



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Reply form

on the Joint Consultation Paper on the review of SFDR Delegated Regulation regarding PAI and financial product disclosures



12 April 2023
ESMA34-45-1218

Responding to this paper

The ESAs invite comments on all matters in the Joint Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

ESMA will consider all comments received by **4 July 2023**.

Instructions

In order to facilitate analysis of responses to the Joint Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Joint Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_SFDR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP SFDR Review_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP SFDR Review_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.



Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs' rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725¹. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

¹ Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Bundesverband Alternative Investments e.V. (BAI)
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

Questions

Q1 : Do you agree with the newly proposed mandatory social indicators in Annex I, Table I (amount of accumulated earnings in non-cooperative tax jurisdictions for undertakings whose turnover exceeds € 750 million, exposure to companies involved in the cultivation and production of tobacco, interference with the formation of trade unions or election worker representatives, share of employees earning less than the adequate wage)?

<ESMA_QUESTION_SFDR_1>

The **Bundesverband Alternative Investments e.V. (BAI)** welcomes the opportunity to respond to the joint ESA's consultation paper on the Review of SFDR Delegated Regulation regarding PAI and financial product disclosures.

BAI is the cross-asset and cross-product lobby association for the alternative investment industry in Germany and we consider ourselves as a catalyzer between professional German investors and suppliers of Alternative Investment products worldwide. The overarching goal is that German institutional and professional investors must be able to diversify their investment with regard to Alternatives better and more easily. The BAI is promoting a broad diversification which includes Alternative Investments as indispensable, in particular in terms of safeguarding long-term retirement pensions and the provision of money for construction, maintenance, and development of public infrastructure and renewable energies.

BAI-members are recruited from all areas of the Alternative Investments' industry, e.g. AIF managers and banks as well as service providers. At present, the BAI counts almost 300 national and international member companies and is growing continuously.

No, we do not agree with the newly proposed mandatory social indicators in Annex I, Table I at this point.

Although we welcome in principle that possible additional mandatory social indicators are in line with the ESRS/CSRD, and although we know that the ESAs may have received a certain mandate from the EU Commission to also consider an extension of the set of social indicators ("*...should aim at broadening the disclosure framework...*", "*...(2) consider extending the lists of universal indicators for principal adverse impacts, ...*"), we see neither reason nor added value in the extension of the number of mandatory social indicators at the present time.

This is due to the following reasons:

The Delegated Regulation on the SFDR has only been in force since 1 January 2023, and the financial market participants addressed have been preparing intensively for months and weeks for the first mandatory PAI statement, which had to be published on 30 June 2023. The collection and coverage of PAIs in the alternative investment industry and for many illiquid assets (infrastructure, private equity/private debt, real estate) is particularly complex and difficult, provided that many issuers of alternative investors are not subject to the NFRD and most likely won't be subject to the ESRS/CSRD in the future. Since the launch of the consultation of the ESAs, the EU Commission has also presented its drafts on the ESRS; in the light of these developments – especially regarding the materiality approach enshrined under ESRS –, the ESAs argument of consistency with the ESRS loses much of its weight, as the ESRSs have been heavily watered down compared to the EFRAG drafts of the ESRS. The EU Commission's decision that the ESRS data points will be subject to a company's own assessment of materiality has as a consequence that the proposed additional mandatory social indicators will not be universally reported.

There are still no empirical evidences or PAI statements available at all. From our (industry) point of view, it is therefore not an appropriate time to discuss an extension of the social mandatory indicators. We rather suggest to review the data quality and coverage ratios of the existing indicators in the following years and then use those insights for potential future amendments.

Although the ESAs have made an effort to align the proposed additional social mandatory indicators with the ESRS/CSRD, they are not fully aligned, as the ESAs themselves have written in the consultation paper. If they are introduced, they should be fully aligned.

For the first proposed additional mandatory social indicator, the ESAs write that it is not an ESRS disclosure. A look at the EU Council's list (dated 14 February 2023) of "non-cooperative jurisdictions for tax purposes" shows that the practical relevance of this indicator should be rather low. This PAI is only based on the Accounting Directive.

The introduction of the (second) indicator "exposure to tobacco cultivation/production" seems rather random and arbitrary to us, and it is not clear to us why this PAI in particular should be introduced, while other activities with similarly harmful effects should not. In any case, the inclusion in the Climate Benchmark Regulation' exclusion list is not a sufficient reason in our view.

Instead of a formal commitment regarding the requirement to have non-interference with trade-union formation, this (third proposed new mandatory social) PAI indicator should focus on measuring any actual interference.

If ever, the fourth proposed PAI indicator – the share of employees earning less than the adequate wages – should be limited to adequate wage standards established under national legislation only, as it would be too difficult otherwise.

At the Public Hearing on 6 June 2023 - which was extremely valuable, instructive and brilliantly mastered by the main protagonists Ursula Bordas from EIOPA and Patrik Karlsson from ESMA - the ESAs were informed that under the mandate of the EU Commission "... to (1) streamline and develop further the regulatory framework,...", the financial market participants had also expected that certain existing PAI indicators might be deleted. The ESAs said that due to a lack of experience and before the first PAI statements were available, it was too early to make changes to the existing PAI framework or to delete indicators. In our view, however, this applies all the more to the introduction of additional indicators. There are already numerous mandatory social indicators. Further mandatory social indicators should be introduced on a strictly evidence-based foundation. Even though the ESAs emphasize that the proposed additional mandatory social indicators are in line with the ERS/CSRD, it will not be possible for financial market participants to obtain data points from companies in the real economy until far into the future, based on the CSRD, which has yet to be transposed into the respective national law.

The CSRD alignment is also a relative one in the sense that the alternative investment industry is a highly global one, whereas the CSRD is European law. Moreover, the investment objects of AI funds are numerous target companies, which themselves do not fall under the scope of the CSRD. Even if the CSRD is to undergo a certain extraterritorial expansion in the future and there are plans to extend certain rules to non-EU companies, it remains a primarily EU-legal set of rules.

The EU Taxonomy will be significantly expanded as of 1 January 2024, a review of the SFDR at Level I has been announced for autumn 2023, and the *OECD Guidelines for Multinational Enterprises* were updated in June 2023, to which reference is also made (dynamically) in the SFDR and Taxonomy. Against this regulatory background, we do not consider an expansion of the indicators to be appropriate at present.

The Delegated Regulation on the SFDR deals with Principal Adverse Impacts. We understand this to mean, and we believe rightly so, the main, most important, most significant negative sustainability impacts of an investment. It is already highly questionable whether all of the existing PAIs (e.g., 67+ PAI datapoints for investee companies) are "principal", let alone all of the proposed new ones. From

our point of view, the most pressing problems are currently in the environmental sector with the issues of climate change, adaptation to it and the transformation of the economy. This is also reflected in the Taxonomy, where TSCs on the two climate goals were adopted first, followed by the other environmental goals. The expert group of the TEG and the EU Commission did not prioritize the environmental goals without reason. Comparable arguments can be put forward for the SFDR PAIs, especially since there is currently already a large number of social mandatory indicators. The CSRD also recognizes the idea of materiality. This basic idea should also apply to the additionally proposed mandatory social indicators within the framework of the SFDR. The question of what added value an additional indicator offers should always be asked first, before the administrative burden is increased even further. We also ask to provide rationales if additional social indicators are considered material and to even map out how they relate to specific objectives (e.g., social) that should be achieved.

For all these reasons, we believe it is appropriate to start with a phase of consolidation and to get right what currently needs to be done. In our opinion, a great deal has already been achieved for the environment, but also for social concerns including their reflection in the minimum safeguards, and therefore an update of the social PAIs might be better grounded with the release of the social Taxonomy, if the consideration of the previous/actual environmental, social and governance indicators leads to capital flows being directed away from harmful investments and if greater awareness is created among investors and financial market participants through the disclosure of all previous mandatory and optional indicators. We would also like to point out that there is not so much an inequality between environmental and social PAIs, if one considers the minimum safeguards. We call on the ESAs to also take into account the guiding principles of the EU Commission mandate, which states with regard to the PAIs: *"At the same time, these amended regulatory technical standards should be carefully calibrated so that disclosures based on these indicators are proportionate and feasible for financial market participants."* **At this stage, we do not consider the concrete multitude of proposed additional mandatory social indicators to be proportional or beneficial for the environment or the society. Moreover, they add to the enormous challenges, especially for smaller financial market participants, in view of the ongoing collection of data points and the continuous implementation of new regulatory provisions.**

In conclusion, we once again state that we do not agree with the introduction of additional mandatory social indicators at this point in time.]

<ESMA_QUESTION_SFDR_1>

Q2 : Would you recommend any other mandatory social indicator or adjust any of the ones proposed?

<ESMA_QUESTION_SFDR_2>

No, we do not recommend any other mandatory social indicator at this point of time.

If additional mandatory social indicators are to be introduced at all, which we are not in favour of at this stage (see our answer to Q1), then this should be done in strict alignment with the ESRS/CSRD. If this is not the case, then in general no additional mandatory social indicator should be introduced.

Should the ESAs wish to introduce some of the proposed additional social mandatory indicators, the tobacco exclusion should not be included due to the many ambiguities, or there should be an overarching clarification of what is meant by "involved".

We would also like to point out how complex the coverage of the "adequate wage" according to ESRS S1-10 is. Adequate wages do not seem to be the central problem in EU/EEA countries, where minimum wages often exist, either at state or regional level, or for certain sectors. Where this is not the case, and where financial market participants would have to collect such data from target companies, the problem is tremendous. They simply cannot do this because the target companies/investee companies do not release such data for data protection reasons or for reasons of competition/commercial secrecy protection. Human resources departments will refuse to share this data.

As we have stated our answer to Q1 above, if (the proposed) additional mandatory social PAIs are to be introduced at all, they should be adjusted as follows:

For the first proposed additional mandatory social indicator, the ESAs write that it is not an ESRS disclosure. A look at the EU Council's list (dated 14 February 2023) of "non-cooperative jurisdictions for tax purposes" shows that the practical relevance of this indicator should be rather low. This PAI is only based on the Accounting Directive and should therefore be limited to in-scope companies of this directive.

The introduction of the (second) indicator "exposure to tobacco cultivation/production" seems rather random and arbitrary to us, and it is not clear to us why this PAI in particular should be introduced, while other activities with similarly harmful effects should not. In any case, the inclusion in the Climate Benchmark Regulation's exclusion list is not a sufficient reason in our view.

Instead of a formal commitment regarding the requirement to have non-interference with trade-union formation, this (third proposed new mandatory social) PAI indicator should focus on measuring any actual interference.

If ever, the forth proposed PAI indicator – the share of employees earning less than the adequate wages – should be limited to adequate wage standards established under national legislation only, as it would be too difficult otherwise. |

<ESMA_QUESTION_SFDR_2>

Q3 : Do you agree with the newly proposed opt-in social indicators in Annex I, Table III (excessive use of non-guaranteed-hour employees in investee companies,

excessive use of temporary contract employees in investee companies, excessive use of non-employee workers in investee companies, insufficient employment of persons with disabilities in the workforce, lack of grievance/complaints handling mechanism for stakeholders materially affected by the operations of investee companies, lack of grievance/complaints handling mechanism for consumers/ end-users of the investee companies)?

<ESMA_QUESTION_SFDR_3>

No, we do not agree with (the introduction of) the newly proposed opt-in social indicators in Annex I, Table III.

Please refer also to our answer to Q1, where we elaborate the reasons to not introduce mandatory social indicators at the moment. *Mutatis mutandis*, they are the same arguments as against the proposed opt-in social indicators.

Opt-in social indicators are voluntary only to the extent as they are not mandatory by regulation. If different investors or types of investors demand different opt-in social indicators, asset managers have to provide all of them as a matter of fact.

Furthermore, as with the additional mandatory indicators, target companies/investee companies are often unwilling to release such information for data protection or competition reasons. Human resources departments will refuse to share this data.]

<ESMA_QUESTION_SFDR_3>

Q4 : Would you recommend any other social indicator or adjust any of the ones proposed?

<ESMA_QUESTION_SFDR_4>

No, we do not recommend any other social indicators. With regard to possible adjustments of the proposed *mandatory* social indicators we refer to our answer to Q2 insofar as this Q4 does not treat only about opt-in social indicators. With regard to the latter, we do not recommend any other nor adjust any of the ones proposed at the moment.]

<ESMA_QUESTION_SFDR_4>

Q5 : Do you agree with the changes proposed to the existing mandatory and opt-in social indicators in Annex I, Table I and III (i.e. replacing the UN Global Compact Principles with the UN Guiding Principles and ILO Declaration on Fundamental Principles and Rights at Work)? Do you have any additional suggestions for changes to other indicators not considered by the ESAs?

<ESMA_QUESTION_SFDR_5>

Yes, the proposed changes make sense, and we agree with them in principle.

With regard to the 3 PAI categories (investee companies, sovereigns and real estate) in the SFDR Delegated Act, it is, in our view, too narrow and does not reflect the investment universe. The Sustainable Finance Package, and also the SFDR, is mainly focussed on equity (like) investments in (listed) companies and most of the considerations and criteria and specifications proposed by the ESAs are led by this investment category. However, we believe that this focus is too narrow and thus cannot be transferred to other investment categories as for example infrastructure to mention only one additional very relevant alternative asset class. For instance, many social PAI KPIs for investee companies such as gender pay gap or board gender diversity are not applicable to SPV structures without employees and only one real physical asset on the balance sheet.

With regard to project finance infrastructure investments we suggest to (i) define the term “infrastructure” (e.g., based on Solvency II or CRR II definitions for infrastructure entities / infrastructure assets) and (ii) either reduce the scope of relevant investee companies to the scope that is applicable to infrastructure project finance (= infrastructure as a sub-category of the investee companies with less PAIs) or (iii) to create a new PAI category specifically for infrastructure (= infrastructure as a separate independent PAI category). It should be noted that infrastructure serves “essential public needs” as defined by the EU COM and therefore plays a particularly important role in sustainable finance. Therefore, it is of crucial significance to enable an appropriate treatment for this particular asset class.

Another category we would like to draw attention to is financial instruments which also vary broadly regarding not just function but also underlying. In addition, we especially would mention systematic trading strategies which are a very distinct asset class as well. We observe that there are often too few considerations and guidances on these types of assets/strategies. Therefore, we invite the ESAs to pay more attention to alternative investments strategies and concepts/private markets as they play a significant role in the asset allocation of institutional investors.

<ESMA_QUESTION_SFDR_5>

Q6 : For real estate assets, do you consider relevant to apply any PAI indicator related to social matters to the entity in charge of the management of the real estate assets the FMP invested in?

<ESMA_QUESTION_SFDR_6>

No, we do not consider relevant to apply any PAI indicator related to social matters to the entity in charge of the management of the real estate assets the FMP invested in.

As we have mentioned in our answer to Q1, in our view, there is no need to introduce any new (social) PAI indicator at the moment – in general, but also with regard to real estate assets.

We also want to further emphasize that, at this stage, we believe it is a matter of keeping away from or mitigating the most important – i.e. principal, and that are environmental ones in our view – adverse sustainability factors from the environment and society. In terms of real estate, these are clearly PAIs with an environmental focus – issues around fossil energies, energy (in)efficiency, GHGs, waste, etc. These PAIs all already exist, and climate-related indicators are actually much more important than social ones. Therefore, no further indicators are needed.

Real estate is a major linchpin in fulfilling the EU’s objective to reach the ambitions of the Paris Agreement. Regulation has the capacity to greatly accelerate the necessary transition of the built environment. The over-riding objectives of SFDR to increase transparency, create standards and inhibit greenwashing are well matched to the needs of the real estate investment market.

With regard to any project finance structures it should be noted that double counting of social PAI is to be avoided. For instance, if social indicators were applied to the SPV holding a real estate asset and also to the construction company that was appointed by the SPV to construct the real estate asset, then the same social indicator would be calculated on both levels which would lead to a double counting. Our view is that real assets / real estate should be only subject to environmental KPIs (which is currently the case for real estate, but not the case for infrastructure projects as stated in Q5), while the service provider companies such as management companies, construction companies, suppliers, operations & maintenance providers etc. should be subject to social indicators provided that they are mainly responsible for potential social adverse impacts. |

<ESMA_QUESTION_SFDR_6>

Q7 : For real estate assets, do you see any merit in adjusting the definition of PAI indicator 22 of Table 1 in order to align it with the EU Taxonomy criteria applicable to the DNSH of the climate change mitigation objective under the climate change adaptation objective?

<ESMA_QUESTION_SFDR_7>

| Yes, we welcome an alignment with the Taxonomy criteria as proposed by the ESAs in the consultation paper with regard to indicator 22 of Table 1. |

<ESMA_QUESTION_SFDR_7>

Q8 : Do you see any challenges in the interaction between the definition ‘enterprise value’ and ‘current value of investment’ for the calculation of the PAI indicators?

<ESMA_QUESTION_SFDR_8>

| There seems not to be a change in the definition of “enterprise value”, whereas the definition of “current value” has been improved in our view.

Currently, the ESAs require the following approach: in the Q&A published on 17 November 2022 under the reference JC 2022 82 (the “Q&A”), the ESAs indicate that the “*enterprise value is fixed at fiscal year-end, annually*” (Q6) and that “*the quarterly impacts should be based on the current value of the investment derived from the valuation of the individual investment (e.g. share) price valued at fiscal year-end multiplied by the quantity of investments (e.g. shares) held at the end of each quarter. In such manner the composition of the investments at the end of each quarter is taken into account, but the valuation reflects the fiscal year-end point in time*” (Q7).

The regulation requires taking the market prices per share as of the fiscal year-end and then applying this market price per share to the quantities in all 4 quarters (“adjustment for the market value changes over 4 quarters”). At the same time, they require fixing the enterprise value as of the fiscal year end. This would lead to the adjustment for market value changes over time and only focus on the change of quantities over 4 quarters related to the fiscal year-end enterprise value. While this approach may be easier to implement for liquid / listed assets that typically have available quantities and unit prices, illiquid assets usually don’t have quantities as they are commitment based. Therefore, we see many market participants using quarterly market values instead of adjusted market values and 4 quarterly enterprise values instead of 1 GAV as of the fiscal year end. EFAMA calls it an “economical approach” and outlines why the current approach is flawed:

“The approach described in the Q&A consists in calculating the detention percentage from the number of securities held by investors at the end of each quarter. However, this

- does not solve the consistency issue: as it focuses on how to manage the impact of financial market fluctuations, it does not resolve issues regarding changes in debt profile, activity perimeter of the company, credit event, etc., but introduces significant impact in case of changes in the capital structure of the company (stock split, capital increase, corporate action).
- introduces unwelcome complexity on the calculation approaches for only a limited number of PAIs while the others can be calculated based on quarterly market valuations, increasing operational risks.
- introduces a huge additional workload for reporting and is contrary to common practices for portfolio analysis (presentation of asset allocations, performance and risk calculations, look-through analysis for prudential reports), which are based on market valuations.

Consequently, it will be virtually impossible to reconcile financial, risk and PAI assessments for portfolios, or provide look-through analysis for investments in funds.”

Furthermore, enterprise value is defined as “the sum, at fiscal year-end, of the market capitalisation of ordinary shares, the market capitalisation of preferred shares, and the book value of total debt and non-controlling interests, without the deduction of cash or cash equivalents;”. At the same time, ESA’s Q&As require a valuation of current value of all investments being consistent to the enterprise value. Therefore, some market participants are not sure if debt positions should be recorded with their market values, book values or other values (e.g., nominals).

In order to ensure consistency and practicability, we recommend allowing using quarter end market values for the current value of all investments and quarter end enterprise values. Book values or nominal values shouldn't be required for the calculation of "current value of investment", although they may be used as an approximation of market values, where the difference is not material and no market values are available. |

<ESMA_QUESTION_SFDR_8>

Q9 : Do you have any comments or proposed adjustments to the new formulae suggested in Annex I?

<ESMA_QUESTION_SFDR_9>

| We welcome the new formulae suggested in Annex I since there are formulae now for PAI Indicators for which formulae did not exist before.

We have recommended our members to use the new relevant formulae for the PAI Statement that had to be published until 30 June 2023 already.

For instance, with regard to the "share of non-renewable energy consumption and production" the clarification and the split into data points helps. Before, it was clear only indirectly via the European ESG Template (EET). So, it is not an innovation, but a clarification which the industry welcomes.

With regard to the "average ratio of female to male management and supervisory board members in investee companies, expressed as a percentage of all board members", our members have discussed whether there is a mistake in the formula. But in our understanding, the reversal of men and women in the numerator serves the (more appropriate) expression of "adverse" in the sense that a greater underrepresentation of women in management and on the supervisory board results in a greater PAI value, which is worse than a small PAI value. |

<ESMA_QUESTION_SFDR_9>

Q10 : Do you have any comments on the further clarifications or technical changes to the current list of indicators? Did you encounter any issues in the calculation of the adverse impact for any of the other existing indicators in Annex I?

<ESMA_QUESTION_SFDR_10>

| Additionally, it could be beneficial for infrastructure/real assets to have their own separate indicators or to widen the real estate asset class to incorporate all real assets, given that these investments do not fit well within the real estate or corporate PAI indicators. (see our answer to Q5) |



<ESMA_QUESTION_SFDR_10>

Q11 : Do you agree with the proposal to require the disclosure of the share of information for the PAI indicators for which the financial market participant relies on information directly from investee companies?

<ESMA_QUESTION_SFDR_11>

Yes, we agree. We welcome the disclosure and transparency on data's origin (information directly from investee companies or not). However, it should be exactly defined what "information directly from investee companies" means. For instance, there is a difference if the investee company only provides raw data, while the asset manager calculates the PAI or if the investee company provides the PAI value calculated on a best effort basis or if it has to be an officially audited / disclosed PAI value (e.g., under NFRD or CSRD). Strictly speaking, unless the PAI value is estimated based on the benchmark, any data would usually come from investee companies because this is where the PAI data is originally generated. |

<ESMA_QUESTION_SFDR_11>

Q12 : What is your view on the approach taken in this consultation paper to define 'all investments'? What are the advantages and drawbacks you identify? Would a change in the approach adopted for the treatment of 'all investments' be necessary in your view?

<ESMA_QUESTION_SFDR_12>

N.b., as we have stated above in our answer to Q8, the definition of "current value" has been improved.

We share also the ESAs' view that currently, "all investments" aims to cover all the investments made by the financial market participants, and that this definition enables the comparability between financial market participants and probably makes the calculation easier as the same denominator applies across all indicators. Any investments should also include other receivables as well as positive values of derivatives based on the netting approach as it would provide the user with the most relevant information basis. |

<ESMA_QUESTION_SFDR_12>

Q13 : Do you agree with the ESAs' proposal to only require the inclusion of information on investee companies' value chains in the PAI calculations where the investee company reports them? If not, what would you propose as an alternative?

<ESMA_QUESTION_SFDR_13>

Yes, we agree with the approach that financial market participants should only require the inclusion of information on investee companies' value chains in the PAI calculations where the investee company reports them and does not have to take into account any information on an investee companies' value chain into the PAI calculation where it is not reported. Such information on investee companies' value chains should be limited to information reported under ESRS. |

<ESMA_QUESTION_SFDR_13>

Q14 : Do you agree with the proposed treatment of derivatives in the PAI indicators or would you suggest any other method?

<ESMA_QUESTION_SFDR_14>

From our point of view, the derivatives should be netted and be only included in the definition of all investments where their value is positive. |

<ESMA_QUESTION_SFDR_14>

Q15 : What are your views with regard to the treatment of derivatives in general (Taxonomy-alignment, share of sustainable investments and PAI calculations)? Should the netting provision of Article 17(1)(g) be applied to sustainable investment calculations?

<ESMA_QUESTION_SFDR_15>

See our answer to Q14. Derivatives should be netted – where derivatives are included in the denominator, they should also be included in the numerator ensuring that calculations are not inconsistent. Netting may also be performed for other asset classes (e.g., corporate bonds), for the purpose of Taxonomy-alignment (in addition to the netting of equity and sovereign exposures) and for the sustainable investment calculation, yes.

With regard to the treatment of derivatives in general within the Sustainable Finance Regulation, there should be a consistent treatment of derivatives across all European Sustainable Finance Regulations, i.e. across SFDR and the Taxonomy. To provide an example: An actual inconsistency is to not allow derivatives as a sustainable investment or as one that cannot meet positive environmental or social characteristics but should still be included in PAI calculations. |

<ESMA_QUESTION_SFDR_15>

Q16 : Do you see the need to extend the scope of the provisions of point g of paragraph 1 of Article 17 of the SFDR Delegated Regulation to asset classes other than equity and sovereign exposures?

<ESMA_QUESTION_SFDR_16>

See our answer to Q14. Derivatives should be netted, and yes, netting may also performed for other asset classes (e.g., corporate bonds).

<ESMA_QUESTION_SFDR_16>

Q17 : Do you agree with the ESAs' assessment of the DNSH framework under SFDR?

<ESMA_QUESTION_SFDR_17>

We agree with the the ESAs' assessment of the DNSH framework within the consultation paper that there is merit in preserving the status quo for the time being while financial market participants are becoming used to the disclosures and as the Taxonomy becomes more usable and used across companies. We believe there is also benefit in waiting for corporate disclosures to come into force under CSRD/the ESRS. There should be allowance for SFDR to be fully established and to see how the DNSH criteria is being addressed by the market. In this respect, we do not agree with the ESAs' view that the SFDR DNSH framework leads to lack of information or inconsistencies and that greenwashing might occur due to a lack of transparency and comparability, even more so in light of the Commission's April 2023 guidance on the definition of "sustainable investments", which is a policy choice of financial market participants.

However, where further disclosure requirements are introduced for financial market participants to publish thresholds used for PAI indicators to determine that their sustainable investments do no significant harm (as suggested in the consultation paper), we believe that financial market participants/fund managers should maintain full discretion on the methodology used to assess DNSH compliance, given the challenges of comparing across assets and industries.

With regard to the proposed optional safe harbour for environmental DNSH disclosures, we fully support this optional safe harbour.

<ESMA_QUESTION_SFDR_17>

Q18 : With regard to the DNSH disclosures in the SFDR Delegated Regulation, do you consider it relevant to make disclosures about the quantitative thresholds FMPs use to take into account the PAI indicators for DNSH purposes mandatory? Please explain your reasoning.

<ESMA_QUESTION_SFDR_18>

As we have noted in our answer to Q17 above, where further disclosure requirements are introduced for financial market participants to publish thresholds used for PAI indicators to determine that their sustainable investments do no significant harm (as suggested in the consultation paper), we believe that financial market participants/fund managers should maintain full discretion on the methodology used to assess DNSH compliance, given the challenges of comparing across assets and industries.

Our view is, given that different thresholds may apply to different asset classes, different classes and different assets, there may be a huge amount of quantitative limits. Disclosing that huge amount of DNSH limits would not be beneficial for the investor and would be too excessive. The financial market participant should have an internal documentation of the PAI framework incl. limits, however we do not consider it beneficial to introduce a disclosure requirement in pre-contractual or periodic reports and also not on the website.

Disclosures about the quantitative thresholds FMPs use to take into account the PAI indicators for DNSH purposes should not become mandatory. |

<ESMA_QUESTION_SFDR_18>

Q19 : Do you support the introduction of an optional “safe harbour” for environmental DNSH for taxonomy-aligned activities? Please explain your reasoning.

<ESMA_QUESTION_SFDR_19>

Yes, we strongly support the introduction of an optional “safe harbour” for environmental DNSH for taxonomy-aligned activities.

If we understood this correctly, the EU Commission has in the meantime anticipated the answer to this consultation Q19 in the Sustainable Finance Package of 13 June 2023, when it proposes the same safe harbour as one of the new measures in a Q&A document in Q/A 4. |

<ESMA_QUESTION_SFDR_19>

Q20 : Do you agree with the longer term view of the ESAs that if two parallel concepts of sustainability are retained that the Taxonomy TSCs should form the basis of DNSH assessments? Please explain your reasoning.

<ESMA_QUESTION_SFDR_20>

We do rather not agree with the ESAs’ view.

In our view, a definition of “sustainable investment” should not be related to EU Taxonomy-alignment, given that this misses out social objectives and does not cover all investments – except

that there would be a social Taxonomy one day. In addition, it would limit investments to Europe given that only European companies will report, which would be sub-optimal.

Although the definition of “sustainable investment” should be broader and not tied to the Taxonomy, it would be beneficial to establish that an investment which is taxonomy-aligned could also be considered a sustainable investment under SFDR, without having to analyse it against PAIs; given the overlap in the DNSH criteria. As we have mentioned in our answer to Q19, we would therefore be supportive of an optional safe harbour for environmental DNSH for taxonomy-aligned activities.

The ESAs should also keep in mind that Taxonomy and SFDR are and should remain two different regulatory concepts, as the EU Commission itself recently clarified in its Notice. |

<ESMA_QUESTION_SFDR_20>

Q21 : Are there other options for the SFDR Delegated Regulation DNSH disclosures to reduce the risk of greenwashing and increase comparability?

<ESMA_QUESTION_SFDR_21>

|As we have stated above in our answer to Q17, we do not agree with the ESAs' view that the SFDR DNSH framework leads to a lack of information or inconsistencies and that greenwashing might occur due to a lack of transparency and comparability, even more so in light of the Commission's April 2023 guidance on the definition of “sustainable investments”, which is a policy choice of financial market participants. We therefore do not see need for such other options. |

<ESMA_QUESTION_SFDR_21>

Q22 : Do you agree that the proposed disclosures strike the right balance between the need for clear, reliable, decision-useful information for investors and the need to keep requirements feasible and proportional for FMPs? Please explain your answers.

<ESMA_QUESTION_SFDR_22>

|First of all, we agree that information provided on GHG emissions reduction targets, including intermediary targets and milestones (where relevant), and actions pursued are very important, as GHG emissions are among the most important (i.e., principal) adverse impacts, and climate change/climate change mitigation and adaptation are among the most important goals of the European Green Deal and the EU Sustainable Finance Package(s). The proposed disclosures might also be decision-useful information for investors.

Nevertheless, we doubt that the proposals are balanced and proportional for FMPs at this stage. They are even not feasible. We invite the ESAs to adhere strictly to the CRSD/ESRS in terms of time

scope and standardisation/methodologies, knowing that the ESAs were only aware of EFRAG's draft ESRS at the start of the consultation. In the meantime, however, the drafts of the ESRS have been submitted for consultation by the EU Commission. In addition to the phase-ins proposed by EFRAG, the Commission has also introduced the following additional phase-ins/the phasing-in of certain requirements: Undertakings with less than 750 employees may omit scope 3 GHG emissions data, for instance. Disclosures as proposed by the ESAs should strictly consider such developments and be aligned with them.

The ESAs' focus on PCAF does, in our view, not reflect the complexity of GHG emissions reduction strategies used in the market and the greater openness of the ESRS, as well as the recently published ISSB IFRS S2 standards to various methodologies and approaches. |

<ESMA_QUESTION_SFDR_22>

Q23 : Do you agree with the proposed approach of providing a hyperlink to the benchmark disclosures for products having GHG emissions reduction as their investment objective under Article 9(3) SFDR or would you prefer specific disclosures for such financial products? Do you believe the introduction of GHG emissions reduction target disclosures could lead to confusion between Article 9(3) and other Article 9 and 8 financial products? Please explain your answer.

<ESMA_QUESTION_SFDR_23>

|Yes, we agree with the proposed approach of providing a hyperlink to the benchmark disclosures for products which have GHG emissions reduction as their investment objective under Article 9(3) SFDR, but we also note that not all such products track a Climate Benchmark. |

<ESMA_QUESTION_SFDR_23>

Q24 : The ESAs have introduced a distinction between a product-level commitment to achieve a reduction in financed emissions (through a strategy that possibly relies only on divestments and reallocations) and a commitment to achieve a reduction in investees' emissions (through investment in companies that has adopted and duly executes a convincing transition plan or through active ownership). Do you find this distinction useful for investors and actionable for FMPs? Please explain your answer.

<ESMA_QUESTION_SFDR_24>

|Yes, this distinction may be useful for investors and actionable for FMPs. It should be actionable for FMPs not least because they would be asked a narrative description about the way the target will be achieved. |

<ESMA_QUESTION_SFDR_24>

Q25 : Do you find it useful to have a disclosure on the degree of Paris-Alignment of the Article 9 product's target(s)? Do you think that existing methodologies can provide sufficiently robust assessments of that aspect? If yes, please specify which methodology (or methodologies) would be relevant for that purpose and what are their most critical features? Please explain your answer.

<ESMA_QUESTION_SFDR_25>

We find a disclosure on the degree of Paris-Alignment of the Article 9 SFDR product's target(s) rather not useful. Article 9 products that seek Paris-Alignment include this information as part of their existing disclosures.

Additionally, we do not share the ESAs' view that Article 8 SFDR products are not expected to be aligned with the Paris-Agreement goals because Paris-Alignment does not per se correspond to the concept of a sustainable investment under Art. 2(17) SFDR since it does not include the SFDR DNSH requirement.

What we observe is that the trend is currently moving in the direction of IEA scenarios, at least in the case of banks, i.e., in scenarios that were developed in or with the International Energy Agency (e.g., Net Zero Emissions, etc.). However, there is no official specification of methods. If alignment disclosures are introduced, a specification of scenarios that would be used for the analysis, would be useful, and probably not the one only specification. We should maintain a methodological pluralism.

<ESMA_QUESTION_SFDR_25>

Q26 : Do you agree with the proposed approach to require that the target is calculated for all investments of the financial product? Please explain your answer.

<ESMA_QUESTION_SFDR_26>

Yes, we agree, for reasons of comparability of financial products.

<ESMA_QUESTION_SFDR_26>

Q27 : Do you agree with the proposed approach to require that, at product level, Financed GHG emissions reduction targets be set and disclosed based on the GHG accounting and reporting standard to be referenced in the forthcoming Delegated Act (DA) of the CSRD? Should the Global GHG Accounting and Reporting Standard for the Financial Industry developed by PCAF be required as the only standard to be used for the disclosures, or should any other standard

be considered? Please justify your answer and provide the name of alternative standards you would suggest, if any.

<ESMA_QUESTION_SFDR_27>

As we have mentioned in our answer to Q22 above, we invite the ESAs to adhere strictly to the CRSD/ESRS in terms of time scope and standardisation/methodologies, knowing that the ESAs were only aware of EFRAG's draft ESRS at the start of the consultation. In the meantime, however, the drafts of the ESRS have been submitted for consultation by the EU Commission. In addition to the phase-ins proposed by EFRAG, the Commission has also introduced the following additional phase-ins/the phasing-in of certain requirements: Undertakings with less than 750 employees may omit scope 3 GHG emissions data, for instance. Disclosures as proposed by the ESAs should strictly be aware of such developments and be aligned with them.

With regard to PCAF, we support global standards in principle, and therefore also the Global GHG Accounting and Reporting Standard for the Financial Industry developed by PCAF. But we do not support the use of a single metric for target setting for financial products with decarbonisation strategies. The PCAF standard should not be the only standard, and it should only be used as an optional standard in target setting. The PCAF standard has, as far as we see, not been widely adopted by financial market participants with GHG reduction targets. We remember also the openness of the ESRS to various methodological approaches. |

<ESMA_QUESTION_SFDR_27>

Q28 : Do you agree with the approach taken to removals and the use of carbon credits and the alignment the ESAs have sought to achieve with the EFRAG Draft ESRS E1? Please explain your answer.

<ESMA_QUESTION_SFDR_28>

Provided that the ESAs will achieve an alignment no longer with the EFRAG Draft ESRS E1, but with EU Commission's Delegated Act of the CSRD/the ESRS consulted until 7 July 2023, and that the ESAs try to align also the timeline with the before-mentioned Delegated Act, we do agree with the approach taken to removals and the use of carbon credits, but these additional disclosures should not be mandatory. |

<ESMA_QUESTION_SFDR_28>

Q29 : Do you find it useful to ask for disclosures regarding the consistency between the product targets and the financial market participants entity-level targets and transition plan for climate change mitigation? What could be the benefits of and challenges to making such disclosures available? Please explain you answer.

<ESMA_QUESTION_SFDR_29>

[No, we find it rather not useful to require such additional disclosures. It seems overly complex to us.]

<ESMA_QUESTION_SFDR_29>

Q30 : What are your views on the inclusion of a dashboard at the top of Annexes II-V of the SFDR Delegated Regulation as summary of the key information to complement the more detailed information in the pre-contractual and periodic disclosures? Does it serve the purpose of helping consumers and less experienced retail investors understand the essential information in a simpler and more visual way?

<ESMA_QUESTION_SFDR_30>

[ESAs' proposition to amend the front of the pre-contractual and periodic disclosure templates to remove the existing summary field and replace it with a dedicated "dashboard" of key information that complements the more detailed information in the main body of the disclosure (with the intention of drawing the attention of retail investors specifically to the key information and reducing the risk of information overload) is welcomed by our members.

Especially the possibility to disclose whether or not the product takes into account PAIs (which is presumably always the case for Article 9 products, but the option to indicate "no" is confusing) is an improvement.

A potentially helpful side-effect of using the dashboard is that the Asset Allocation chart could be omitted (as the dashboard would provide information on the product's sustainable and taxonomy-aligned investments from the outset). This should alleviate some of the problems that companies have encountered with the current version of the template when trying to determine the allocation of investments.]

<ESMA_QUESTION_SFDR_30>

Q31 : Do you agree that the current version of the templates capture all the information needed for retail investors to understand the characteristics of the products? Do you have views on how to further simplify the language in the dashboard, or other sections of the templates, to make it more understandable to retail investors?

<ESMA_QUESTION_SFDR_31>

[In principle, we agree with the statement that the current templates capture all the information necessary for retail investors, yes. On the other hand, we have some fundamental doubts as to whether the information asymmetry between product providers and retail investors can really be

eliminated by means of the extensive templates, the complexity of the underlying regulation and the technical terminology (Taxonomy, PAIs, etc.). However, this is more a question of principle that would have to be answered at Level I of the SFDR, and consumer tests and ESMA's call for evidence on suitability assessment will possibly bring more clarity.

We expressly acknowledge the ESAs' effort to provide a useful overview of the main characteristics of Article 8 and 9 funds through the design and wording of the templates of Annexes II-V. This is particularly true for retail investors. But it is also a matter of fact that the market has taken up products according to Art. 8 and 9 SFDR as labels, even if legislators and supervisors firmly reject this. In our opinion, however, a label system meets a fundamental need of the industry and investors, which is why we are not surprised by the "abuse" of the SFDR as a label system against this background. In our opinion, the need for a label applies particularly to retail investors, and we have certain doubts that the mandatory templates with their rather large number of pages and information will pass the practical test of sufficiently reducing the existing information asymmetry between fund providers and retail investors. |

<ESMA_QUESTION_SFDR_31>

Q32 : Do you have any suggestion on how to further simplify or enhance the legibility of the current templates?

<ESMA_QUESTION_SFDR_32>

| We expressly acknowledge the ESAs' effort to provide a useful overview of the main characteristics of Article 8 and 9 funds through the design and wording of the templates of Annexes II-V. This is particularly true for retail investors. Doubts exist with regard to the complexity of the regulation, the partly complicated terminology and the fact that the market has taken up products according to Art. 8 and 9 SFDR as labels, even if legislators and supervisors firmly reject this. In our opinion, however, a label system meets a fundamental need of the industry and investors, which is why we are not surprised by the "abuse" of the SFDR as a label system against this background. In our opinion, the need for a label applies particularly to retail investors, and we have certain doubts that the mandatory templates with their rather large number of pages and information will pass the practical test of sufficiently reducing the existing information asymmetry between fund providers and retail investors. But the consumer tests and ESMA's call for evidence will possibly bring new insights here.

It is worth considering, also in the context of the review of the SFDR at Level I, whether mandatory templates are really necessary for professional and institutional investors. A different use of such templates for retail and institutional investors would seem appropriate to us. Institutional investors do not need too standardised and rigid templates, as they have their own list of preferences or objectives and often their own sustainability agenda and strategy. Due to their ticket sizes and professional standing, institutional investors and their consultants are able to negotiate directly and successfully with fund managers to get the information needed or wanted. |

<ESMA_QUESTION_SFDR_32>

Q33 : Is the investment tree in the asset allocation section necessary if the dashboard shows the proportion of sustainable and taxonomy-aligned investments?

<ESMA_QUESTION_SFDR_33>

[No, in our view the investment tree is no longer necessary if the dashboard is introduced and shows the proportion of sustainable and taxonomy-aligned investments. We believe this is a potentially helpful side-effect of using the dashboard, as we have stated in our answer to Q30 above. This should alleviate some of the problems that companies have encountered with the current version of the template when trying to determine the allocation of investments.]

<ESMA_QUESTION_SFDR_33>

Q34 : Do you agree with this approach of ensuring consistency in the use of colours in Annex II to V in the templates?

<ESMA_QUESTION_SFDR_34>

[Yes, we do.]

<ESMA_QUESTION_SFDR_34>

Q35 : Do you agree with the approach to allow to display the pre-contractual and periodic disclosures in an extendable manner electronically?

<ESMA_QUESTION_SFDR_35>

[Yes, we do, as it might be helpful, especially for retail investors, to keep the overview and to click on specific sections to extend them.]

<ESMA_QUESTION_SFDR_35>

Q36 : Do you have any feedback with regard to the potential criteria for estimates?

<ESMA_QUESTION_SFDR_36>

[The ESAs' comments in the consultation paper on "equivalent information" seem reasonable to us. The use of the Usability Report of the Platform on Sustainable Finance for "substantial contribution", DNSH and compliance with the "minimum safeguards" are in our opinion practicable, appropriate

and reasonable. But we also note that the statement on compliance with minimum safeguards is no longer in line with the EU Commission's interpretation as the Commission has clarified in June 2023 that investee companies must have implemented due diligence and remedy procedures in line with the standards of the OECD Guidelines and the UN Guiding Principles and must consider the mandatory social PAIs and the controversial weapons PAI indicator under the SFDR Delegated Act. |

<ESMA_QUESTION_SFDR_36>

Q37 : Do you perceive the need for a more specific definition of the concept of “key environmental metrics” to prevent greenwashing? If so, how could those metrics be defined?

<ESMA_QUESTION_SFDR_37>

|No, we do not see any need for a more specific definition of “key environmental metrics” that go beyond ESAs' explanations. |

<ESMA_QUESTION_SFDR_37>

Q38 : Do you see the need to set out specific rules on the calculation of the proportion of sustainable investments of financial products? Please elaborate.

<ESMA_QUESTION_SFDR_38>

|From our point of view, it is crucial to outline that (i) the calculation of sustainable investments should include all investments incl. cash, derivatives and other assets (similar to PAI) in the denominator and (ii) the calculation should happen based on a specific reporting date and not as of a reporting period (e.g., average values throughout the year) as opposed to PAIs. |

<ESMA_QUESTION_SFDR_38>

Q39 : Do you agree that cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload?

<ESMA_QUESTION_SFDR_39>

|Yes, we agree. |

<ESMA_QUESTION_SFDR_39>

Q40 : Do you agree with the proposed website disclosures for financial products with investment options?

<ESMA_QUESTION_SFDR_40>

[Yes, we agree, as the ESAs only set out in the Delegated Act on the SFDR what they have already made part of supervisory practice since 2022.]

<ESMA_QUESTION_SFDR_40>

Q41 : What are your views on the proposal to require that any investment option with sustainability-related features that qualifies the financial product with investment options as a financial product that promotes environmental and/or social characteristics or as a financial product that has sustainable investment as its objective, should disclose the financial product templates, with the exception of those investment options that are financial instruments according to Annex I of Directive 2014/65/EU and are not units in collective investment undertakings? Should those investment options be covered in some other way?

<ESMA_QUESTION_SFDR_41>

[]

<ESMA_QUESTION_SFDR_41>

Q42 : What are the criteria the ESAs should consider when defining which information should be disclosed in a machine-readable format? Do you have any views at this stage as to which machine-readable format should be used? What challenges do you anticipate preparing and/or consuming such information in a machine-readable format?

<ESMA_QUESTION_SFDR_42>

[The industry defined the European ESG Template (EET) as a machine readable format for the exchange of SFDR data between funds and investors. We recommend using EET as a basis provided that the majority of the industry is already using it for PAI reporting and also Art. 6/8/9 disclosures. Introducing an additional machine readable format would not be beneficial from our perspective and reduce data quality and data coverage.

We would rather recommend an exchange between the FinDatEx EET Working Groups and the ESAs on a regular basis in order to ensure alignment between the regulatory and the reporting frameworks.]



<ESMA_QUESTION_SFDR_42>

Q43 : Do you have any views on the preliminary impact assessments? Can you provide estimates of costs associated with each of the policy options?

<ESMA_QUESTION_SFDR_43>

No, we do not have any views on the preliminary impact assessment, and as an association, we are not able to provide estimates of costs associated with each of the policy options. |

<ESMA_QUESTION_SFDR_43>