



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Reply form

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



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SUPERVISORY AUTHORITIES

12 April 2023
ESMA34-45-1218

Responding to this paper

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

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

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

Instructions

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

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

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

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



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Publication of responses

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

Data protection

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

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



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

General information about respondent

Name of the company / organisation	Dutch Green Building Council
Activity	Non-financial counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Netherlands

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>

No comments |

<ESMA_QUESTION_SFDR_1>

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

<ESMA_QUESTION_SFDR_2>

[No comments. |

<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



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

by the operations of investee companies, lack of grievance/complaints handling mechanism for consumers/ end-users of the investee companies)?

<ESMA_QUESTION_SFDR_3>

[No comments.]

<ESMA_QUESTION_SFDR_3>

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

<ESMA_QUESTION_SFDR_4>

[No comments.]

<ESMA_QUESTION_SFDR_4>

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

<ESMA_QUESTION_SFDR_5>

[No comments.]

<ESMA_QUESTION_SFDR_5>

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

<ESMA_QUESTION_SFDR_6>

[Yes. On a social level, emphasis in the SFDR is currently placed on employee, human rights, anti-corruption and anti-bribery matters. This already encourages among others social sustainability within value chains (for instance, in the production chains of building materials), decent working conditions, fair government practices and competition at both side of the chains. For instance, in the context of solar panels that are produced in China for buildings that are constructed in Europe, these PAI indicators stimulate among others a living wage, safety and good leadership in a (sub)activity that is linked to a bigger economic activity (e.g. the production of new buildings).

Met opmerkingen [PG1]: Graag hier jouw ideeën bij vastgoed gerelateerde sociale indicatoren invullen [\[Nieuw Vennoten\]](#)



JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

The PAI indicators however cover the entire economy – and are therefore (naturally) less focused and specified on the building sector. How can buildings contribute positively to the environment where they are located? How can be ensured that the needs of the communities are being met, who live in the area? Do parties in the building sector take responsibility and invest their part in creating an inclusive, resilient (both E and S) and sustainable neighborhood? Is an equal alternative provided for residents that are forced to move due to demolition and new construction, and/or a new area development? Such questions – and more indicators on a local level, a neighborhood level - seem to be covered less. See also below an example of a framework with social indicators on a more local level.

Social	Economic	Environmental
Community networks	Employment	Sustainable transport options
Community engagement	Skills	Green spaces
Local identity	Small businesses	Air quality
Diversity of building uses	Affordable housing	Resource use and waste
Security and safety	Physical resilience	Biodiversity & urban greenery
Public spaces	Accessibility	Warm, damp-free housing

Figure 1; Framework for defining social value, UK GBC, 2021

Besides that, there is much potential for indicators that are linked to and stimulate both the S and E of ESG – such as greenery in buildings and neighborhoods (which contributes to both climate adaptivity and the wellbeing of residents). We miss the link and integration between the S and E indicators. Which is a shame, as it can create win-win situations.

<ESMA_QUESTION_SFDR_6>

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

<ESMA_QUESTION_SFDR_7>

Yes, we are in favor of adjusting the definition of energy in-efficient buildings with the DNSH criteria of climate mitigation under the climate change adaptation objective. With the caveat that the top 30% requirement is secondary to the EPC requirement. In other words, an FMP tests energy inefficiency first on the basis of the EPC and only then on the top 30% performance. This ensures a single definition of energy inefficient building. This keeps the interpretation of the EU Taxonomy and



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

SFDR more simple.

Correctly embedding the EPBD IV in EU Taxonomy and SFDR will be essential in clear, unambiguous definitions and transitions towards (harmonised and/or minimal) energylabel standards. Different definitions are a serious risk for the applicability of EU regulations.]

Met opmerkingen [PG2]: Hier ook voorstel voor definitie van energie efficiënte gebouwen aangeven?

<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>

[No comments.]

<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>

[No comments.]

<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>

[No comments.]

<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>



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

[No comments.]

<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>

[No comments.]

<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>

[No comments.]

<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>

[No comments.]

<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>



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

[No comments.]

<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>

[No comments.]

<ESMA_QUESTION_SFDR_16>

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

<ESMA_QUESTION_SFDR_17>

[No comments.]

<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>

[No comments.]

<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>

[No comments.]

<ESMA_QUESTION_SFDR_19>



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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>

[Yes, multiple definitions of DNSH are confusing for FMP's, accountants, regulators and other parties involved. To increase the effectiveness of SFDR and EU Taxonomy regulation, it is important that underlying definitions and methods align. Hence, the Taxonomy regulation should be treated as the leading definition on DNSH.]

<ESMA_QUESTION_SFDR_20>

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

<ESMA_QUESTION_SFDR_21>

[As of today, there is no clear distinction between article 6, 8 or 9 products. Although there are higher expectancies and requirements around disclosures, it is still possible that unsustainable investments can be classified as article 8 or 9 (as long as they report on being unsustainable). The Dutch Financial Markets Authority confirmed this and sees few to no opportunities to correct FMP's. This does not prevent greenwashing, so a better distinction between articles should be made.

We propose to set minimum requirements of EU Taxonomy alignment for Article 8 and 9. Based on expert reviews, we suggest to set a 50% minimum requirement of EU Taxonomy alignment for Article 8. For Article 9 this threshold should be 100%. This will drive FMP's, data providers and other stakeholders towards higher sustainability performances, better data availability and transparency.

The above 100% will most likely not be feasible for real estate funds at the moment, due to the fact that investments in renovation can't be fully allocated to the real estate value. This should be taken into account when aligning the EU Taxonomy (preferably) or setting EU Taxonomy thresholds for Article 9. See also the European Green Bond Standard, who has already set a (temporary) solution regarding EU Taxonomy alignment.]

<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.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

<ESMA_QUESTION_SFDR_22>

[No comments.]

<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>

[No comments.]

<ESMA_QUESTION_SFDR_23>

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

<ESMA_QUESTION_SFDR_24>

[Yes. The second strategy, when a transition plan has been developed, is preferable to divestments and reallocations. There is a specific need for finance that actually contributes towards the transition. Therefore, transparency in the strategy that leads to a reduction in emissions is essential for investors to make wellconsidered decisions. A transition plan should be in favor of divestment and reallocation strategys. This could be rewarded differently. For real estate, this can be solved by disclosing the renovation rate of real estate managers planned in for example the next five years (corresponding with the EU Taxonomy definition regarding renovation of buildings at a minimum). This provides insight in whether the asset manager invests in energy-efficiency and optimising energy use rather than the sale of real estate. The higher the renovation rate, the more existing buildings are being refurbished. This is in favor of building energy-efficient new buildings.]

<ESMA_QUESTION_SFDR_24>



JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

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

<ESMA_QUESTION_SFDR_25>

[Yes. Disclosure of alignment of GHG emission reduction target to the Paris Agreement should be mandatory for Article 9 products. Products in Article 9 should demonstrate that the fund will achieve the GHG-emissions reduction targets within the Paris Agreement before 2050. A transition plan, which contain at least an overview of required resources, should be provided as well. To ensure that the targets are aligned with the Paris Agreement, a third party verification should have been undertaken. Methods, such as the Science Based Target Initiative (SBTi) can be used. For real estate, tools as CRREMM and WEii (for the Dutch market) are available, but will not necessarily be verified by a third party. In The Netherlands, nearly a hundred construction and real estate parties already have committed themselves to achieving 'Paris Proof' targets in 2040.

Also for Article 8 products it is important that it is shown how the emission reduction targets relate to the Paris Agreement targets. For Article 8 products it can be considered to not set any requirements regarding third party checks and to be more flexible when it comes to data availability, to increase accessibility.]

<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>

[No comments.]

<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



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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

Met opmerkingen [PG3]: Arjan, Frank of Roel, hebben jullie hier specifieke ideeën bij?

<ESMA_QUESTION_SFDR_27>

[We recommend to use one methodology, as this increases comparability, transparency and uniform assessments.]

<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 agree with the ESA's perspective on the use of carbon credits. Carbon credits can be used to compensate remaining GHG-emissions, but shouldn't be used as a tool to reduce GHG-emissions. Therefore, separate reporting on GHG-emissions reduction targets (excluding carbon credits), carbon removals and carbon credits will provide insight in actual GHG-emission reduction efforts.]

<ESMA_QUESTION_SFDR_28>

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

<ESMA_QUESTION_SFDR_29>

[No comments.]

<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>



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

[No comments.]

<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>

[No comments.]

<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>

[No comments.]

<ESMA_QUESTION_SFDR_32>

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

<ESMA_QUESTION_SFDR_33>

[No comments.]

<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>

[No comments.]

<ESMA_QUESTION_SFDR_34>

Met opmerkingen [PG4]: Hier aandeel EU Taxonomie alignment opnemen?



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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>

[No comments.]

<ESMA_QUESTION_SFDR_35>

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

<ESMA_QUESTION_SFDR_36>

[No comments.]

<ESMA_QUESTION_SFDR_36>

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

<ESMA_QUESTION_SFDR_37>

[No comments.]

<ESMA_QUESTION_SFDR_37>

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

<ESMA_QUESTION_SFDR_38>

[No comments.]

<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?



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

<ESMA_QUESTION_SFDR_39>

[No comments.]

<ESMA_QUESTION_SFDR_39>

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

<ESMA_QUESTION_SFDR_40>

[No comments.]

<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>

[No comments.]

<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>

[No comments.]

<ESMA_QUESTION_SFDR_42>



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

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

<ESMA_QUESTION_SFDR_43>

[No comments.]

<ESMA_QUESTION_SFDR_43>