BSW BUNDESVERBAND FÜR STRUKTURIERTE WERTPAPIERE

BSW Response to the Call for Evidence for an Impact Assessment: Revision of the Sustainable Finance Disclosure Regulation

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The German Structured Securities Association (Bundesverband für strukturierte Wertpapiere, BSW) welcomes the opportunity to respond to the European Commission's call for evidence for an impact assessment on the revision of the Sustainable Finance Disclosure Regulation (SFDR).

The BSW represents the issuers of structured securities that are sold to private investors in Germany. These structured securities compete in sales with other products such as investment funds, also in the market for private investors with sustainability preferences.

In the view of the BSW, comparable regulatory treatment of the various investment products with regard to all aspects in which the product types do not exhibit any relevant differences is of great importance. This should apply to all product types offered to private investors: Not only investment funds, but also various types of securities (including structured securities). The feedback from the BSW relates exclusively to the structured securities represented by the BSW.

Lacking harmonisation of the legal requirements

The SFDR is an important instrument to promote transparency and accountability in the financial sector and to support the transition to a low-carbon and socially inclusive economy.

However, the differing scopes of the SFDR and MiFID in particular, as well as the fact that the two sets of regulations are not currently coordinated in terms of content and have different focuses and underlying philosophies, represent a major shortcoming of the legal requirements in the area of sustainability.

From a product perspective, the current structure of the SFDR is almost exclusively geared towards investment funds and, in terms of its content, focuses on the disclosure of information. This does not take into account the fact that in sales many more types of investment products effectively compete for the capital of private investors with sustainability preferences than are currently covered by the SFDR, namely various types of securities in addition to investment funds. Structured securities, which fall within the scope of MiFID but not of the SFDR, are a good example of this, and the shortcomings of the current regulation are reflected in the experience of the structured securities industry. As structured securities with sustainability characteristics do not fall within the scope of the SFDR, it is unclear how they can be classified and distributed as non-SFDR financial instruments in a legally secure manner.

The lack of harmonisation between the SFDR and MiFID was also mentioned in the ESMA consultation on the product governance guidelines. The limited product scope of the SFDR leads to problems when applying the MiFID rules for sustainability preferences, such as when determining the "minimum proportion of sustainable investments" for non-SFDR products. ESMA made this very clear in the consultation on the product governance guidelines.

Due to their complexity, the MiFID regulations on asking about sustainability preferences pose major challenges on the distribution side, while at the same time investors often feel overwhelmed. A revision of MiFID to simplify asking about sustainability preferences would therefore also be welcome in the view of the BSW.

BSW position on the revision of the SFDR

As long as the MiFID regulations on asking about sustainability preferences refer to the provisions of the SFDR, the BSW advocates the targeted extension of the scope of the SFDR to structured securities that are offered to private investors with sustainability preferences in accordance with the respective MiFID target market.
Different types of sustainable investment products should be treated equally, provided there are no relevant differences between them. However, rules that are tailored to investment funds and are therefore inappropriate in terms of content should not apply to structured securities, and no disproportionate compliance costs should be imposed on issuers.
Structured securities with sustainability characteristics should therefore be regulated in future explicitly as sustainable financial products in accordance with an SFDR tailored to them.

a. No expansion of the current disclosure requirements

The scope and depth of detail of the information to be published in accordance with the SFDR may be helpful for institutional investors. However, private investors usually ignore this volume of information when making an investment decision. The concise provision of key information on the ESG details of the product would be of greater benefit to private investors (see below).
Furthermore, the disclosure rules contained in the SFDR are not appropriate for structured securities with sustainability characteristics, as these rules are tailored to ongoing investment management or advice. Disclosure in accordance with the SFDR is based on the assumption that the financial product itself invests in certain assets. However, structured securities are usually linked to a fixed underlying asset, the performance of which determines the payout in accordance with the product terms. Structured securities simply do not provide for investment decisions during their lifetime. Therefore, most of the required disclosure of information would not be suitable for structured securities with sustainability characteristics.
In addition, issuers of structured securities (usually banks) are already subject to various ESG disclosure requirements.

b. Standardised, concise, ESG-related information

Providing sufficient information on the ESG characteristics of potential investment products is highly important for the transition to a sustainable economy. However, as discussed by the European Commission itself in the context of the Retail Investment Strategy, practical experience shows limited use of the information provided in PRIIPs KIDs, and even less use for longer and more detailed information, such as that contained in prospectuses.
In terms of ESG information, less can therefore be more: Key information on sustainability characteristics presented in a brief, concise, and understandable format has the potential to increase the practical use of the information by investors. This could be effectively supplemented by an ESG scale.

c. Introduction of product categories

At the moment, the only part of the SFDR that is actually used by the vast majority of investors is the *de facto* product categorisation based on Articles 8 and 9. Even if this was not intended by the legislator, both the demand from investors and the efforts of product manufacturers to meet this demand show that there is a practical need for such a categorisation.

However, there are currently no requirements for marketing investment products outside the scope of the SFDR as sustainable. This creates an unlevel playing field across the range of competing investment products. The BSW therefore advocates the introduction of product categories for all relevant investment products, not just those that currently fall within the scope of the SFDR.

Specific criteria should be defined by the legislator for this purpose. Specific criteria provide guidance and improve the comparability of the various product types with respect to investors' sustainability preferences. A category system would provide product manufacturers legal certainty in the categorisation of investment products; distributors and investors would also benefit from such a categorisation. However, it is important that the defined criteria are appropriate for the respective investment products. For example, the criteria for the various product categories presented in the Categorisation of Products under the SFDR: Proposal of the Platform on Sustainable Finance are tailored only to investment funds and are not appropriate for structured securities with sustainability characteristics.

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