Position Paper

Call for Evidence: Initiative for a European Savings and Investment Union

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The German Structured Securities Association (Bundesverband für strukturierte Wertpapiere, BSW) welcomes the possibility to respond to the EU Commission's Call for Evidence on the Savings and Investment Union. BSW agrees with several findings of the reports presented by Enrico Letta and Mario Draghi in 2024. Like the two experts, BSW believes that there is an urgent need to improve the existing securities services regulatory framework to attract more retail investors to invest their savings in the EU capital market. Currently, a large proportion of EU citizens' savings are either not invested in securities at all or invested in securities of non-EU countries. Therefore, it is important to ensure that EU companies can be provided with the capital they urgently need for their transformation, and, simultaneously, that investors can generate long-term returns on their savings enabling them to build up wealth for their retirement. Due to demographic change, statutory pension insurance systems are likely to reach their limits in almost all EU Member States.

Thorough and unbiased evaluation and impact assessment necessary

We have noted with great interest the guidelines provided by Commission President Ursula von der Leyen in her mission letter to the new Commissioner Maria Luís Albuquerque. We would like to point out that we support the requested requirement that regulation should be less bureaucratic and that new proposals should be evidence-based. The fact that this is emphasized in the mission letter confirms our perception that the approach was (sometimes) different in the past. An illustration of severe shortcomings in this regard is, for example, the Retail Investment Strategy, which was put forward for discussion in the last legislature and which has not yet been concluded. Preparatory studies commissioned by the EU Commission at the time, contradicted research conducted by the industry itself. Methodological questions remained unanswered or only covered part of the addressed regulatory issues. In particular, the draft rules for "Value for Money" requirements do not appear to have been sufficiently evaluated. This is evidenced, inter alia, by the fact that the proposed concept of EU benchmarks was so rudimentary that the addressees of the regulation could hardly draw any conclusions from the draft level 1 text as to what requirements they would have to comply with.

Another example of missing careful evaluation and triggering massive consequences is the payment for order flow (PFOF) ban. Even the German supervisory authority BaFin concluded in its study that for smaller order volumes, in particular, the execution of retail originating orders on PFOF trading venues was predominantly beneficial and transaction costs were better (read lower) than on the reference markets. Nevertheless, the PFOF ban was introduced with a far-reaching impact on the retail market landscape, which we believe to be highly undesirable.

No real progress since MiFID I

As for the broader picture, the MiFID ruleset came into force more than 20 years ago in 2004, with the aim of making the European capital market more attractive for retail investors. Against this background, it would be a good opportunity to start a thorough, scientifically safeguarded and research-based analysis of how the number of retail investors and the assets they invest in has developed, and how this could be improved by any new measure. In Germany, for example, the number of securities accounts has fluctuated constantly between 30 and 35 million over the last 20 years. Even during the ECB's low-interest phase, which has lasted longer than ten years and has been accompanied by rising stock market prices and a lack of yield alternatives, the total number of securities accounts has not risen significantly. However, there have been some shifts at least. The number of securities accounts at online banks and neo-brokers though has increased sharply in recent years. Based on the survey of our online brokerage members, we estimate that there are currently around 12 million securities accounts in Germany. Many of these online and neo-brokers have been able to offer investors very favorable conditions on the basis of PFOF-generated income. Investors who were able to trade for one euro or even free of charge without having to accept a lower quality of execution of their orders made increased use of these options, not least because they were able to increase their returns in this way. Given this positive experience for retail investors, the restrictive PFOF ban introduced in March 2024 is entirely inconsistent with the EU Commission's objective of providing easy and affordable access to capital markets. Therefore, the PFOF ban should be lifted urgently and swiftly.

BSW proposals

Besides the **lift of the PFOF ban**, BSW considers the following aspects as crucial to **develop an attractive EU capital market** for retail investors in the long term:

- **Market-driven solutions** must take precedence over highly regulated instruments (e.g. PEPP has failed).
- **Plans for a simple product should be abandoned**. Simple does not mean free of risk and neither does it say anything about the potential yield of an investment offering.
- Retail investors should have **barrier-free access to capital markets**: Investment advice and execution-only should be on the same level as well as commission- and fee-based advice. Low transaction costs are crucial for private investors. There is still no evidence that the existing inducement regime is not effective.
- There should be a **level playing field of financial instruments** to provide retail investors a wide range allowing investments according to the investors' individual needs and phases of life. Equities, funds as well as debt and structured securities allow diversified investments in line with investors' goals and risk profiles.
- The **risk indicator system**, currently provided by the PRIIPs regulation for packaged retail and insurance-based investment products only, **should be extended**. The MiFID concept of complex and non-complex products should be replaced as it is misleading regarding the respective risk and performance (see below).
- The **PRIIPs KID** regime should be **redrafted** and the **scenario methodology revised**. Short and precise retail investor information is key, but less than 10 % of retail investors read the current KID or at least open the document (survey conducted among BSW online brokerage members). The PRIIPs KID scenario methodology should be revised as currently – at least with regard to structured securities – these scenarios neither provide reasonable nor meaningful or realistic results.
- Cross-border distribution of financial instruments only works if the **tax rules** are **harmonized**. As the EU's legislative powers are limited, it could be considered to avoid at least taxation for long-term investments until the payout when retirement starts (see below).

With regard to the **further legislative initiatives and procedures**, we would like to propose the following:

- **Postpone** the ongoing discussion of the draft regulations based on the **Retail Investment Strategy**. Not least in order to avoid bureaucracy, no regulations should come into force that will quite likely be modified in the course of the establishment of the Savings and Investment Union.
- Conduct a **thorough and unbiased impact assessment** of retail investment behavior that also takes into account the **competitiveness of the EU capital market in comparison to non-EU capital markets**.
- **Recalibration of the level 1, 2 and 3 legislation** and the **role of the ESAs**: The provisions of level 1 should be formulated in more specific terms, in order to allow harmonized interpretation by the ESAs, but not to provide the ESAs the ability to create de facto regulations themselves (see below).

In this context, **BSW** would like to emphasise further **considerations:**

- **Simple or non-complex products can be associated with more risk than complex or structured securities – SRI for all financial instruments**
  It is a myth that complex or structured products generally involve higher risks and potential losses for clients as there are fundamental differences between the complexity and riskiness of products. The definition of "non-complex products" under the MiFID rules is only meant to capture the degree of complexity of financial instruments, without regard to their inherent level of risk (leaving aside the fact that the MiFID notion of complexity does not take into account all dimensions of complexity for all financial instruments). Accordingly, many financial instruments not categorized as "non-complex" under these rules, and in particular many types of structured securities, have a lower degree of risk than financial instruments categorized as "non-complex", such as shares. According to BSW research, if the calculation method for the Summary Risk Indicator (SRI) according to the PRIIPs Regulation is applied to equities or UCIT funds, these instruments would often be classified in SRI risk classes 4 and higher. Therefore, it could be considered to apply the current PRIIPs risk indicator model to all financial instruments and to provide a harmonized framework for KIDs for all financial instruments. This would not only ensure that investors receive the same level of information for all investment products, but also that they are not misled by terminology that pretends a kind of simplicity when in fact there are risks involved.

- **Taxation**
  Cross-border distribution of financial instruments depends on the tax framework. For example, in the area of structured securities, some products are offered in one Member State as debt securities and in another Member State in an insurance wrapper, even though they are economically equivalent. The only reason for this is taxation. We are aware that the EU's legislative powers are limited in the tax area and that the taxation of capital is often embedded in the national taxation system that differs from one Member State to the next – not least in view of historical developments and the intended steering effects in each case. Also, the strategy pursued under the PEPP regime, that taxation should be based on the national taxation of pension products, does not appear to have worked, given the number of PEPPs registered (8 products, 1 manufacturer!). It could therefore be argued that, at the very least, there is no taxation of long-term investments for retirement purposes, as these may only be subject to taxation under national tax rules at a later stage, when the investor retires.

- **Recalibration of the levels of 1, 2 and 3 legislation, interpretation and application of the law**
  The goal of harmonising financial market regulation in the EU as much as possible has been pursued for years with the three-level approach (level 1, 2 and 3: directives/regulations, delegated acts, guidelines, Q&As and recommendations). In practice, however, this has led to level 1 acts becoming increasingly generic. Many specifications were shifted to the subsequent levels, where sufficient co-

legislators’ and stakeholders’ participation and transparency are not provided. In recent years, this has not only led to the emergence of a highly detailed framework especially on level 3 actions by the ESAs, which is at odds with the new EU Commission's stated goal of simple and non-bureaucratic regulation. Furthermore, some interpretations were published that have a clear impact on competition in the market and thus should be subject to the regulatory powers of the co-legislators (and not of the supervisory authorities). Therefore, we believe it would be appropriate to return to the principle that level 1 requirements should be as specific as possible to enable those affected by the regulation to understand the legal framework and its implications.

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The German Structured Securities Association (Bundesverband für strukturierte Wertpapiere – “BSW”) is the industry body which represents the leading issuers of structured securities in Germany. Its work is supported by more than twenty sponsoring members, amongst which are the exchanges in Stuttgart, Frankfurt and gettex as well as direct banks and online brokers.
By establishing industry standards and through active communication with politicians, supervisory authorities and international institutions, the Associations aims to improve the political and regulatory framework for structured securities in Germany and Europe.
For more information, please consult www.derbsw.de.

German Lobby Register: R001411
EU Transparency Register: 377055313623-72