often does not allow sufficient time for the new rules to be fully implemented. Without such a period of effective implementation, assessment of their impacts and amendments of the rules are premature and incomplete thereby inherently increasing the likelihood of adding complexity to an already overly detailed regulatory framework.

In order to avoid unnecessary constraints on EU actors, any review of existing legislation therefore should be based on proven shortcomings in order to amend the legislation only when needed. Any review should therefore be strictly evidence-based, rely on objective data and also be launched when the potential benefits clearly outweigh the potential effect of the proposed measures on the competitiveness of EU market players.

- *A better articulation between level 1 & level 2 texts*

Equally important, it is necessary to ensure a better synchronization between level 1 and level 2 texts, even more since the timing of the review of the level 1 text leaves insufficient time for the full, industry level implementation of the text and to measure its impact. When level 2 texts are necessary, the application date of level 1 legislation should be far enough in the future to ensure that level 2 provisions will be available, including a safety margin for their elaboration.

- *Limiting level 2 texts to technical calibration*

It is highly important that fundamental decisions, which require political validation on level 1 are not shifted to the administrative Level 2 which lacks the democratic legitimacy to take substantial legislative decisions. Therefore, Level 2 should be strictly dedicated to technical calibrations. Similarly, level 1 should leave to level 2 the calibration details, as this level can be amended more quickly when adaptations to changing context is needed.

- *Broadening the scope of the no-action letter*

EFSA proposes that the scope of the no action letter that can be issued by the ESAs, and ESMA in particular, be broadened drawing inspiration from the powers vested in the SEC in the US.

This is a critical tool given the length and rigidity of the EU legislative process. No-action letters are essential in situations where existing rules prove inadequate or misaligned with rapidly evolving market conditions or regulatory developments as well as when it is not possible to apply the level 1 rules because required level 2 or 3 is not in place yet.

II. SIMPLIFYING THE CLIENT'S JOURNEY

The Retail Investment Strategy

- *The rules on inducements should exempt clients' payments for investment services e.g. underwriting and placing fees*

The Council has proposed that a definition of inducements is introduced into Article 4 MiFID II. In this regard, EFSA would like to remind the co-legislators that there still is a need to clarify that a corporate client's payment for an investment service relating to an issuance (e.g. underwriting or placing) should not be considered as an inducement in relation to an end client of an investment service relating to that same issuance (e.g. advice or execution services). Without such a clarification, there is a risk that the inducement rules (i.e. ban on accepting and retaining, quality enhancement/inducement test, disclosures etc.) could in practice prevent firms from charging issuer clients for the investment services provided and/or from offering end-clients the option to subscribe for financial instruments where the firm has assisted with the issuance. Such an interpretation would have very problematic effects on the primary market in the EU with negative effects on the real economy as a result[2]. Thus, in EFSA's view it must be clarified (either through an exemption or a recital) that payments received by the investment firm for providing services to issuer clients should be addressed through the conflict-of-interest rules in MiFID II, rather than the inducement rules.

- *New inducement test*

EFSA acknowledges the need for further clarification of the existing "quality enhancement- test" in MiFID II. To our understanding, several of the requirements in the Council's so-called inducement test are a codification of existing level 2 and 3 which could contribute to increasing supervisory convergence. However, more work needs to be done to ensure that this new test is not drafted in a manner which would add legal uncertainty, and that the requirements work for the different types of financial instruments and investment services that are in scope of the inducement rules. From an operational standpoint, it is crucial to retain the Council's proposal to include "where applicable" in the text and to ensure that the proportionality regime is workable in practice (e.g. no client-by-client assessment). Otherwise, there is a risk that this new inducement test will effectively result in a total ban "through the back door", which could have adverse effects on the well-functioning of the distribution of investment products in EU.

- *Value for Money (VfM)*

As a general principle, EFSA opposes all forms of obligatory benchmarks in VfM which we consider to be a form of price regulation. We find the current drafting of the value for money proposals to be complex and are unsure how these requirements are going to work from an operational

[2] See article 41 delegated regulation to MiFID II which provides that a placing fee/underwriting fee is an inducement in relation to end-clients that receive investment services and ESMA technical advice: https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf

perspective, taking different types of PRIIP-products into account (e.g., investment funds, bonds, structured products and derivatives).

EFSA would be in favour of an internal model based on the existing product governance regime, combined with robust internal governance requirements. A supervisory benchmark could in our view have the same effects as price regulation and must therefore be carefully considered by the co-legislators. We also take the view that the reporting requirements regarding costs and performance are disproportionate, in particular in the context of the Commission's goal of reducing reporting burden by 25 %[3]. We generally consider that the non-paper published by the PCY for the CWP on 11 September includes several proposals that are a step in the right direction of simplifying the proposal, e.g. as regards limiting reporting requirements and clarifying that the VfM-assessment should be an internal process.

- *Best interest test*

Considering that the Commission's intention with the best interest test was to replace the existing quality enhancement-test, which has been retained in both the Parliament's and Council's texts, the rules on best interest test should be deleted. In our view the best interest test will merely add yet another layer of rules to an already complex framework, while providing minimal additional protection for clients. We therefore strongly welcome that deleting the test has now been proposed by the PCY.

If the best interest test is kept, EFSA believes that more calibration is needed to make the rules workable from an operational perspective. Firstly, we consider that it is important to retain the Parliament's proposal that allows consideration of the business model of the investment firm. We also agree that other factors than costs must be taken into consideration by investment firms and note that the wording of this test needs to be carefully drafted considering its interaction with other rules e.g. VfM and the suitability regime. Finally, we support the Parliament's proposal to delete the criteria "additional features"[4] and find the Council's proposal to introduce a similar requirement in the suitability regime is misguided as it limits client's choice.

[3] https://commission.europa.eu/system/files/2023-10/Factsheet_CWP_Burdens_10.pdf
[4] According to which investment firms could not consider a product to be suitable where it contains features which are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.

- *Appropriateness and suitability*

EFSA opposes the new proposals to introduce criteria on the ability to bear losses and on risk tolerance into the appropriateness assessment. Adding such criteria would blur the distinction between suitability and appropriateness and hinder the ability to adequately address the diverse needs of clients. We therefore strongly support the Parliament's proposals for deletion and welcome that this is also the approach of the PCY.

Furthermore, EFSA believes that the scope of the "suitability light – regime" should apply regardless of whether the investment firm claims to be independent or not and include portfolio management. This amendment is important for competition reasons as the proposed regime provides an undue advantage to independent advice which appears as a bias in favour of a specific distribution model. Moreover, such amendment would ensure that the protection of the retail client is the same regardless of the type of advice/investment service provided, i.e. portfolio management. EFSA notes that the PCY non-paper proposes to extend the regime to all investment advisors and would like to emphasize the need to do the same for portfolio management.

From an operational perspective, we also find the Council's proposal that a financial instrument should not be considered as suitable if it has additional features which lead to extra costs, to be very challenging and we strongly welcome the proposal by PCY to no longer include this requirement in the negotiating mandate. Verifying that the level of product charges is reasonable in relation to their characteristics, performance and qualitative features duplicates the VFM's requirements. Moreover, recommending a more expensive product with features that go beyond a client's profile can be perfectly legitimate, for example when that product offers better performance prospects, a better guarantee, particular ESG characteristics or opportunities to diversify the client's asset. A one-size fits all approach to the suitability rules must be avoided.

- *Cost & Charges*

EFSA is genuinely concerned with the complexity of the disclosure regime and finds it unfortunate that this part of the Commission's proposal does not seem to have been subject to in-depth discussions in neither the Parliament nor the Council. We would like to emphasize that one of the key objectives of the Retail Investment Strategy at the outset was to address the problems with information overload faced by retail clients as well as incoherence between different EU-regulations as regards client disclosure.

Evidence shows that retail clients are interested in price and total costs, not detailed breakdowns, or methods of calculation.[5] Against this backdrop, the new requirement regarding an annual report on both portfolio and instrument level should be reassessed in trilogues with the aim of simplifying and reducing the information and reporting requirements.

- *Client categorization (opt-up)*

The concept of retail client is broad and beyond individual consumers, it also includes sophisticated retail investors and SME. In order for investment firms to be able to serve the latter sub-categories of retail clients, we believe a review of the opt-up criteria is necessary. In some markets, the "transaction" criterion in particular is difficult to apply e.g., for corporate bonds and private equity which do not trade very often. The proposal by the PCY does not solve this issue.

- *PRIIPs scope and KID*

EFSA supports a review of the PRIIPs scope to ensure that it is only applicable to packaged products. The application of PRIIPs to simple bonds unduly restricts retail client's access to these products which is detrimental to clients' need for diversification and to the capital market as a whole. Moreover, EFSA does not support the new requirements to include in the KID information on "product at a glance" and sustainability, as this information would make it very challenging to keep with the three-page limit.

III. REDUCING REPORTING BURDENS

A holistic review of the transaction reporting framework

EFSA welcomes ESMA's recent decision not to propose any changes to the existing reporting frameworks on transaction reports (RTS 22), reference data (RTS 23) and order data (RTS 24) as part of the ongoing MiFIR review[6].

Frequent and wide-ranging changes to transaction reporting requirements contribute significantly to regulatory instability. The continual introduction of new fields and evolving technical standards divert attention and resources away from longer-term improvements, such as enhancing the quality, consistency, and reliability of existing data.

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[5] https://op.europa.eu/en/publication-detail/-/publication/5d189b3c-120a-11ed-8fa0-01aa75ed71a1/language-en
[6] Streamlining financial transaction reporting: ESMA calls for input, link

We believe that valuable regulatory outcome would be achieved by focusing collective efforts both within the industry and among supervisors on ensuring that the data already collected are accurate, usable, and fit for purpose.

With these objectives in mind, we call for a thorough review of the transaction reporting framework under MiFIR, EMIR and SFTR. This review should be inclusive of market realities, aligned with the Level 1 legislative mandates and the EU’s broader objectives for simplification and competitiveness.

If any new data elements are deemed necessary, they must be evaluated against the clear regulatory purpose they serve, their implementation feasibility, and their potential cost to firms. EFSA also reiterates the importance of avoiding duplicative reporting obligations across EMIR, MiFIR transaction reporting, and MiFIR post-trade transparency.

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