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Call for evidence of the EU Commission on the "Sustainable Finance Disclosure Regulation with the response deadline set at 30 May 2025

Response letter submitted by EUSIPA (European Structured Investment Products Association), registered in the transparency register of the EU under number 37488345650-13.

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EUSIPA RESPONSE

Introduction

By way of responding to this Call for Evidence, EUSIPA, the European Structured Investment Products Association representing the major ten European markets of this asset class with an invested volume of around 500 billion Euros, wishes to markup the commitment of its members to contribute to the allocation of financial assets to the attainment of societal targets regarding environmental, social and governance purposes, in a transparent and meaningful manner.

Structured investment products are well suited to fulfil such role. Structured investment products, manufactured for distribution to retail clients across the EU's internal market by all major retail banks, are financial debt instruments generally issued by a bank. They are composed of mainly two financial components. These are usually a bond component coupled with a derivative (referenced to an underlying asset). Qualitative and quantitative criteria on measuring the ESG contribution can be applied to both components at issuance.

The following comments exclusively relate to structured **investment** products. They do **not** extend to structured leverage (non-investment) products. An overview of all structured product types is available under the EUSIPA product categorisation website:
(copy into browser)
https://www.eusipa.org/wp-content/uploads/23_EUROPEAN-MAP_24_01.pdf

Headline message

EUSIPA strongly supports the regulatory landscape in the area of sustainable finance currently undergoing a thorough recalibration and simplification effort. This effort ultimately should resolve the current absence of a substantive alignment between the SFDR rules and others, equally important regulatory frameworks such as MIFID and IDD, as well as important further cornerstones of product information disclosure such as the EU PRIIPs Regulation.

Consequently, EUSIPA focusses its contribution to this Call for Evidence on the before aspect, taking this call for evidence as an opportunity to reiterate core of our sector's positioning on the SFDR review, namely, to **include structured investment products into the scope of the SFDR**.

Details

As in previous contributions to the SFDR review debate, EUSIPA takes the view that a major deficiency of the current rules is rooted in the fact that the SFDR leaves some major product formats/asset types completely unregulated, following its restricted product scope.

This situation results not only in legal uncertainty at the business and consumer end but also triggers inconsistencies with regard to the offering of ESG products at the point of sale, finally creating, without any need, an unlevel playing field of products with ESG enhancing qualities.

The major issue arising in this context is that for financial instruments MIFID obliges the distributor to inquire sustainability preferences of any investor asking for advice on ESG products, defined as the precise (%-wise) level of his/her minimum investment preference (with regard to the taxonomy and SFDR alignment) and, in qualitative regard, of the PAI consideration of the offered asset. This obligation obviously includes structured investment products with their ESG enhancing qualities, as these products are covered by MIFID (and IDD, should they be sold as insurance-based solution). Since MiFID requires to assess structured products sustainability features to match sustainability preferences of end-investors defined in relation to SFDR, EUSIPA and its member associations strongly advocate for structured products to be included within the SFDR scope.

Doing so would also, to stress the obvious, follow the recommendation of both the Draghi and Letta reports on the EU capital markets in terms of their joint plea for a level-playing field in financial products offered to retail investors within the EU.

Otherwise, the situation in practice continues to pose a huge challenge for all market participants dealing with structured products despite these asset class sharing, when designed with sustainability features, many similarities with SFDR covered products such as UCITS or IBIPs, e.g. when it comes to product governance obligations, the inclusion in ESG-labelled offerings and more generally, the ESG calibration of investor portfolios.

In practice, the resulting legal uncertainty led to a "best effort" of the industry to adequately provide "SFDR information", in an analogous way, also to structured investment products. This 'makeshift" solution, however, often triggers intense discussions with regulators, additional verification between issuers and distributors and leads to an extra communication effort with investors. We also note that at the end of investor-directed disclosure, discussions took place to use PRIIPs' KIDs for properly disclosing to retail investors sustainability features of investment products. It seems to us worthwhile to hint again at the fact that structured products, like UCITS and IBIPs are already included in the PRIIPs scope and would have been covered by any ESG information requirement under PRIIPs, in case such had been inserted. The absence of their inclusion in the SFDR scope would in that situation have created another inconsistency.

EUSIPA hence would reiterate its position on the SFDR scope aspect, pleading clearly for an inclusion of structured investment products into the scope of a recast future SFDR.

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