Reply form

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

European Banking Federation

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from across Europe. The federation is committed to a thriving European economy that is underpinned by a stable, secure and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere

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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’.

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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) 2018/1725[1]. 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.

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General information about respondent

Name of the company / organisation	European Bankin Federation EBF
Activity	Banking sector
Are you representing an association?	☒
Country/Region	Europe

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)?

We appreciate the intention of ESA's to align PAIs with mandatory ESRS indicators to be reported under the CSRD. Such approach would greatly help implementation of SFDR and the reporting on these indicators as it would minimize the need for bilateral engagement or the use of proxies. However, while the ESAs' proposal assumes that the information needed to calculate the SFDR indicators will be mandatorily reportable by customers under CSRD, whereas the European Commission Draft Delegated Acts related to the ESRS (currently under consultation until July 7th) requires publication of indicators only if assessed as ''material'by the preparers. This means that the information considered as non material by the corporates will not be reported should the materiality assessment be retained in the final Delegated Act. This is of particular issue for the following PAI that should not have been subject to materiality assessment in the ESRS:

1. GHG emissions (scopes 1, 2 and 3)
2. Carbon footprint
3. Monetary GHG intensity (tCO2e/M€ of enterprise value)
4. Activities in the fossil fuel sector
5. Share of non-renewable energy consumption and production
6. Energy consumption intensity
7. Activities negatively affecting biodiversity-sensitive areas
8. Emissions to water
9. Hazardous waste and radioactive waste ratio
10. Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises
11. Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises

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12. Unadjusted gender pay gap
13. Board gender diversity
14. Exposure to controversial weapons (anti- personnel mines, cluster munitions, chemical weapons and biological weapons)

PAI related solely to real-estate investments were not included in the ESRS. Nevertheless, it will be important that companies also disclose those, depending on their sector:
1. Exposure to fossil fuels through real estate assets
2. Exposure to energy-inefficient real estate assets

It is of utmost importance that consistency in the EU legislative framework is ensured. The non alignment of European ESG disclosure regulations (naming SFDR for 'users' and CSRD/ESRS Delegated Acts for 'preparers') on the materiality assessment rules and on the implementation calendar, is a huge flaw that needs to be solved urgently either in the ESRS or in the SFDR. We also understood the European Commision is planning a comprehensive assessment of the SFDR level 1 text, for which a public consultation in autumn 2023 is envisaged.

The ESAs' explicit prohibition (also reiterated during the public hearing) for Financial Market Participants (FMPs) to use '0' or 'N/A' for SFDR related disclosures, when their clients consider the information not material, is not workable. **We urge the ESAs to adapt the SFDR RTS to the final ESRS rules, should disclosure requirements remain subject to the materiality assessment of the reporting entities.**

The SFDR RTS should allow Financial Market Participants (FMPs) to (i) use '0' when disclosed by the corporates under CSRD when data is considered as non material or (ii) have the possibility to use proxies or estimates for corporates not subject to CSRD.

Apart from the above, it has to be recognized that still a large part of the investable universe may not be subject to the CSRD. Without clear guidance it may be difficult to obtain meaningful data on these new indicators. Especially it may be difficult to retrieve data for non-CSRD investments because investments with a social objective are often linked to investments in developing countries – e.g. microcredit initiatives – and therefore are likely to be non-CSRD.

While we understand the proposal to extend the list of social PAI indicators, as they reflect social issues of material concern and we suggest the introduction of PAIs only in the presence of reported information from companies. For the purposes of alignment, it is essential that the final version of the RTS 2.0 aligns with the first set or sector-agnostic ESRS both in terms of content as well as timing. The entry into force of the RTS 2.0 should not take place before 2025, and ideally in 2026. In addition, we would like to highlight a number of specific issues related to the new mandatory social PAIs measurement:

PAI 14. **Amount of accumulated earnings in non-cooperative tax jurisdictions** (not ESRS): Amount of accumulated earnings at the end of the relevant financial year from investee companies where the total consolidated revenue on their balance sheet date for each of the last two consecutive financial years exceeds total of EUR 750M in jurisdictions that appear on the revised EU list of non-cooperative jurisdictions for tax purposes." While the EU provides a clear list of non-cooperative jurisdictions, companies do not always disclose their revenue earned by national jurisdiction. This will make tracking this information difficult en masse until country level revenue reporting becomes mandatory. If the EU wishes to add this indicator to the mandatory list then it should also mandate disclosure by

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corporations accordingly. In the interim the EU should accept "non available" mention in the absence of reported data.

PAI 16. **Exposure to companies involved in the cultivation and production of tobacco** (ESRS2 SBM-1): Share of investments in investee companies involved in the cultivation and production of tobacco." This indicator should be relatively easy to measure as there are established ESG databases which track company revenue exposure to tobacco production. Specific guidance should be given as to how involvement should be measured (e.g. revenue) and the tolerance threshold for this indicator.

PAI 17. **Interference in the formation of trade unions or election of worker representatives** (under ESRS S1, mentioned as an example of a policy) : Share of investments in investee companies without commitments on their non-interference in the formation of trade unions or election of worker representatives." As currently worded, this indicator would be very tricky to measure. We believe it should be removed. Defining what constitutes "interference" is also not operationally meaningful..

PAI 18. Share of employees earning less than the adequate wage (ESRS S1-10): ''Average percentage of employees in investee companies earning less than the adequate wage". It is already difficult to define adequate wage at national level and there is typically no data available at corporate level to support compliance with this PAI as far as we are aware.

In summary, while we believe all of the issues which these new PAI are seeking to address (tax, pay equity, worker rights, tobacco) are material, we have strong reservations about making their tracking/reporting mandatory without further clarification of each indicator definition and/or further clarification of the acceptable use of estimates.

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

No we would not recommend other mandatory social indicators. As stressed in the response to the first question, any indicators have to correspond to the information disclosed under ESRS or other mandatory disclosure requirements for companies, otherwise financial intermediaries will not be able to determine specific indicators in this context.

In this regards, we would like to highlight indicators which are not aligned with the CSRD/ESRS such as:

- The **interference in trade union foundation** is not an explicit requirement in S1. Interference in trade union foundation could also not be a material aspect of the policy required by S1, so companies may not address this aspect. This could create extra data complication, as the failure to mention this topic in a policy related to workforce does not mean that there is adverse impact.

- S1-10 **on less-than-adequate wage** is also subject to materiality assessment (like most ESRS datapoints). Data will therefore by lacking for those undertakings who do not consider this topic to be material. The CSRD rules on materiality leave considerable leeway to reporting undertakings, and there is a risk that data availability will be of a poor quality

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- **'insufficient employment of persons with disability'** -data availability will also likely be partial.

We would also like to propose to adjust the following PAI: **"Investee countries subject to social violations"**. As worded, it has no material significance as it counts the number of countries and not the measurement of exposure. We propose to change the PAI to "Share of investments in countries subject to social violations".

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)?

We consider that there is already a long list of voluntary / optional indicators. We do not see the need to add new ones. Furthermore, as also mentioned under question 1, we would recommend that when introducing new PAIs, it be ensured that the data for these are available.

It may be difficult to obtain meaningful data on these new indicators. Especially it may be difficult to retrieve data for non-CSRD investments because investments with a social objective are often linked to investments in developing countries – e.g. microcredit initiatives – and therefore are likely to be non-CSRD.

Also, as already mentioned, the proposal assumes that the ESRS indicators will be mandatorily reportable items under the CSRD which may not be the case in the final ESRS.

In addition:

- For indicators "**Excessive use of non guaranteed-hour employees in investee companies, Excessive use of temporary contract employees in investee companies'' and ''Excessive use of non-employee workers in investee companies**", concepts like "excessive use" and "non-employee workers" are undetermined, which could lead to difficulties in terms of coherence and comparability.
- For the indicator "**insufficient employment of persons with disabilities within the workforce**", the concept "insufficient employment" is not defined and could bring the same difficulties mentioned above.
- The following two indicators could, in our view, be combined: "Lack of grievance/complaints handling mechanism for communities affected by the operations of the investee companies" and "Lack of grievance/complaints handling mechanism for consumers/end-users of the investee company''

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

We consider that there is already a long list of voluntary / optional indicators. We do not see the need to add new ones.

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?

The views on replacing the UN Global Compact (UN GC) principles diverge amongst EBF members.

Although the UN GPs have a narrower scope than the UN GC (focusing more on Human Rights), some of the issues such as Environment and Corruption are adequately covered by the OECD Guidelines for Multinational Enterprises.Whilst the UN GC reaches out directly to the business community on what priorities broader policy and strategic objectives should incorporate on a voluntary basis, the UN Guiding Principles focus on how to ensure a narrower set of priorities are actually fulfilled. The UN GPs aim to fill the gap which had not previously been properly addressed in practice and provide valuable direction and practical steps for those private sector organisations seeking to avoid being complicit in human right abuses.

Replacing UNGC with UNGP will also result in increased alignment across the EU legislation (see also CSDDD) which is very much needed and supported. Particularly as regards PAI indicators #10 and #11 , replacing UNGC with the UN Guiding Principles (UN GPs) and Rights at Work and the International Bill of Human Rights will strengthen the consistency with the EU Taxonomy Regulation, Art. 18, with regard to the minimum safeguard criteria that an economic activity must comply with in order to be classified as "environmentally sustainable".The concerns regarding the replacement are based on practical considerations and operational issues such as a still low availability of UNGP related data and the fact that numerous products have been aligned with the UN Global Compact and distributed. A corresponding exchange would lead to partly extensive contractual adjustments, which - since this is not possible via the GTC change mode - would require intensive interaction with the customer.

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?

No.

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?

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Yes, we see the 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.When establishing new reporting obligations, it is essential to ensure data availability and consistency between the SFDR and EU Taxonomy. However, we would like to note that the alignment with the Taxonomy for this type of indicator is mainly focused on companies that are under the scope of the Taxonomy Regulation. For real estate investments in countries outside the European Union it will be challenging to collect this data.

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?

We welcome the clarification provided by November 2022 ESAs Q&A on current value of investment (end of fiscal year has been replaced by mark to market value as of end of quarter).

However the definition of 'current value of investment' exposed in Annex I seems to be applying only to investees. It should be evaluated whether the provision of further details on how to practically calculate this value for each exposure (investees, sovereign issuers, real estate) and asset class (equity, debt, treasuries) may be needed.

Moreover, we highlight that the use of the current value of the investment, calculated as the price of the individual investment at the end of the financial year multiplied by the quantity of investments, partially avoids the PAI under/overevaluation risk related to the market performance in the reference year. However, the use of the market value of the investment would represent the following advantages:

- The use of a single methodology for different asset classes and exposure categories.
- Less significant differences between PAI indicators' values during the reference period aimed to monitoring and managing, and those published in the PAI Statement.

We also highlight that, due to the fact that companies' financial year can be different from the reference period of the PAI Statement, the PAI under/overevaluation risk cannot be completely avoided.

Moreover, changes in the measurement methodology affect how ESG data providers will be able to adapt the calculation formulas in a timely manner. This change will also prevent the comparability between indicators between PAI reports in N and N-1.

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

- Some additions in Annex I are not listed in the consultation:
  - (5) '**exposure to companies active in the coal sector'**
  - (40) **Share of supranational and sovereign debt** (§28. All investments)

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- (69) ‘**investments in non-cooperative tax jurisdictions’** => the CP only includes "amount of accumulated earnings"; which difference ? clarification is needed (p.124 Table 3 n°28)/ (before n°22)
- (64) ‘**lack of remediation mechanism for affected communities in relation to the operations of the investee companies’**

- One PAI is removed:
  - 17. **Share of bonds not issued under Union legislation on environmentally sustainable bonds**
- Some KPIs wording were modified:
  - (46) ‘**investments in companies without workplace accident prevention policies or management systems**’ => modified to add 'management systems'
  - (47) **'Accident' replaced by 'recordable work-related injuries’**
  - (50). **Lack of grievance/complaints handling mechanism related to employee matters** replaced by '‘lack of grievance/complaints handling mechanism to report alleged cases of discrimination related to employee matters’
  - (61) ‘**operations and suppliers using workforce qualifying as child labour'** replaces 'at significant risk of incidents of child labour'

In general, we agree with the proposal to have total assets at the denominator for the calculation of the PAI, except for a limited number of PAIs (5-6-12-13), in order to avoid any risk of dilution of PAI or possible greenwashing.

For such PAIs, SFDR RTS should clearly allow FMPs to rebase the denominator by assets or exposure of ‘eligible’ and covered instruments. In that case, FMPs should be transparent and complement the disclosure with the % of eligible assets to all investments.

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?

For some indicators, published data is not always available, as the ESRS have not entered into force yet (and disclosures may continue not to be available if considered immaterial by the reporting entity) . High reported numbers do not necessarily give a picture of reality. Common methodologies (e.g. for scope 3 for instance) are still missing.

Difficulty with regards to the following PAIs indicators were reported by some EBF members:

1, 2, 3 PAI – Scope 3	Scope 3 carbon data is very rarely disclosed and estimates vary dramatically across vendors. Where data is disclosed, typically, it is done inconsistently. All of these factors could distort reporting figures and make them difficult to interpret by market participants independently and in reference to other asset managers.
8. Emissions to water	There is very low disclosure (and high estimation error for entities that do not report) which could distort reporting figures. Vendors also capture different emission types and there is some uncertainty about which should be considered as

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	per the regulation. Companies also inconsistently report pollutants. For these reasons reporting on this PAI seemed imprudent at this stage.
9. Hazardous waste ratio	There is very low disclosure (and high estimation error for entities that do not report) which could distort reporting figures. Vendors also capture different emission types and there is some uncertainty about which should be considered as per the regulation. Companies also inconsistently report pollutants. For these reasons reporting on this PAI seemed imprudent at this stage. To have greater clarity on the indicator formulas, please consider • including in Annex I both formulas necessary to calculate the metrics based on the indicator "Hazardous waste and radioactive waste ratio" • the formulas for the remaining indicators in Table III
15. GHG intensity (Scope 3)	Sovereign carbon emissions for Scope 3, provided by OECD, is as of 2018. However, Scope 1 & 2 data, already sourced by different providers, correspond to 2019 and therefore, we do not recommend to mix carbon emissions from different years.

We propose a phase-in approach for SFDR PAIs and alignment to the CSRD/ESRS implementation dates (from 2025 onwards) in order to avoid any data gaps.

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?

Financial market participants rarely receive the data directly from the company. Due to the abundance of data required and the electronic/automated processing, FMP s generally rely on data providers, some of whom retrieve the data from the companies, and tend to contact the companies directly only in the area of engagement. We do not agree with the proposal , as the added value of this information is questionable. In addition, it appears that this approach is not even possible for some PAI (PAI 7,10 or 11 for instance), or controversies.

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?

We agree that this approach is relevant for most PAIs but we consider that this proposal is not logical for all the PAIs. As an illustration, if there is a gender pay gap of 20% for 50% of the portfolio and 50% cash, it's not the same at all to have a gender pay gap of 10% for 100% of the portfolio.

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The first approach proposed in the consultation covering all the investments made by the financial market participant could potentially lead to a low comparability, both with regard to the performance of a single FMP over time and between different FMPs. Moreover it seems to lead to lower values than the second approach -covering investments in the particular type of entity or real estate asset causing the adverse impact.

Although the approach that focuses PAI calculations on the relevant categories of exposures (investee, supranational and supranational companies, real estate assets) leads to greater calculation complexity for FMPs (due to a multiplication of PAIs) and potentially higher values (therefore negative for the FMP), a series of advantages can be identified that could also lead to a greater transparency and comprehensibility of the indicators to the market. In particular:

- Consistency between the numerator and the denominator of the formula is ensured without diluting the values of the PAI indicator, considering investments for which it is not relevant to the denominator (for example, including in the denominator investments in sovereign and supranational securities for indicators applicable to investments in investee companies).
- The significance of the PAI indicators is preserved. For example, the indicators "gender pay gap" and "gender diversity in management and supervisory bodies" represent respectively the weighted average of the percentage difference in pay between men and women and the percentage of men on the boards of directors of FMP investee companies. If investments in sovereign issuers were also included in the denominator (for which these indicators are not relevant and therefore would not be included in the numerator), the reported value would lose its meaning and, other things being equal, would be inferior.

Therefore, while monitoring PAI calculated on all assets can give an overview of the macro trends of asset managers and at, aggregate level, give indication of the evolution of the financial system, calculating PAI at asset class level can give a more meaningful indication of the actual effort made by the various FMPs to curb PAIs.

As a result, it would be more relevant to have a more targeted and differentiated approach depending on the nature of the PAI. For a limited number of PAIs (5-6-12-13), in order to avoid any risk of dilution of PAI or possible greenwashing, the SFDR RTS should clearly allow FMPs to rebase the denominator by assets or exposure of ‘eligible’ and covered instruments. In that case, FMPs should be transparent and complement the disclosure with the % of eligible assets to all investments

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?

Yes, we generally agree with the ESAS approach. It has to be considered that the value chain scope of each datapoint is determined by the ESRS themselves. For example, various datapoints, including those dermining PAI indicators under the SFDR, are limited to own operations – therefore without a wider supply chain scope – and regardless of the outcome of a materiality assessment. Therefore supply chain data will not be available for all indicators.

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Financial market participants should include information on the value chains of investee companies that are not reporting under the ESRS where that information is readily available, e.g. in the public reporting of those investee companies. The consequence of that proposal is that if the investee company is not reporting its value chain's adverse impacts under the ESRS or this is disclosed in other reporting, then those do not need to be taken into account for the PAI calculations.

It is the responsibility of the investee companies to report on emissions in the value chain outside the CSRD. And only if PAI & value chain is reported by the investee companies, the information can be included..

Moreover, as a general comment, it should also be noted that the inclusion of information on the value chains of the investee companies could make it more difficult to compare the values reported among the FMPs as the availability of this information for each individual investee company would depend on:

- the type of company in the portfolio (subject/not subject to CSRD, with more or less 250 employees, etc.).
- for certain mandatory indicators, whether the information is relevant on the basis of the materiality assessment of the investee.

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

EBF is not responding this question

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?

EBF is not responding this question

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?

In principle, we agree with the objective sought by the proposed amendments to improve the comparability of PAI data by clarifying the way they are calculated and, therefore, the composition of the relevant numerators and denominators. However, it is difficult at the moment to carefully assess the impacts. We only note that the new wording includes a new definition of 'current investments'. We suggest to further precise the definition of the meaning of 'current'.

We highlight the need to explicitly indicate that the proposed approach should be applied to all asset classes (for example, corporate bonds) and not only to equity and sovereign exposures, in order to avoid possible differing interpretations or doubts by FMPs.

As per Question 14 and 15, companies are the actors of the real economy and capable of ESG assessments; inclusion of certain derivatives should be further asseesed.

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

We share ESAs' concerns about the wide margins left to financial market participants for the assessment of compliance with the DNSH principle and the resulting lack of comparability. We also note that the lack of comparability in the disclosed information is unfortunately inherent to a disclosure regime with open-ended definitions such as the SFDR, which also does not prescribe any methodology for the assessment of key constructs.

These shortcomings should be addressed in the level 1 text, including aligning the entire ESG regulatory framework in order to avoid duplications or misalignments and also to improve the effectiveness the entire ESG framework.

Looking forward, it should be noted that for the development of a future pproach to DNSH under SFDR, following aspects will have to be considered:

- the need for methodological guidance by the European authorities or legislator to ensure consistency at European level.
- the definition of a methodology with "dynamic" criteria enabling financial products to make sustainable investments in a wide range of environmental or social objectives, in order to maintain adequate levels of investment stability and diversification.

On the contrary, the definition of "static" criteria could excessively restrict the universe of investable assets, undermining compliance with stability and diversification parameters and, consequently, the profitability of the products themselves..

However, even in this context, we fully support the option of "Status Quo" as proposed by the ESAs.

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.

We do not support the mandatory use of PAI as quantitative DNSH thresholds as proposed for the option "More specific disclosures".

We suggest not to add any additional burden to financial market participants that decide to include sustainable investments in their products. While it may be tempting to require additional disclosures to give the market access to information on compliance with the DNSH criteria, there is a real risk of 'disclosure overload' especially if this would have to take place through quantitative thresholds as well as possible confusion for clients given comparability issues between financial market participants as different PASI consideration methodologies can be used in the DNSH analysis. In addition, the publication of the thresholds used for the DNSH does not guarantee comparability between financial

market participants as different PASI consideration methodologies can be used in the DNSH analysis and may lead to further confusion for clients.

In addition, the publication of quantitative thresholds implies that, for each change or adjustment made in the methodology (even if its minor), all the public documents must be modified, with the consequent administrative burden that this entails.

On top of that, FMPs should not be required to define their own the quantitative thresholds for PAI indicators for DNSH purposes. This is not leading to defining reasonable thresholds given very nature of the SFDR DNSH principle, namely the sector agnostic characteristic . In the absence of a reference economic sector, it is impractical for FMPs to fix minimum quantitative thresholds in order to determine, for each indicator, whether the level found below or above these thresholds is appropriate for asserting compliance to the DNSH principle. First application practices show that it is very difficult to set such thresholds across the various economic sectors. Threshold criteria for DNSH, where they have been determined quantitatively by FMPs, differ on a sector and country basis (as they apply to each investment), and may be grounded over very complex assessments in the presence of considerable scientific uncertainty. They are therefore unlikely to offer any meaningful and comprehensible insight to the average investor. It could also increase the risk of greenwashing accusations and, in some respects, greenbleaching, as it could lead FMPs not to declare the sustainability of their financial products for fear of falling into an impossible reporting situation.

If these were to be applied as exclusionary thresholds, it would have the effect of limiting the investible universe of Sustainable Investments for most companies to zero (or close to it) making construction of article 9 products which need to maintain 100% SI exposure unworkable.

For instance, very few companies pass all the PAI. Also, we understand that the failure rate of companies when measured against some PAI can exceed 90% depending on the interpretation of the PAI language (e.g. PAI 11).

Additionally, some of the PAI (e.g. those requiring the existence of a policy) bias against small cap companies which typically lack the resources to develop and enforce various policy types. Moreover, we also do not believe that some of the PAI should be considered material enough to justify exclusion of a company from portfolios, . For all of these reasons, setting PAI as quantitative thresholds would have a negative effect on Sustainable Investments and should be avoided.

In addition, the publication of quantitative thresholds implies that, for each change or adjustment made in the methodology (even if its minor), all the public documents must be modified, with the consequent administrative burden that this entails.

More relevant to assert consideration and address or mitigation of PAI would be the status quo which allows PAI to be considered in ways other than strictly quantitatively. This is more in keeping with the spirit of the PAI which we consider to be indicating material (principal) adverse impacts but avoids strict adherence with metrics which in some cases are rarely reported by companies (e.g. scope 3 carbon; gender pay gap) or are difficult to measure precisely (e.g. PAI 11).

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

Allowing companies aligned to the EU Taxonomy to benefit from an "automatic pass" of the SI environmental DNSH would be welcome. However, in light of the difference between DNSH notions in the SFDR and the Taxonomy, we do not see how the "safe-harbor" option would work in practice and how it can be of more than limited assistance in demonstrating compliance with DNSH.

Practical implementation seems to bring lots of complexity and potentially limited usefulness.

We see risk of exacerbate confusion that would likely raise questions (especially by retail clients) about complex and possibly conflicting regulatory terms that would however be the responsibility of financial market participants to explain.

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.

Synchronisation seems sensible in principle; however, there are some considerations that could question the practicability:

- The EU Taxonomy DNSH ensures no harm at activity level and SI DNSH ensures a different level of information at issuer level.
- The EU Taxo DNSH only captures aligned activities and does not ensure any check regarding activities not aligned with the EU Taxonomy.
- EU taxo DNSH criteria are much more specific and granular than SI DNSH which captures less details. SFDR DNSH is based on controversies, governance score and exclusions and is not splitted between a social and environmental DNSH.
- Tere are currently no EU Taxonomy DNSH for activities aligned with a social objective and, therefore, the basis of international conventions, treaties and principles must be identified...

We believe it is premature to anticipate what would be the best long term approach or to agree with the longer term view of the ESAs that, if two parallel concepts of sustainability are retained, the Taxonomy TSCs should form the basis of DNSH assessments. FMPs and regulators need time to experiment the two existing DNSH frameworks, the incoming Taxonomy (Technical screening criteria, DNSH and Minimul Social Safeguard) for the four additional environmental objectives, and the role of the minimum social safeguards in the EU Taxonomy Regulation and SFDR.

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

See our response to Q 20.

Classification : Internal

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.

We consider that this section on decarbonisation is going into the right direction. However it is necessary to assess if this approach is feasible at this stage or if more maturity is needed to implement these new disclosures in appropriate conditions.

For example, it should be noted that the inclusion of highly detailed information on greenhouse gas emission reduction targets (GHG) can be difficult for the customer to understand due to the high technicality of the topic. In particular, it should be considered that the indication of the objective and the description of how it is to be achieved can be understandable to the customer, while the table with its highly detailed information may require a very complex work for the FMP without any benefit to the customer.

Indeed, we have the same huge concerns for disclosing GHG emissions reduction targets as for PAIs. The non alignment of European ESG disclosure regulations, naming SFDR for ‘users’ and CSRD/ESRS Delegated Acts for ‘preparers’, on the materiality assessment rules and on the implementation calendar, is a huge flaw that needs to be solved urgently in the revised RTS.

Indeed, the ESA’s proposal assumes that the information needed to calculate the SFDR indicators will be mandatory reportable by customers under CSRD, whereas the European Commission Delegated Acts related to the ESRS (currently under consultation till July 7th) will require mandatory publication of indicators only if assessed as ‘material’ by the preparers. This means that the information considered as non material by the corporates will not be reported.

We disagree with the ESAs’ prohibition (as reminded during the public hearing) for Financial Market Participants (FMPs) to use ‘0’ or ‘N/A’ for SFDR related disclosures, when their clients consider the information is not material. We urge ESAs to allow Financial Market Participants to (i) use ‘0’ when disclosed by the corporates under CSRD when data is considered as non material or (ii) have the possibility to use proxies or estimates for corporates not subject to the CSRD.

In addition, FMPs are dependent on the disclosure from their customers under the ESRS of the Corporate Sustainability Directive. Consistency between both regulations is essential, as investors need the ESG data collected through the CSRD to comply with the SFDR. Therefore, it seems utmost necessary that the required SFDR disclosures be aligned with ESRS and timed in accordance with the reporting of non-financial companies, which will occur in a phased-in mode from 2025 to 2029, in order to minimize the data gaps.

Finally, the SFDR RTS should also provide a phase in period for counterparts not subject to the CSRD.

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

Classification : Internal

could lead to confusion between Article 9(3) and other Article 9 and 8 financial products? Please explain your answer.

The introduction of GHG emissions reduction target disclosures could lead to confusion between Article 9(3) financial products that have the objective to reduce GHG emissions and other Article 9 and 8 financial products that have GHG emissions reduction targets. The differences are subtle and makes it hard for investors to distinguish between the different categories. It would require investors to dive into and understand the details. This extra information undermines the need for comprehensible, summarised information suitable to retail investors. In our view the amendments regarding GHG emission reduction targets should be left out.

We believe that the introduction of emission reduction target disclosures for Art 8 products, but also for Art. 9(1) and (2) products can be very confusing to investors who may not understand the difference between these products and the more ambitious products covered by Art. 9(3) disclosures. To tackle greenwashing and avoid consumer confusion there should never be any doubt to investors about the different level of ambition between these products. In particular, it should be very clear to investors that an Art. 8 product that promotes the reduction of CO_2 emissions is not underpinned by targets in line with the Paris Agreements CO_2 emission reduction goals. In the end, if that was the case, disclosures should have been made under Art. 9(3). We therefore reccommend that in the precontractual templates for such products, a clear indication is provided that the promotion of CO_2 emissions reduction is not underpinned by targets in line with the Paris Agreement, rather than complex target disclosures that may convey the impression of contribution to internationally-agreed upon climate targets.

Should ESAs nevertheless decide to require information on the GHG emissions reduction target, it should be through the hyperlink.

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.

The 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) might be relevant, allowing to grasp the peculiarieties of two different investment strategies.. However, the reduction may be achieved through a combination of actions and it is not easy to isolate a specific lever. In addition, including this information may be confusing to stakeholders who are not familiar with the distinction proposed by the ESAs.

Classification : Internal

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.

In principle, this can help mitigate greenwashing, but the added value of information for the average customer is questionable and the implementation is associated with a great deal of technical effort.. There is no clear agreement on methodologies to measure the degree of Paris Alignment. The NZIF approach which consists in qualifying companies under different categories of alignment based on their level of carbon emission reduction ambition (companies having achieved Net Zero emissions, the one that are aligned with a pathway consistent with the goal, the one that are aligning and those that are not aligned) might be a better option than disclosing the ITR of a fund.

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.

As already tackled in Question 9 and Question 12, we agree that the proposed approach to require that the target is calculated for all investments of the financial product may be relevant for some targets, for the sake of comparison between products. However, we consider that this proposal is not logical for all the targets and may generate some risk of dilution or possible greenwashing.

That's why we propose that SFDR RTS should clearly allow FMPs to rebase the denominator by assets or exposure of 'eligible' and covered instruments. In that case, FMPs should complement their disclosure with the % of eligible assets to all investments.

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.

At this stage, the Global GHG Accounting and Reporting Standard for the Financial Industry developed by PCAF should not be required as the only standard to be used on a mandatory basis for the disclosures.

We believe that the mandatary use of PCAF is premature. The ESAs should allow FMPs, for a transitional period, the flexibility either to use either PCAF on a voluntary basis for financed GHG emissions reduction targets or any other standard of their choice.

Classification : Internal

In the long term, we strongly believe that, in order to avoid any litigation related to greenwashing, FMPs should only use 'official' methodologies that should be set by official authorities (standard setters, regulators or authorities with mandates from regulators at European level and/or international level).

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.

Yes, we agree with ESAS approach. The split between financed emissions, financed removals and use of carbon credits is a real need to avoid greenwashing. As recommended by the EFRAG in Europe and by the ISSB at International level, we believe that the carbon reduction targets should be disclosed both net and gross of the removals and the use of carbon credits. It should however be aligned with the final version of ESRS.

Q 29 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.

Today, targets are only determined at entity level with no translation at fund level. Having consistency between the product targets and the entity-level targets would require significant developments.

Adding additional information to the templates that does not refer specifically to the product can create confusion for the client by mixing concepts such as decarbonization objectives of the entity vs. product, especially considering that there may be products (eg indexed product) that are not within the scope of the entity's transition plan. Product objectives are primarily focused on customer interests and needs, which are not always in line with entity-wide ESG commitments and may vary over time. Therefore, such disclosure may not accurately represent the reasons why an entity has entered into certain commitments and the products follow certain investment strategies.

In addition, we do not see what would be the added value for end investors to have access to this type of information as for the customer, product-related disclosure brings the most added value It is key that information delivered to end-investors remains simple and does not generate any form of confusion for them.

Providing disclosures regarding the consistency between the product targets and the financial market participants entity-level targets and transition plan for climate change mitigation should be at the discretion of FMP, not mandatory.

Classification : Internal

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?

We believe that the dashboard could be useful to provide a view of the key elements given the size of the template and the quantity of information it holds. However, simplification of the dashboard is of utpmost importance for retail investors.

While a dashboard, combined with visual icons, could simplify the comprehension of the detailed information, we strongly believe that the following concerns should be adressed:

- The new representation contains much more information (for example, percentage of investments promoting environmental or social characteristics; consideration of PAI at product level; reduction of greenhouse gas emissions - reintroduction), with the risk of inducing the customer to believe that the reading of this is exhaustive to the detriment of a greater information offer derived from the reading of the whole document.
- The first line of the dashboard, containing the indication of the promoted environmental or social characteristics and the corresponding percentage of investments, can be disproportionately sized considering the possibility of using up to 250 characters (spaces included). Moreover, this description would end up being repeated in the text of the first question "What are the environmental and/or social characteristics of this product?".
- The inclusion in the dashboard of information on the percentage of investments planned by the financial product has removed the immediate understanding of the overall relationship between the different types of investments (that is sustainable investments belonging to the set of investments with environmental or social characteristics), also due to the elimination of the asset allocation tree, which is also easy to read for the customer.

.- There are additional drawbacks of the dashboard such as:

- This new set-up does not show the playing field c.q. framework within the SFDR investing environment. In other words you can not see what the other options are e.g. sustainable investment objective (social/environmental).
- Title requires plit between E or S characteristics promoted - while it is always a mix
- Ratios: relationship between Q&R too complex for retail, simplification to be proposed
- The wording regarding PAIs does not indicate that the product may not take into account all mandatory PAIs in the investment strategy
- The information on GHG emissions reduction should should be read through the other part of the templates and deleted from the dashboard
- The box about "most significant negative impacts". Is this merely a statement that PAI's on product level are taken into account? If so the added value is merely that there are PAI's available later in the disclosure?

Classification : Internal

- most important PAI's for example mandatory fossil fuel disclosures are missing from the dashboard
- How does it work with the box percentage of sustainable investment? Art. 9 funds need to be 100% sustaianable investments excluding cash position and derivatives? Then there is no clear distinction at first glance between art. 8 and 9, perhaps this should be included in the header.

If these drawbacks are not solved, we find limited added value compared to the implementation efforts for this new dashboard formatQ31 : 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?

We believe that the templates are highly useful to standardize the publication of sustainability information for each financial product and this greatly simplifies the comparison exercize. However, we think that, in their current state, the templates are still beyond the analytical capabilities of most retail investors. We are proposing the following simplifications:

1. **Less ratios**:, we think that some ratios introduced in the level 2 texts should be discarded as what they bring in additional complexity far outweighs the potential increased clarity. In a nutshell, we think that the whole regulatory framework should align the concepts it uses across regulation, as such, SFDR should stick to the concepts that are defined in the Sustainability Preferences of the MIFID II/IDD amendments, namely the consideration of PAIs, the proportion of Sustainable Investments and the proportion of Taxonomy-aligned investments. More details in our answer to question 33.
2. **Better articulation between the minimum proportion and the spot values**: in their current form, the templates are not implemented in an harmonized manner across European jurisdictions, which further complexifies an already complex topic, bringing it further away from retail investors. We believe that the following points should be confirmed:
   - **There is no mandatory minimum**: SFDR being a disclosure regulation, FMPs should be free to take minimum commitments or not. In addition, the fact that there is no “minimum commitment” on a KPI does not mean that the fund will not invest in securities contributing to the said KPI but simply that the fund will not seek to invest in those securities (e.g. we should be able to take no commitment on EU Taxonomy while still being allowed to invest in stocks with a non-null Taxonomy proportion).
   - **There is no mandatory breakdown of commitments**: SFDR being a disclosure regulation, FMPs should be free to take the minimum commitments they choose. Especially in the case of ratios that are within one another: if we take the example of the EU Taxonomy, we should be able to take a minimum commitment on the overall Taxonomy-alignment of a product without having to take individual minimum commitments on the sub-elements of the EU Taxonomy alignment (nuclear, gas, others). There are two main reasons for this, a technical one and a principle one.

Classification : Internal

➢ **The technical reason** is that managing ratios which are encapsulated within one another is complex. Such a requirement will lead to a reduction in commitments across the board, as we would need to fill two or more conditions for each stock when the portfolio need to change (in our example, a sufficient overall taxonomy alignment and also suffient alignment on the sub-elements of the Taxonomy on which a commitment has been made). Still, the absence of commitment on the sub-components of the Taxonomy does not implies that the portfolio will not have any, but simply that the portfolio will be agnostic on the breakdown of its Taxonomy pocket. Lastly, and to cover the extreme case, it is not possible to breakdown an overall commitment into a sum of the sub-components (e.g. that min Taxo-nuclear + min Taxo-gas + min Taxo-others = overall min Taxo), as in this case, even the slightest change in the markets would immediately trigger a breach on the sub-components.

➢ **The principle reason** is that, currently, when investors take a commitment to invest a minimum share of a fund's assets in a geographical zone (e.g. EU) they are not required to commit to minimum holding in the sub-geographies of the zone (in our example, we do not take any minimum commitment to invest in the individual countries making up the zone Europe). This does not prevent them to clarify the breakdown in ex-post reporting, but in the ex-ante positioning, the only commitment is on one ratio. There is no reason that, for extra-financial ratios, this would be different.

- **Ex-post reporting is independent from ex-ante commitment**: minimum commitments are about the positioning of the products while ex-post reporting is about transparency. We believe that ex-post reporting should be granular and precise, independently from the ex-ante commitments through which the product is positioned.

3. **Less repetitions**: the templates, when filled, are already very long. We propose a revamping of their structure to ensure that information is only written once, making their reading simpler and shorter.
4. **Changing the order of the questions:** We suggest following text fields to appear at the end of the table (instead of at the beginning):
   - Template for Article 9 products: [in this box include the product's sustainable investment objective]
   - Template for Article 8 products: [include the environmental and/or social characteristic(s) promoted by the product and the [X]% of the product's investments that promote those characteristics –]

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

We would like to propose several suggestions to simplify and clarify the templates for retail clients:

Classification : Internal

1. Reorganize the structure of the templates to put together pieces of information that cover the same concepts but that were previously split;

2. Simplify the ratios in the Precontractual Templates – in particular, the ratios with commitments should be aligned with the ESG preferences (i.e. Sustainable Investments and EU Taxonomy).

3. Conduct extensive consumer-testing in all markets, to ensure that the proposals improve consumers' understanding and match their information needs. The consumer-testing should replicate a real-life situation where consumers are confronted with the entire document, and not just with parts of the documents

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

While an investment tree could be considered a useful tool to understand the breakdown of the entire portfolio of financial product assets and the relationship between different types of investments (such as sub-assemblies), as currently proposed, it may be misleading in different ways.

It may give the impression that the different SFDR ratios are a subset of each other. This is not the case: the different ratios are in practice independent. In addition, the tree introduces confusing elements: if we follow the tree, the denominator of SI seems to be the E/S ratio, as 1-SI corresponds to the remaining E/S which are not SI. Next to this, however, the regulatory literature consistently requires that the proportion of SI both committed and reported be expressed as a proportion of the assets of the fund, directly contradicting the asset allocation tree. This conflicting approach between the tree display and the ratio is true for all the indicators of the tree.

If the template is indeed intended for retail investors, it is highly advisable to limit the number of indicators that they need to digest and not to overestimate the willingness and ability of retail investors to perform due diligences on the extra-financial characteristics of the products in which they wish to invest. In addition, the asset allocation tree as currently proposed could also be misleading for retail clients, as it presents an articulation of the different concepts (E/S, SI, etc.) that is not true in practice and that contradicts the regulatory corpus in several instances.

Below, we (i) demonstrate indicator by indicator why we believe that the asset allocation tree is misleading, (ii) underline the importance of differentiating ex-ante commitments from ex-post reporting especially to clarify the difference between intentionality and fortuitous presence and (iii) ad important remarks on some ratios and on the “objectives” of sustainable investments.

I – The asset allocation tree is misleading and contradictory with the regulation

- From a general perspective, the asset allocation tree gives the impression that we represent a breakdown of the portfolio whereas,
  - in the precontractual, we take **minimum** commitments, which naturally don’t add up to the percentage of the parent KPI (min SI-E + min SI-S < min SI)
  - in the periodic report, we report actual values of which the sum is often greater than the parent KPI

Classification : Internal

  - Thus, retail investors looking at the tree get confused by the relationship between the indicators drawn by the tree which does not correspond to the figures written in the tree.
- **The relationship between E/S and SI in the tree contradicts the RTS**: if we follow the tree, the proportion of SI is expressed as a percentage of E/S (E/S is split between SI and non-SI but still E/S). On the contrary, it seems quite clear in the regulation that the proportion of sustainable investments should be expressed as a percentage of the total assets of the product.
- **The relationship between SI-E and SI-S is artificial**: when using systematic methodologies to define SI (and thus fight the greenwashing risk resulting from qualitative arbitrations), companies can and will be qualified through both E and S criteria.
- **The relationship between SI-E-Taxo and SI is contradicting recent clarifications from the EC:** as it was clarified by the EC in its FAQ on Taxonomy, an issuer can have a Taxonomy alignment percentage while not being considered a sustainable investment under SFDR. This renders the relationship between SI and Taxonomy as presented in the template fundamentally false, as we could totally have <u>more</u> Taxonomy alignment than SI in a portfolio (e.g. a portfolio with 30% Taxonomy alignment because of reported values by energy companies but 0% SI because all these companies use coal power generation in a way that would breach the DNSH of the SI methodology of the manager)
- **The asset allocation tree tries to present concepts of SFDR as included in one another whereas they are independent from each other. Consequently, the asset allocation tree results in a display of information which is misleading at best.**

<u>II – The tree has blurred the line between ex-ante and ex-post, intentionality and fortuitous presence, which need to be reclarified</u>

Minimum commitments are about **intentionality**: the asset allocation tree has pushed some regulators to request managers to take minimum commitments on each concepts which could be found in the portfolio even though there was no intention to have them (i.e. we can invest in stocks that have Taxonomy-alignment for reasons other than their Taxonomy alignment).

<u>III – Key additional elements</u>

- **We advise to abandon the ratio of "E/S characteristic" as it is misleading for end clients.** This ratio is supposed to inform on the alignment of the product with the characteristics it promotes. However, it has many unintended adverse effects that risk misrepresenting the extra-financial intensity of ESG features to clients:
  - It is ill suited for demanding strategies with several criteria: is the ratio of E/S the union of criteria? The intersection of criteria? If it is the former it loses all substance, and if it is the latter it will reward the less demanding strategies as having less criteria will automatically result in higher ratios, giving to clients the false impression that a product is more demanding than the other whereas it has less criteria.

    We believe that the issue that the E/S ratio tries to address (i.e. misrepresentation of the portfolio through communicating on only part of the assets) has already been addressed by the minimum coverage requirement. Today, in some labels, when one of the criteira is a classic better portfolio score than benchmark approach on a KPI, it is always accompanied from a minimum coverage requirement (usually between 75% and

90%) to ensure that the score of the portfolio has been measured on a material share of the portfolio. In addition, the minimum coverage allows to take cumulative commitments on several indicators while the E/S ratio can't manage it in a convincing way.

- **We advise to abandon the ratio of "Sustainable Investments with an Environmental objective that are not aligned with the EU Taxonomy" as it supposes a mathematical link between SI and Taxonomy which has been clarified the European Commission as possible but non necessary.** Indeed, when the SI notion has been implemented through a "pass/fail" methodology there are many companies that have some degree of Taxonomy alignment but that are not qualified as sustainable investments (either because they don't pass the DNSH due to their non-aligned activities or practices, or because their positive contribution is not material enough), this ratio does not make sense as it tries to link two independent concepts. One way of calculating it consists in substracting a revenue percentage from a sum of "pass/fail" (i.e. Taxo "-" SI-E) and can result in negative figures. The other way of calculating it consists in recomputing the "pass/fail" tests of SI but without the EU Taxonomy indicator; however, in this case, the sum of SI-E-Taxo-Aligned with SI-E-Non-Taxo-Aligned will not be equal to SI-E which will be even more confusing for clients. Lastly, the fact that the precontractual template foresees a minimum commitment on this KPI seems very strange as it can be breached either because there are not enough SI-E in the portfolio or because there is too much EU Taxonomy alignment: to respect the minimum commitment we could be forced to sell companies in portfolio because there are too much aligned with the EU Taxonomy which seems quite at odds with the objective of capital reallocation of the whole regulatory package. Therefore we strongly advise to discard this indicator.

- **The regulation needs to differentiate between the objectives of the sustainable investments at company level and at product-level because this can get very confusing for clients**. At company-level, we can easily identify the positive contribution criteria that led to the positive alignment of the company with the EU Taxonomy or to their qualification as SI (be it partial or full) – in other words, we could call this the sustainable investments objectives of this company. However, at the level of the fund, the EU Taxonomy pocket or the Sustainable Investments pocket are in the vast majority of the cases agnostic: what is important is to have e.g. at least 15% of Taxonomy alignment in the product, but these 15% will be randomly composed of CCM, CCA etc. In addition, as companies would report some degree of alignment with CCM, CCA etc. it would be near to impossible for a fund to ex ante commit to a breakdown of its Taxonomy commitment on the subobjectives. It is the same for the split between SI-E and SI-S, what is important is the existence and size of the sustainable investment pocket as a whole, not the split between E and S which is fortuitous in the majority of cases. What's more, the more commitments there are, the more challenging it is to take them at meaningful levels (e.g. because you can only replace an SI-S with an SI-S), reducing in turn the demandingness of financial products. While ex-post reporting can be extremely granular, ex-ante commitments should be focused on few indicators to ensure that they can be demanding and thus meaningful. Thus, while the notion of "objective" makes sense at the level of the methodologies applies to the analysis of companies, it is less relevant at fund level and even more so for generalist Article 8 products for which the objective is often only to have a generalist SI or Taxonomy pocket, as opposed to a pocket pursuing a particular objective.

Classification : Internal

We believe that ex-ante commitments should signal intentionality form the investment manager. As such, we do not see the added value of reporting on SI-E or SI-S for products for which we commit to an agnostic sustainable investment pocket (the important element here being the share of sustainable investments, not the fortuitous split between E and S).

As a consequence, we propose to:

- Discard the asset allocation tree in all templates
- Assume the independence of the different ratios (especially SI, and Taxonomy)
- Discard the E/S ratio
- Discard the split between SI-E and SI-S (of particular importance in the precontractual templates, they could be kept in the reporting templates even though it not clear what informational value they bring in the absence of intentionality)
- Discard the SI-E-Non-Taxo (of utmost importance in the precontractual template as we do not wish to be forced to sell stocks because their Taxonomy alignment increases) – should it be kept in the periodic report templates more guidelines should be provided on the calculation methodology

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

We do not consider the specification to use certain colours to be purposeful. Retail customers will print out the pre-contractual information if necessary and the colour will not come into play in a black and white printout. The presentation of green and grey icons is also not helpful, but leads to a presentation that does not do justice to the degree of sustainability of the products as highlighted in response to question 30 .

Moreover:

- the colours are relevant only for two parts of the templates, i.e., the dashboard and pie charts related to environmentally sustainable investments.
- the customer may not understand why the document is not in colour, attributing the fact, for example, to print settings.

It should also be noted that the images often appear poorly explanatory of the concepts expressed through the questions and, in some cases (for example on the consideration of PAI), the image is the same, changing only colour.

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

Classification : Internal

The proposed approach could be easier to use, reducing the impact of immediate viewing of detailed information. We agree to proceed with the consumer test. It would be useful to specify better what is meant by electronically, as it is a simple application in digital customer journeys but not in the paper "traditional" or dematerialized ones. This possibility needs to be clarified and electronic version should be planned to be dated. It should also be taken into account that:

- some devices could not be compatible with this new approach;
- this kind of format could not be saved in a durable medium.

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

As a general comment, and given the difficult access and availability of relevant data, it is crucial to allow financial market participants to rely on estimates, when necessary and whether it is on entity or product level. Transparency on the methodology used by FMP should accompany such disclosure.

We are concerned that a strict approach to Taxonomy assessment, that must rely on information reported by investee companies (presumably in the context of their annual report or other form of audited document possibly meeting a similar standard of assurance of information disclosed under the CSRD), would not be feasible for certain types of financial products.

This is particularly the case of investments in small undertakings, private equity and microcredit institutions - especially in non-EU countries. These investments may pursue environmental objectives and possibly may even be Taxonomy-aligned. Indicating 0% Taxonomy alignment because the required information cannot be produced by the investee company would not result in an adequate depiction of the sustainability characteristics of these investments. The approach to usable data in the Taxonomy Art. 8 Delegated Regulation has been designed for entities reporting under the NFRD/CSRD. A solution for small undertakings, private equities, microcredit institutions especially in non-EU countries should be found with the possibility to use proxies and other type of information as part of the assessment.

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?

We agree with the proposed approach.

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.

We have observed that the methodologies used in the market differ greatly from one another, with important differences in the criteria applied for the consideration of an investment as sustainable. For indirect investments (i.e. funds of funds and individual portfolio managed through investments in UCITS of alternative funds) and government bonds, FMP could benefit from clear rules.

Classification : Internal

However, we also note that establishment of specific rules to determine how to calculate the % of sustainable investment at this stage could generate a high impact and cost to the entities that in their products article 8 and 9 in accordance with SFDR have established percentages of sustainable investment according to a methodology that they have developed internally in accordance with the criteria currently established by the regulations.

At this stage, banks also use the 12 June 2023 European Commision Q&A on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and links to the Sustainable Finance Disclosure Regulation: "…if a financial market participant (FMP) invests in an undertaking with some degree of taxonomy-alignment through a funding instrument that does not specify the use of proceeds, such as a general equity or debt, the FMP would still need to check additional elements under the SFDR in order to consider the whole investment in that undertaking as sustainable investment. This means that the FMP would still need to: (i) check whether the rest of the economic activities of the undertaking comply with the environmental elements of the SFDR DNSH principle; and (ii) assess whether she/he considers the contribution to the environmental objective sufficient". The European Commission recognizes the need to assess several elements in order to form an informed view, and not to rely on specific rules on the calculation of the proportion of sustainable investments of financial products. We support this approach.

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

We agree that cross-references in periodic and pre-contractual communications of financial products with investment options could be beneficial for retail clients to address information overload. However, we believe that it might be useful, in order to allow for easy referral, to separate the SFDR periodic disclosure of investment options from the Fundhouse annual statement. In fact, most Fundhouses are still providing a single report that includes SFDR disclosure. In this regard, we ask for the possibility to provide a separate SFDR disclosure (periodic and pre-contractual) compared to other Fundhouse documents.

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

The EBF is not responding. The question is more directed for insurers.

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

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collective investment undertakings? Should those investment options be covered in some other way?

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?

It should be kept in mind that retail customers are unlikely to benefit from machine readability so cost-benefits should be considered as a criterion.

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

When amending the RTS, it would be desirable to think about easing the burden on FMPs. Portfolio management is classified as an investment service under MiFID II and as a financial product under the SFDR. Pre-contractual information and regular reportings have to be provided to individual clients for each individual portfolio management service. Hundreds and more contractual documents and regular reportings have to be prepared. Again, this results in an huge IT costs and burdens that FMPs have already incurred. Changing the templates in the way proposed would not only negate this effort, but even generate such an effort. We therefore urgently ask the ESAs to refrain from changing the templates again within such a short timeframe.

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