

# 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](http://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) 2018/1725<sup>1</sup>. 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.

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<sup>1</sup> 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	Finance Watch
Activity	Advocacy (NGO)
Are you representing an association?	<input type="checkbox"/>
Country/Region	Belgium

## 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>

We support the inclusion of mandatory social principal adverse impacts (PAI) indicators. We believe that the PAI indicator on the amount of accumulated earnings in **non-cooperative tax jurisdictions** is particularly relevant and will complement the PAI indicator regarding the OECD Guidelines for MNE, which already covers taxation, by providing a better understanding of the absolute amount of earnings from such jurisdictions. However, it is important to note that (1) art 48(b) and (c) of CSRD are focusing on an EU list of jurisdictions, on which non-EU companies may not report and (2) the related disclosure is limited to companies with a turnover of more than 750 million. This would therefore generate possible data availability issues. The lack of data should particularly be considered as a concern for PAI as it may result in an underestimation of the adverse impact, while the lack of data with regard to the percentage of sustainable investment and taxonomy would - to the extent it is not replaced with proxy - result in an underestimation of the positive impact of the financial product. It would therefore be important to state that financial market participants should not solely rely on CSRD disclosures to calculate this PAI indicator.

Finally, we believe that the current formula does not effectively represent the part of accumulated earnings that should be attributed to the investments. In fact, the denominator should refer to the investee company's enterprise value and not the current value of all investment, so that the formula is:  $\text{SUM}(\text{current value of investment} / \text{investee company's enterprise value} * \text{accumulated earnings of the investee company from the EU revised list of non-cooperative jurisdictions for tax purposes})$ .

We also consider the share of employees earning less than the **adequate wage** as particularly relevant as it is not covered by the OECD guidelines for MNE and brings a new dimension that was not yet covered by the existing PAI indicators.

The PAI indicator on the **cultivation and production of tobacco** also brings consistency with the restrictions that already apply for some financial products labels. It would also align the list of PAIs with the sectorial disclosures of ESRS SBM 1 (point 40(d) in the draft CSRD DA published on 9 June 2023 for consultation) and would therefore complement the list of environmental and social PAI indicators related to the fossil fuel, the chemicals production and the controversial weapons as referred in ESRS SBM1.

We propose to include the PAI indicator on **interference with the formation of trade unions or election worker representatives** in complement to indicators 10 and 11 related to the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles. While the topic is already covered by the OECD guidelines for MNE of 8 June 2023 (Section V. Employment and Industrial Relations), it will provide more granular information on the PAI consideration and respond to the important limitations to identify violations of the OECD guidelines. Today, it is indeed hard to confirm that a company fully respects all the OECD guidelines, given the lack of enforcement and monitoring. More granular PAIs therefore allow an easier identification of violations.

However, it is important to highlight that ESG MiFID does not forbid an aggregation of PAI categories when collecting sustainability-related preferences of clients. For example, an investment firm could aggregate all the social indicators as a single PAI family “social”, without giving the possibility for the client to select which underlying indicator should be respected. The investment firm would then consider that a financial product considers the PAI family as soon as one of the underlying PAI is considered. Moreover, even if the client has the possibility to select, at a more granular level, which indicator must be considered, the sustainability-related preferences are usually considered as alternatives, as allowed by MiFID level 3. Therefore, the inclusion of too “easy-to-comply-with” indicators could jeopardize the consideration of client preferences. The inclusion of new indicators therefore emphasizes the importance of starting a revision of ESG MiFID level 3.

An attention point also remains on the availability of the data. In the ESRS, the EFRAG had indeed identified a series of indicators that should be mandatory for all companies - and therefore not subject to a materiality assessment - considering the necessity to comply with specific regulatory requirements, including SFDR. Beyond the fact that the mandatoriness of SFDR indicators is being questioned in the draft CSRD delegated acts published for consultation on 9 June 2023, it is good to note that the proposed social indicators had not been included by EFRAG as mandatory. It could therefore happen that financial market participants (FMPs) underestimate their adverse impact after investee companies consider those disclosures as being non material. The quality of the materiality assessment will therefore be of major importance.

<ESMA\_QUESTION\_SFDR\_1>

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

<ESMA\_QUESTION\_SFDR\_2>

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<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>

We believe that the principle of optional indicators does not work as it defies the purpose of regulatory requirements (by definition compliance with regulation must be mandatory) and jeopardizes the comparability between financial products and leaves too much flexibility for financial market participants not to disclose indicators that could still be relevant to reflect the actual negative impact of their financial products.

<ESMA\_QUESTION\_SFDR\_3>

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

<ESMA\_QUESTION\_SFDR\_4>

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<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?**

&lt;ESMA\_QUESTION\_SFDR\_5&gt;

We do not have particular comments on the replacements. However, we would be in favor of clarifying that the notion of “violation” does not only consider the reporting period of the last year, but a period of 3 to 5 years, given the possible lasting impacts of such violations. Improvement of processes during such extended reference period to prevent such violations would still be reflected in indicator 11 “Lack of processes and compliance mechanisms to monitor compliance with OECD Guidelines for MNE or the UN Guiding principles including the principles and rights set out in the eight fundamental conventions identified in the ILO Declaration and the International Bill of Human Rights”. Further guidance on how violations should be identified would also be welcome. As the guidelines do not lead to enforcement measures, it is hard to confirm whether a company is violating the guidelines. Most of the identifications of violation could be triggered by a specific event (e.g. scandal), sometimes several years after the actual violation. The reference period would need to be clarified in such a case where the violation would be identified several years later. Moreover, the broad reference to violations does not allow for a differentiation between companies that are working towards implementation of these standards and making incremental progress, and those that have never sought to align their practices.

As a general comment, indicators should be oriented towards measuring impacts of companies actions to mitigate PAI, so that the PAI statement will not only promote the reduction of adverse impact at portfolio level, but will also reflect the transition of investee companies to mitigate adverse impact.

&lt;ESMA\_QUESTION\_SFDR\_5&gt;

**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?**

&lt;ESMA\_QUESTION\_SFDR\_6&gt;

We support the inclusion of social PAI indicators for real estate assets, applying to the entity in charge of the management of the real estate assets. To avoid confusion, we would still welcome a clear definition of “entity in charge of managing the real estate assets”.

&lt;ESMA\_QUESTION\_SFDR\_6&gt;

**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?**

&lt;ESMA\_QUESTION\_SFDR\_7&gt;

We agree with the principle of improving the consistency and interoperability between SFDR and the taxonomy and we are therefore in favor of the adjustment for buildings built before 31 December 2020, to the buildings having at least an Energy Performance Certificate (EPC) class C. However, given that SFDR relates to positions in real estate assets while the Taxonomy relates to economic activities, the interoperability will remain limited. In practice, companies reporting under the Taxonomy will indeed report on a percentage regarding their activities, while the SFDR PAI will relate to the “Share of investments in energy-inefficient real estate assets”. The current risk of inconsistency referred to in point 45 (sector-agnostic PAI thresholds as “pass or fail” thresholds for DNSH leading to outcomes potentially inconsistent with the environmental sustainability criteria set by the EU Taxonomy) of this consultation is therefore more limited.

We also noted that the current formula for assessing inefficient assets seems incorrect as it should refer to the building with PED above NZEB, as being above such threshold means having a lower energy performance. Inefficient real estate assets should therefore be calculated with the following formula: ((Value of real estate assets built before 31/12/2020 with EPC **below** C and not in the top 30% of the national or regional building stock expressed as operational PED) + (Value of real estate assets built after 31/12/2020 with PED above NZEB in Directive 2010/31/EU))/Value of real estate assets required to abide by EPC and NZEB rules.

It is also important that ESMA takes into account the recently revised EPBD, which includes adaptations in the calculation of energy performance certificates.

Finally, we would like the ESAs to formally clarify whether this indicator only concerns direct holding of real estate assets or whether indirect holdings, e.g. via SPVs, should also be included.

<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>

As mentioned by ESMA during the open hearing of 6 June 2023, we identify a timing gap within the ratios, given that the enterprise value (as currently defined in SFDR) is set only at fiscal year-end. The quarterly value of the investment may therefore not be assessed at the same date. As an example, an increase of enterprise value during the year could overestimate the PAI indicator on GHG emissions (or other KPIs using both notions in their methodology) while a decrease of enterprise value would underestimate the GHG emissions.

However, we simply propose to acknowledge the weakness of this definition, given the limited impact it should have for the majority of financial products that would invest in listed instruments. Moreover, considering again the example on GHG emissions, the emissions value is also not based on quarterly disclosures. We finally understand from ESMA during the public hearing of 06/06/2023 that



it is allowed to still use the latest available enterprise value, or use a more accurate method than the one prescribed in the Q&A of November 2022 (although we believe that this statement would then need to be reflected as well in the delegated acts). A solution to partly solve the timing gap would be to state that enterprise value at quarter-end should be used, when 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 are generally welcoming the alignment, when possible, with the EFRAG ESRS formulae.

For the definition of **exposure to companies active in the fossil fuel sector and exposure to companies active in the coal sector**, we believe that the notion of investments in companies active in the sector needs to be clarified. In particular, it should be formally clarified whether the value of investments in the fossil sector should only include the percentage value *b* of investee's activities in that sector. As stated by ESMA during the open hearing of 6 June 2023, we understand that currently the investment should be fully accounted for as a fossil sector investment. This means that even in the case of, an investment in a company with a low share of activity in the coal sector, such investment would be accounted at 100% as a fossil sector investment.

This would not reflect the possible actions by asset managers to push their investee companies to decrease their percentage of activities related to fossil energy, although we agree that such actions would still result in a decrease of scope 3 GHG emissions. We therefore believe that focusing on the part of activities related to the coal and fossil fuel sectors could incentivize companies to transition their activities (and better track it) as investors will have the possibility to identify the real percentage of their portfolio directly attributed to activities related to fossil energy.

On the other hand, we would like ESAs to clarify whether investment in specific projects would allow a different treatment. Investments in green projects could support companies active in the fossil fuel sector to transform their business models towards environmentally sustainable activities (beyond environmentally sustainable economic activities referred to in Section 4.29 to 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139). We would therefore propose that exposures are excluded in the case the investment is made for environmentally sustainable activities aligned with the Taxonomy Regulation, to the extent the FMPs is able to prove that the proceeds shall not be used for other purposes.

The formulae for **emissions of inorganic pollutants, emissions of air pollutants and emissions of ozone-depleting substances** do not reflect that the indicator should be made per million EUR invested. It should be made clear that the total value of investments in the formula should be expressed in millions EUR, as it is the case in the PAI statement table.

Finally, we would like to ensure that the notion of “carbon footprint” PAI indicator should be calculated per million EUR invested as it is the case in the current delegated acts (cf formula of “carbon footprint”). In the proposed delegated acts, the notion of ‘current value of all investments’ is indeed expressed in EUR and not in million EUR and the formula should be clear that the denominator should be expressed in million EUR. The same remark would apply for indicators 8 and 9 (although the ambiguity is clarified with the description of the two indicators in page 105 of the consultation document). Moreover, the terminology “carbon footprint” would coexist with the notion of “financed GHG emissions per million EUR of investment”. We would propose the use of PAI indicator “Financed GHG emissions per million EUR of investment” to bring more consistency with the GHG emissions reduction target setting and the PAI statement. Point 68 of the consultation indeed states that all targets should be converted and disclosed using financed GHG emissions expressed in tonnes of CO<sub>2</sub>-equivalent per millions EUR of investments. Such clarification may avoid underestimating the emissions by a factor of 1.000 or 1.000.000.

<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>

We welcome the work of the ESAs on clearer definitions. However, as a general comment, we would still like to raise the attention on the numerous terms and calculation methodologies behind the different PAI indicators that make them very complex to read and understand. As mentioned above, the definition of “emissions” sometimes refers to absolute amounts, sometimes to emissions per million EUR invested. “Exposure” and “investments” are both used to refer to share of investments in investee companies. We would welcome a better alignment between the terms and formulae used.

Beyond the definition and calculation methodology of PAIs, we are also stressing the importance of having clear rules to be able to say that a product considers certain PAIs.

<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>

We agree with the proposal. However, as per answers given during the open hearing of 6 July 2023, we understand that EIOPA considers that data received from data providers who relied on data

published or provided by the investee companies will be considered as third party data. We understand the interest of guaranteeing the quality of the data published. However, we believe that such a narrow definition will lead to very low share of information recognised as coming directly from investee companies and does not capture the situation where ESG data providers would only serve as intermediary, sometimes between entities of a same group, in order to facilitate the data flows. We therefore suggest that information obtained from data providers, which has not undergone any transformations by such data providers, but was directly sourced from investee companies, should be recognised as such.

We believe that it should also be clarified whether the information collected by other third parties - that may themselves be subject to SFDR - based on information provided by the investee companies should be included as information from investee companies. This would typically apply for a fund of funds that would capture the information collected from investee companies via the underlying fund.

Finally, we would also like to see FMPs disclosing the part of investments for which they could not collect data, in particular with regard to PAI indicators, as it could lead to underestimating the actual negative impact of the investments.

<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>

We are strongly **in favor of using the relevant investments only** as it represents a more conservative approach. Firstly, it allows assessing the evolution of the figures over the years in a specific type of assets. Considering all the investments would generate fluctuations in certain PAI indicators (e.g. emissions to water) that would be explained by a reallocation of investments between the different types of investments rather than changes in the actual PAIs of the specific asset class. As an example, increasing sovereign exposures could reduce the “emissions to water” PAI indicator without actually reducing the underlying emissions to water for the relevant investments. With a focus on relevant investments only, we would be able to compare the improvements of the investments in that sector.

Secondly, considering only relevant exposures would facilitate the comparison of products and understand the actual level of sustainability for the relevant assets. On the contrary, considering all investments will give an incentive to spread investments in different types of exposure in order to generally disclose lower PAI indicators compared to products that would be solely invested in a single type of assets.

Thirdly, financial market participants are setting thresholds to determine whether PAI indicators are taken into account. It should be made clear that PAI consideration should be assessed in light of the relevant types of investments.

Finally, the absolute impact could still be assessed by including the repartition of the portfolio between the different types of investments or by including new indicators in absolute amounts, like it is the case for the GHG emissions. Using the relevant investments only is therefore the best option for not losing information, although both approaches have their pros and cons.

<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>

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<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>

We agree that derivatives should be included with an equivalent long net exposure. However, the exclusion in the case where the FMP can show that the derivative does not ultimately result in a physical investment by the counterparty could create a loophole through the use of cash-settled derivatives instead of physically-settled derivatives. As the settlement does not come from the delivery of the underlying asset by the counterparty, it could be argued that the derivative does not ultimately result in a physical investment by the counterparty and that the exemption should apply. We also believe that such cases, where the counterparty does not effectively physically hold the underlying investment, would be sufficiently marginal for not considering exemption that would lead to such a loophole. We are therefore against any exclusion and would welcome a strict inclusion of derivatives with an equivalent long net exposure.

In case of exclusion, we also believe that in such exclusions, derivatives should also be excluded from the denominator, so that the PAI indicator is not diluted by derivatives that would not result in a physical investment by the counterparty. ESMA would also still need to consider the impact that investing via derivatives to reduce PAI indicators may have on the price of the underlying asset.

Finally, the PAI indicators may be used both from an impact and a financial materiality perspective. Investors should therefore remain adequately informed of exposures to companies/investments that would have a negative impact.

<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>

We fully support having distinctive approaches between the positive impact of the financial products (Taxonomy alignment and proportion of sustainable investment) and the PAI indicators.

For sustainable investment: We agree that, for long net exposures, the numerator should take into account short positions achieved through derivatives to avoid artificially increasing the percentage of sustainable investment. We also agreed that net short exposure on a given issuer should not lead to a negative proportion of taxonomy-aligned investment or sustainable investment.

<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>

For Taxonomy alignment (long exposure), we agree that it could be clarified that netting may be performed for other asset classes than the ones referred to in the netting provision of Article 17(1)(g).

<ESMA\_QUESTION\_SFDR\_16>

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

<ESMA\_QUESTION\_SFDR\_17>

We support the ESA's assessment and agree that sector-agnostic PAI indicators may bring inconsistencies with the result of Taxonomy alignment. However, we do not identify legal limitations for applying PAI consideration thresholds differently depending on the sector. The Commission has

indeed clarified in its Q&A of 14 April 2023 that the approach for determining whether PAI are considered is flexible and rather “imposes a disclosure obligation on financial market participant for those financial products for which a financial market participant applies Article 4(1), point (a), Article 4(3) or Article 4(4)”. In that context, we believe that such safe harbour is already possible, to the extent that it is adequately communicated.

However, we see an important complexity for FMPs to apply it as environmental DNSH would apply only to the part of investee companies’ activities that are aligned with the EU Taxonomy. We agree that this would result in additional complexity due to the separate treatment of Taxonomy-aligned economic activities. Still, it must be made clear that in that case, it cannot be considered at investment level but only at economic activity level. In practice, we believe that FMPs should nuance the way they are considering PAI indicators and ensure that sector-specific thresholds are defined when they identify that the sector-agnostic threshold is stricter than the Taxonomy DNSH. In such a case, we would require FMPs to adequately disclose on the deviations.

<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>

We strongly support the definition of common minimum criteria for FMPs to determine whether they consider PAI and to identify the proportion of sustainable investment. As we understand that the Commission will, for the time being, “not set out minimum requirements that qualify concepts such as contribution, do no significant harm, or good governance”, we consider such detailed disclosures as a must. Such disclosures are necessary for investors to better understand the actual adverse impacts of their investments. We are also reiterating the importance of more aligned and common thresholds to be applied, both for the investor transparency and the FMPs operability. FMPs are indeed also facing important challenges for performing look-through assessments when investing in third party funds and brings major uncertainty on the stability of the information, and therefore the actual suitability of an investment with the client sustainability preferences.

<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>

See response to question 17.

<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 believe it is necessary to clarify whether this alignment would be done for the identification of the proportion of sustainable investment or for the consideration of PAI.

We would support the **conservation of both the notion of taxonomy alignment and the notion of proportion of sustainable investment** without a strict alignment with the Taxonomy TSC, as it could impact small enterprises and non-EU companies that are not reporting under the Taxonomy. On the other hand, the Taxonomy TSCs do not cover specific types of investments (e.g. sovereign) as the Taxonomy focuses on economic activities. However, we strongly believe that minimum criteria should be established to better define the notion of sustainable investment.

We support the idea of **aligning minimum requirements for the consideration of PAI with the activity-agnostic Taxonomy DNSH criteria**. An alignment of PAI indicators with the activity-specific Taxonomy DNSH criteria would however be problematic (1) for investing in non-EU companies and smaller companies and (2) considering PAIs at investment level and not activity level. On the other hand, the scope of PAI indicators is wider than the scope of activity-agnostic Taxonomy DNSH criteria (and the minimum social safeguards), which will create challenges to align both concepts.

In a shorter term, we would welcome a comprehensive mapping between the SFDR PAIs, the Taxonomy DNSH, the CSDDD adverse impacts on human rights and environmental matters and the Taxonomy minimum safeguards (as started by the Platform on Sustainable Finance in its report of 11 July 2022) to clarify overlapping and complementary indicators.

<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>

No additional comments than the answers to the previous questions.

<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>

We support the inclusion of GHG emissions reduction targets and the inclusion of intermediary targets. In order to improve the comparability between products with GHG targets and the interoperability with transition plan requirements under CSRD, and potentially under CSDDD and prudential requirements, we would welcome instruction for the disclosure of intermediary targets to be based on 5-year steps.

As previously mentioned, we would also welcome an alignment of the GHG emissions-related PAI indicators with the notion of financed GHG emissions so that it will improve the comparability with products that would not have GHG emissions reduction targets but would still have good PAI indicators in this matter.

Point 64 of the consultation also states that disclosures at product-level on a GHG emission reduction target should not automatically be considered as a guarantee of the robustness or ambition of the methodologies implemented by the FMP. We believe that such statement is problematic and that additional guidance on the robustness of the methodology should be provided to ensure that the disclosed ambitions can be used for companies to comply with the implementation of clear and realistic transition plans to bring their strategy and business model in alignment with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119 (European Climate Law), as potentially required by CSDDD (pending outcome from the trilogue discussions). Therefore, the methodology adopted by the FMPs and the target defined for the financial product should be based on conclusive evidence and the GHG accounting methodology should consider the GHG Accounting and Reporting Standard for the Financial Industry from the Partnership for Carbon Accounting Financial (PCAF), consistently with CSRD and the ESRS.

<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>

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&lt;ESMA\_QUESTION\_SFDR\_23&gt;

**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.**

&lt;ESMA\_QUESTION\_SFDR\_24&gt;

We believe that this distinction is highly important as it relates to the difference between decarbonizing an investment portfolio and decarbonizing the real economy. Also, this would help at identifying products that would tend to hold exposure via derivatives in order to optically decrease PAI indicators.

However, we believe that the difference between paragraph a (commitment to reduce the financed GHG emissions through divestment from investments with particular GHG emissions levels) and the first point of paragraph b (investments will be invested in companies that deliver actual GHG emissions reductions based on reduction expectations) should be clarified as these may overlap and open the door to greenwashing practices (e.g. having a minor reduction attributable to reduction as per paragraph b). To do so, we believe that quantitative disclosures should be made in order to determine the percentage of reported GHG emissions reductions that would be attributed to a reduction of absolute emissions in the real economy. Without such quantitative information, the comparability between the products will be very limited, in particular in a context where many companies could be required to implement a transition plan for the reduction of their GHG emissions (without information being given on the actual progress towards achieving transition targets under the target b) as per above). If not actionable for pre-contractual disclosures, such disclosure should be included in the periodic reporting. Including this information in the ex-post periodic reporting is indeed crucial to prevent non-achievable pre-contractual commitment that would not be subsequently verified.

&lt;ESMA\_QUESTION\_SFDR\_24&gt;

**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.**

&lt;ESMA\_QUESTION\_SFDR\_25&gt;

TYPE YOUR TEXT HERE

<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 believe that this approach is necessary for product comparability.

<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>

We strongly support the alignment of methodologies with the CSRD DA. Given that PCAF is already used by many companies, we believe that this standard would be less disruptive for FMPs to collect the data and define their reduction targets. We also believe that authorizing a single methodology would ensure better comparability between the financial products. Other standards should therefore not be allowed. It is particularly important in a context where a fund of funds could rely on targets defined by a fund into which it is invested. For example, without a strict single methodology, a “fund A” could be invested in “fund B” and “fund C”, which would both use different accounting methodologies. This would jeopardize the possibility to reuse the reported information for both funds (B and C) to set reduction targets at the level of “fund A”. It is therefore necessary that products use the same methodology.

<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>

We strongly agree that FMPs should report separately on the gross GHG emissions, on GHG removals and on their use of carbon credits. We agree that FMPs should disclose any “GHG emission reduction targets” they may have set, covering all three scopes in terms of gross GHG emissions and GHG removals, and carbon credits should be accounted separately and should not be considered as means to achieve the GHG emissions reduction targets. Finally, we believe that reporting on the use of carbon credits should also include the information whether such credits have been certified.

For clarity, we also believe that it should not be allowed for a product to disclose that it has GHG emissions reduction targets if it only relies on GHG removals and carbon credits.

In addition, we believe that an explanatory statement on the uncertain impact of carbon credits (including carbon offsets) and GHG removals should be added in the report when GHG removals and carbon credits are reported, so that the investor is informed of the limitations of such related projects (e.g. risk of double counting, time of materialisation of offsets, project monitoring, etc).

<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 your answer.**

<ESMA\_QUESTION\_SFDR\_29>

We do not consider this relevant for product-level disclosures. FMPs could manage financial products with different levels of reduction targets, which as a whole will need to be consistent with the FMPs’ own transition objectives and actions. This, however, will be part of entity-level disclosures. While companies transition targets remain subject to the upcoming details expected on the implementation of their transition plan for climate change mitigation, we believe that such additional disclosures at product-level will bring unnecessary complexity to the reporting.

<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>

We agree that the inclusion of a dashboard is useful for the readability of the annex. We however believe that the four blocks from the dashboard (taxonomy alignment, percentage of sustainable investment, PAIs and GHG emissions reduction targets) could bring confusion with the current 3 sustainability-related preferences of ESG MiFID and ESG IDD. In that context, we believe that ESG MiFID and IDD delegated acts should integrate this additional notion to the sustainability preferences, which could contribute to giving the possibility to investors to invest in impactful financial products. As a general note, investors should be able to easily link their sustainability preferences, the information in the SFDR template dashboard and the PRIIPS Key Information Document after its review in the context of the Retail Investment Strategy.

<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>

We believe that sectorial exclusions should be included in the pre-contractual templates (e.g. an FMP not investing in fossil fuel sector for its article 8 product), in the absence of exclusion of certain sectors for the notion of sustainable investment.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We agree that a strongly aligned layout would prevent confusion for the clients.

<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>

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<ESMA\_QUESTION\_SFDR\_35>

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

<ESMA\_QUESTION\_SFDR\_36>

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<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>

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<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.**

## &lt;ESMA\_QUESTION\_SFDR\_38&gt;

We strongly believe that the notion of sustainable investment must be clarified with minimum criteria.

Article 2(17) of SFDR proposes a very broad definition of sustainable investment, giving financial market participants (and, to a more limited extent, financial advisors) the possibility to define their own notion of sustainable investment. We understand the interest of such a concept as it is broader than the alignment with the Taxonomy. It indeed covers environmental, social, and governance aspects (cf Regulation 2019/2088 Article 2(17)). However, the underlying flexibility allows very different methodologies, which ultimately reveal a great disparity between products with the same SFDR classification and disclosing the same level of sustainable investment. As a result, SFDR opens the door to greenwashing practices.

We understand that the ESAs are attempting to address weaknesses left by SFDR, notably with ESMA's proposals to establish requirements for funds using the notion "sustainable" in their naming and minimum requirements based on the percentage of sustainable investment. We welcome the intention to establish a degree of consistency but we believe that this approach cannot be effective as long as the core issue remains unaddressed: How to define the "sustainable investment" and determine the percentage of sustainable investment? It is essential to define a strict, consistent, transparent, and reliable methodology to determine the percentage of sustainable investment of a product in order to prevent confusion and greenwashing practices.

Such clarification is of utmost importance in a context where the concept of sustainable investment - as defined by SFDR - is also used under the ESG MiFID and ESG IDD delegated acts to allow a client under advisory or discretionary portfolio management services to define his sustainability-related preferences. Considering that the ESG MiFID guidelines and IDD guidance also lack necessary provisions/definitions of certain sustainability-related aspects and leave too much flexibility (e.g. introduction of alternative preferences, lack of details on the consideration of cash), a loose concept of sustainable investment only jeopardizes credibility of green/sustainable finance with private investors. We must therefore enable investors to compare products accurately and make informed investment decisions in line with their sustainability preferences (or receive portfolio management services according to them).

We should notably ensure that exclusions are included in the definition of sustainable investment. It is important to also note that minimum requirements for Article 8 products will not solve the lack of clarity on the percentage of sustainable investments that may be requested by the client.

Finally, the notion of sustainable investment should also distinguish the notion of exposure to a company (via a financial vehicle) and the actual allocation of capital to the real economy (which not financial instruments automatically entail). As stated in a [joint NGO policy briefing](#) from March 2022, aiming for sustainable finance to make a tangible difference in the allocation of capital to a sustainable economy, we believe that the Commission (and not the ESAs) should address the issue that not all financial instruments have the same capacity to effectively allocate capital to the

economy. Consequently, financial instruments' capacity to finance sustainable economic activities also vary.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SFDR\_39>

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

<ESMA\_QUESTION\_SFDR\_40>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_SFDR\_43>