

Comments

On the proposal for a regulation on the establishment of a framework to facilitate sustainable investment

Register of Interest Representatives

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The German Banking Industry Committee is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

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I. General comments

The German Banking Industry Committee (GBIC) supports the European Commission's initiative to raise more funding for a sustainable economy in Europe and to promote financial market stability. To achieve these objectives, it is essential to establish a common understanding of which type of economic activity is to be designated as "sustainable". In this respect, we welcome the European Commission's initiative to draw up a classification at EU level based on existing international frameworks. We are convinced that this will contribute to further growth of sustainable funding and investment. Likewise, the risk of greenwashing will be countered by such a classification.

The focal point of the proposal for a Regulation presented here therefore is the question of how to establish whether an economic activity is environmentally sustainable. This clearly underlines that not only is the financial sector called upon here, but above all branches of the real economy as the main addressees must be actively involved in designing the taxonomies. To achieve the sustainability objectives strived for by the European Commission, an integral approach is therefore essential which encompasses all economic sectors in the further development of the taxonomies.

In this respect we regard the Commission's approach of parallel action as unfortunate. That is to define general criteria for sustainability via EU Regulations and at the same time to delegate the elaboration of technical screening criteria for the operational implementation of the criteria to an expert group. To increase legal certainty and consistency, an approach first to define the framework conditions and then in a second step to identify more detailed regulatory requirements seems to be recommendable in order to safeguard a successful implementation of the EU Action Plan "Financing Sustainable Growth".

We share the concerns expressed by the European Commission's Regulatory Scrutiny Board concerning immediate use of the taxonomies and risks associated with making such use mandatory for financial market participants before the taxonomies have reached sufficient stability and maturity. The step-by-step approach adopted by the Commission is therefore appropriate. However, the step-by-step approach must also be taken into consideration in the Commission's further legislative proposals, i.e. the ESG factors must also be phased in step-by-step to the extent that stable, resilient sub-taxonomies exist for the respective factors.

Furthermore, we advocate a comprehensible, consistent use of concepts and terms. In both the HLEG report and the EU Action Plan, the focus is on "sustainable finance" as an overarching term and emphasis is placed on the comprehensive approach to a financial sector oriented towards an environmentally sustainable economy. In the light of this approach, the narrow focus on "sustainable investment" of the current proposal for a Regulation is falling short of a comprehensive approach for sustainable finance, neglecting common language of the relevant stakeholders in the financial sector.

Before we address individual regulations in detail, we would like to make some comments on a couple of fundamental issues.

1. Taking into account the role of the credit institutions

The present proposal for a Regulation focuses on certain capital market participants and their products and the promotion of sustainable investment. With respect to the sustainable finance impact assessment presented by the Commission, pointing out the lack of incentives for considering ESG factors to be taken into account by institutional investors, asset managers, investment advisers and insurance intermediaries, this seems to be consistent at first glance.

Credit institutions in particular nevertheless play a key role in financing the real economy. To emphasise this fact, it suffices to bear in mind that small and medium-sized enterprises form the backbone of many economies in Europe, accounting for nearly 99 per cent of all European enterprises. They generate nearly 60 per cent of added value and account for about two thirds of all jobs. A good 80 per cent of financing enterprises and private households in Europe is ultimately channelled through credit institutions. In view of the particular importance of the SME-sector in Europe, small and medium-sized enterprises should not become subject to new un-proportionate burdens. Therefore credit institutions should not be obliged, to check all financial products and the underlying business ventures – for example financing investment projects of SME clients – on their sustainability character. In particular, credit institutions should not have the general obligation to check SMEs on their compliance with regulatory sustainability obligations. This should be the task of the policy arena.

On the basis of the explanatory memorandum to the proposal for a Regulation and according to the legislative financial statement annexed to this proposal, the European supervisory authorities are also to be assigned an important role in the development of the taxonomies in order to ensure that it is usable by financial institutions, applicable to financial products and compatible with the EU financial legislation. EBA and EIOPA are to ensure for example that taxonomies can allow the analysis of risk differences between bank and insurance assets/exposures and that they will analyse such differences and their possible incorporation into prudential regulation. This objective of the Commission makes it clear that, in the medium term, credit institutions too must have recourse to the taxonomies currently being developed, when identifying sustainable economic activities.

Therefore it is necessary from our point of view to take the requirements of the real economy and of the credit institutions sufficiently into account when developing the taxonomies and when fixing technical evaluation criteria for defining environmentally sustainable economic activities.

However, it must be avoided that credit institutions later on will be referred to criteria – initially developed for a narrowly defined group of financial market participants and for a small range of financial products – and the taxonomies based thereupon which does not reflect the closely knit regulatory requirements for the credit sector and leaves certain typical bank product groups out of the equation. Bank products, such as deposits, loans or savings certificates, differ in material respects from the financial products addressed in the proposal for a Regulation, for instance with respect to consumer protection and especially the risk management requirements. In addition, credit institutions develop and market still further capital market products which extend beyond the financial products covered by the proposal for a Regulation.

We therefore suggest, at an early stage, starting a close exchange of experience and opinions between the Technical Expert Group on Sustainable Finance, the ESAs addressed in the proposal for a Regulation and the stakeholders concerned, namely the credit institutions in particular, in order to preclude frictional losses and to enable the taxonomies to be widely used within the credit sector. However, prior voluntary use of the criteria of the Regulation and the taxonomies or parts of the taxonomies by credit institutions should not stand in the way of this approach.

2. Grandfathering

The taxonomies should be applied from the time of mandatory use exclusively for newly concluded sustainable financial products. Subject to the still ongoing development of standards and labels for sustainable financial products, we consider grandfathering, within the meaning of non-application of the new taxonomies for financial products already concluded/sold before the entry into force of the Regulation, to be essential. It should be left to each financial institution to decide on the extent to which it applies the taxonomies on a voluntary basis to financial products concluded/sold before the entry into force of the Regulation.

II. Concerning proposals in detail

1. Article 2: Definitions

As a matter of principle, all definitions that are essential within the context of “sustainable finance” should be pooled in this regulation, instead of referring to other legislative acts of the European Union, as for example to the “Regulation on Disclosures relating to Sustainable Investments and Sustainability Risks and amending Directive (EU) 2016/2341”.

Furthermore a definition of “corporate bonds” should be included for the sake of completeness so that ecologically sustainable bonds issued by credit institutions would fall under this heading.

2. Article 6: Substantial contribution to climate change mitigation

Climate protection is rightly emphasised as an important objective. In this respect it is important to take country-specific practices into account. It should be avoided, with a view for example of energy efficiency, that due to very high European-wide uniform standards, economic activities would be assessed as not being sustainable for the purpose of this regulation, although they show a very good energy efficiency in national comparison.

3. Articles 6 to 11 (including Article 18)

Advisory practice and the production of financial products would be less laborious if the environmental taxonomies were to be complete and as an integrated whole, eventually earlier as originally planned at the end of 2021. We understand, however, that due to the complexity of the subject matter, these expectations can hardly be achieved. As an alternative we propose to let the environmental taxonomies go effective in two steps maximum. An appropriate implementation period should in any case be granted.

4. Article 13: Minimum safeguards:

Upholding employees’ rights is a major and important concern. Nevertheless we point out that the verification of compliance with these minimum standards should not be passed and imposed on the credit institutions. G-BIC rejects any auditing, consultation and documentation duties of credit institutions in this respect.

5. Article 15: Platform on Sustainable Finance

As already explained above, it is important for credit institutions also to be involved in the future work process on the further development of the taxonomies. For this reason, we suggest including representatives of the credit sector in the work of the platform as experts within the meaning of

Article 15(1)(b). Furthermore, we consider it to be important, for reasons of transparency, that governance rules, comprehensible to the public, should be drawn up for the work of the platform. In addition, involvement and active cooperation of the credit sector should be ensured through the group of technical experts already appointed to draw up the taxonomies on climate change mitigation and climate adaptation activities.

6. Article 17: Review clause

The European Commission's proposal to publish a review report at the end of 2021 and subsequently every three years thereafter and to make adjustments if appropriate, is welcomed.
