**Reply form**

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

12 April 2023ESMA34-45-1218

**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[[1]](#footnote-1). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Insurance and Pension Denmark |
| Activity | Insurance and Pension |
| Are you representing an association? |  |
| Country/Region | Denmark |

**Questions**

1. : 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>

It is of the utmost importance that the disclosure requirements under the EU Sustainability Reporting Standards (ESRS) of the Corporate Sustainability Reporting Directive (CSRD) and the SFDR Delegated Regulation remain as consistent as possible. Investors need the CSRD reported ESG data from their investees to comply with their SFDR requirements, and in particular PAI indicators. The timeline for when the data from the investee companies will be available should be taken into consideration.

Financial market participants (FMP’s) should as a starting point not be required to report on additional disclosures before the investee companies are required the report this information.

We would like to note that the indicator on the interference with the formation of trade unions or election worker representative is not completely aligned with the information to be disclosed under the ESRS. If the requirement is included, it should be further aligned with requirements in the ESRS.

As a more general point, we would like to highlight the fact that the European Sustainability reporting Standards (ESRS) are not final at this time.

With the new extended materiality approach in the European Commission’s draft delegated act to the European Sustainability Standards, we fear that all the necessary information might not be available. The FMPs needs to be able to base its reporting on the data reported according to ESRS. It would undermine the whole concept of the ESRS if the FMPs ends up demanding separate reporting and additional information from undertakings reporting after the ESRS. Hence the FMPs need to be able to base their reporting on the following crucial precondition: “If an undertaking provides no reporting in the ESRS on a specific disclosure requirement this equals as a qualified zero/ neutral non-detrimental value. The FMPs may therefore base their reporting according to SFDR on the information being a qualified zero/ neutral non-detrimental value.” The FMPs shall not be required to seek data in another manner.

We call on the EU Commission to issue a clear and unambiguous statement to the ESAs and to the national supervisory authorities stating that they must accept that FMPs apply a materiality principle when reporting according to SFDR. Thus, when an investee does not report on an ESG impact under ESRS because it is considered immaterial by the undertaking and its auditor, the FMP shall not be required to include these immaterial impacts when reporting on their investing activities according to SFDR. If needed, the European Commission should as well initiate any necessary legislative actions to clarify this treatment immediately.

<ESMA\_QUESTION\_SFDR\_1>

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

<ESMA\_QUESTION\_SFDR\_2>

Given the current data gap, significant effort is required from financial market participants to obtain consistent and reliable information from their investee companies to be included in their PAI statement for each mandatory indicator.

The EU initiative regarding simplifying and reducing administrative burdens should be taken into consideration in this review.

<ESMA\_QUESTION\_SFDR\_2>

1. : 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>

IPD welcomes a focus on opt-in social indicators, and we are positive on the fact that these are defined based on the draft ESRS. However, we suggest to not include the proposed indicators at this time, as we see a need for further analysis, in order to ensure that the indicators at an aggregated level are in fact relevant in the context of investment decisions. <ESMA\_QUESTION\_SFDR\_3>

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

<ESMA\_QUESTION\_SFDR\_4>

Not at this time. Investee companies would have to disclose all PAI indicators (ie. not only the mandatory ones) to satisfy all the information demand of FMPs. At this time the necessary data is not available, and we need to gain experience with the data reported in accordance with the ESRS before further PAI indicators are proposed.

With the new extended materiality approach in the European Commission’s draft delegated act to the European Sustainability Standards, we fear that all the necessary information might not be available. As the FMPs needs to be able to base its reporting on the data reported according to ESRS. It would undermine the whole concept of the ESRS if the FMPs ends up demanding separate reporting and additional information from undertakings reporting after the ESRS. Hence the FMPs needs to be able to base their reporting on the following crucial precondition: “If an undertaking provides no reporting in the ESRS on a specific disclosure requirement this equals as a qualified zero/ neutral non-detrimental value. The FMPs may therefore base their reporting according to SFDR on the information being a qualified zero/ neutral non-detrimental value.” The FMPs shall not be required to seek data in another manner.

We call on the EU Commission to issue a clear and unambiguous statement to the ESAs and to the national supervisory authorities sta-ing that they must accept that FMPs apply a materiality principle when reporting according to SFDR. Thus, when an investee does not report on an ESG impact under ESRS because it is considered immaterial by the undertaking and its auditor, the FMPs shall not either be required to include these immaterial impacts when reporting on their investing activities according to SFDR. If needed, the European Commission should as well initiate any necessary legislative actions to clarify this treatment immediately.

In addition, the public availability of and access to reliable data should also be taken into account, in particular regarding data needed from investee companies not subject to CSRD, as the requirement to directly obtain the information from investee companies is inefficient and the alternative to carry out additional efforts might create dependencies on third-party data providers.

<ESMA\_QUESTION\_SFDR\_4>

1. : 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>

IPD supports the replacement of the UN Global Compact Principles by the UN Guiding Principles on Business and Human Rights and the Dec-laration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights in order to foster consistency and alignment with the EU Taxonomy crite-ria on minimum safeguards, and with the social draft ESRS.

<ESMA\_QUESTION\_SFDR\_5>

1. : 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>

We do not support the application of a PAI indicator related to social matters to the entity in charge of the management of the real estate assets which the FMP has invested in. We believe the data would prove difficult to collect especially when an FMP use different property managers. Nevertheless, if the ESAs were to think of a relevant social PAI indicator for real estate assets, we would encourage the use of the exist-ing ones which are generally accepted throughout the EU.

<ESMA\_QUESTION\_SFDR\_6>

1. : 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 support greater consistency and alignment where possible between the SFDR PAI indicators and the EU Taxonomy criteria.

<ESMA\_QUESTION\_SFDR\_7>

1. : 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>

The "current value of investments" is still not clear. It should be clarified whether it refers to current market value, current book value or other accounting value (in particular for fixed income investments), as it has been clarified for enterprise value.

The interaction between both definitions could be challenging, as the current value of investment is directly linked to changes in rates, mak-ing it difficult to measure progress over time.

Another challenge is the potential mismatch between the numerator and denominator in case FMPs do not regularly update the EVIC values and do not use nominal values for their debt exposure. To avoid this mismatch, the calculation of PAI metrics could be based on the investor allocation approach to recalculate the EVIC quarterly with the share prices at quarter ends so that the denominator (market cap in EVIC) is aligned with the nominator (public equity investment in investee companies). As the EVIC is based on the book value of total debt insurers likewise use the nominal value of their fixed income investments in investee companies for the investor allocation approach PAI metrics. If FMPs do not use the nominal exposure in debt investments, they could in the present market environment understate their potential adverse impact.

It should also be noted that the calculation of the current value of the investment as a valuation of the individual investment price valued at the end of the financial year multiplied by the quantity of investments eliminates the risk of over/underestimation of the PAI relating to the market performance of the investment during the reference period, but the use of the market values of the investments would have several advantages:

* It allows to adopt a single methodology for different asset classes and categories of exposures.
* It reduces the possibility of significant differences between the values of the PAI indicators calculated during the reference peri-od for monitoring and management purposes (which would form the basis for any commitment/disinvestment activities) and those published in the PAI Statement.

It should also be considered that:

* the fact that the tax year of the companies may be different from the end of the reporting period of the PAI declaration implies that the risk of over/underestimation of the indicators for these companies cannot be completely eliminated.

The choice of this approach does not represent an a priori advantage or disadvantage for market participants (it depends on the market performance of the investee company), and the over/underestimation effect is still mitigated at portfolio level.

<ESMA\_QUESTION\_SFDR\_8>

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

<ESMA\_QUESTION\_SFDR\_9>

We welcome the efforts made by the ESAs to extend and clarify the formulae suggested to calculate PAI indicators. Nevertheless, we would like to highlight the following points:

- In all formulae, the denominator should only consider the in-vestments in the assets covered by the PAI indicator, in order to avoid any risk of dilution of PAI or possible greenwashing.

- With regards the formula related to the “rate of recordable work-related injuries”, we believe that the investee company’s €M revenue as the denominator is not relevant as the work-related injuries do not depend on revenue. It may be more relevant to put the total employees number as denominators

- It would be beneficial if the regulator could further specify how “violations” should be interpreted and if there is a decay on con-troversies in past reporting periods – this is relevant for PAI 10 and PAI 16. Specifically, for PAI 16 “Number of investee countries subject to social violations, as referred to in international treaties and conventions, United Nations principles and, where applicable, national law” there is no consistency in the market or data provided by data vendors. This makes comparability impossible.

- PAI 11 “Share of investments in investee companies without poli-cies to monitor compliance with or with grievance/ complaints handling mechanisms to address violations of the OECD Guide-lines for Multinational Enterprises, the UN Guiding Principles, including the principles and rights set out in the eight fundamen-tal conventions identified in the ILO Declaration and the Inter-national Bill of Human Rights” still mixes “and” / “or” in the name and description, likewise the wording still leaves a lot of room for interpretation, which may lead to incomparable disclo-sures across FMPs.

- PAI 12 was previously defined as “Average unadjusted gender pay gap of investee companies”, which is now changed to “Aver-age gender pay gap between female and male employees of in-vestee companies”. It would be beneficial to keep the “unadjusted” specification in to ensure comparability and clarity.

- PAI 12 (Gender Pay Gap) and 13 (Management and supervisory bodies gender diversity) should be made gender neutral in a way that 0 is always positive and 100 is always negative.

In general, insurers support the ESAs’ efforts to unify the PAI calcu-lation with unique formulae. However, it must be noted that, with the first PAI reporting in June 2023, a historical comparison of KPIs will be started. Therefore, the same definition would need to apply for new KPIs to allow comparability to the already reported data, specifically for mandatory PAIs. If the definition changes, compara-bility of PAIs is only given, if already disclosed KPIs are recalculated. This would confuse clients and should be avoided.

Finally, Insurance and Pension Denmark would also like to highlight that we supports the provision of additional formulae for PAI indica-tors, but additional clarification on KPI calculation for periodic reporting templates of Art 8 and 9 products would also be required, e.g. by which methodology and calculation formulae could a potential double counting between the share of sustainable investments and share of EU Taxonomy aligned investments be avoided if associated investee companies fulfil both criteria.

<ESMA\_QUESTION\_SFDR\_9>

1. : 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>

It is still quite early to evaluate on the PAI reporting and the FMPs are struggling with ensuring the necessary data on PAI indicators. The needed data infrastructure is still not established, and it will take sever-al years before we begin to see the effect of the CSRD. In assessing the current list of indicators, we still need to see what data will come as a result of the CSRD and the quality of this data.

With the new extended materiality approach in the European Commission’s draft delegated act to the European Sustainability Standards, we fear that all the necessary information might not be available. The FMPs need to be able to base its reporting on the data reported according to ESRS. It would undermine the whole concept of the ESRS if the FMPs ends up demanding separate reporting and additional information from undertakings reporting after the ESRS. Hence the FMPs need to be able to base their reporting on the following crucial precondition: “If an investee company provides no reporting in the ESRS on a specific disclosure requirement this equals as a qualified zero/ neutral non-detrimental value. The FMPs may therefore base their reporting accord-ing to SFDR on the information being a qualified zero. / Neutral non-detrimental value”. The FMPs shall not be required to seek data in an-other manner.

We call on the EU Commission to issue a clear and unambiguous statement to the ESAs and to the national supervisory authorities stating that they must accept that FMPs apply a materiality principle when reporting according to SFDR. Thus, when an investee does not report on an ESG impact under ESRS because it is considered immaterial by the undertaking and its auditor, the FMP shall not be re-quired to include these immaterial impacts when reporting on their investing activities according to SFDR. If needed, the European Commission should as well initiate any necessary legislative actions to clarify this treatment immediately.

<ESMA\_QUESTION\_SFDR\_10>

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

<ESMA\_QUESTION\_SFDR\_11>

Yes. The disclosure of the share of data coming directly from investee companies would support consumers’ understanding that the responsibility for the accuracy of ESG data cannot be put solely on financial market participants. However, it would need to be clarified carefully what it means "information directly from investee companies". Example: if a financial market participant relies on disclosure from a company to evaluate (through internal methodology) if the company's activities are in violation of international principles such as Global Compact, does this constitute use of "information directly from investee companies"?

In any case, it should be noted that the lack of publicly available and reliable data requires significant efforts from financial market partici-pants to provide for the PAI information, in particular until the CSRD comes into application, as the requirement to directly obtain all the in-formation from all investee companies is highly inefficient and its alternative creates dependencies on third party data providers.

Therefor we see a need for the FMPs needs to be able to base their reporting on the following crucial precondition:

“If an investee company provides no reporting in the ESRS on a specific disclosure requirement this equals as a qualified zero/ neutral non-detrimental value. The FMPs may therefore base their reporting according to SFDR on the information being a qualified zero / neutral non-detrimental value.” The FMPs shall not be required to seek data in another manner.

We call on the EU Commission to issue a clear and unambiguous statement to the ESAs and to the national supervisory authorities stating that they must accept that FMPs apply a materiality principle when reporting according to SFDR. Thus, when an investee does not report on an ESG impact under ESRS because it is considered immaterial by the undertaking and its auditor, the FMP shall not either be required to include these immaterial impacts when reporting on their investing activities according to SFDR. If needed, the European Commission should as well initiate any necessary legislative actions to clarify this treatment immediately.

While the new formulae clarify that only investee companies should be considered in the numerator, it is still not clear what is to be included in the denominator in cases where ESG data is not available. Should insurers only include in the denominator investments where reliable ESG data is available or is it acceptable to rely on estimated data for PAI calculation. Besides, issues with data availability will persist as all issuers are not (yet) covered by ESG data reporting requirements under CSRD.

We see two possible options:

• Option 1: the denominator is the current value of issuers covered with actual available (not estimated) ESG data only. This allows to (i) evaluate the adverse impact with reliable data, and (ii) avoid cas-es where improving the ESG data coverage would increase the ad-verse impact of the portfolio, which could disincentivize the effort to increase coverage. This approach would also be consistent with the approach outlined by ESAs in point 88) of the consultation for EU taxonomy data.

• Option 2: the denominator is the current value of all issuers, whether covered by actual ESG data or estimated ESG data. This allows to es-timate the portfolio impact in a broader way compared to option 1, but (i) would increase subjectivity of results (since relying on estimates) and (ii) would require further guidance on which are the acceptable ways to estimate the data.

<ESMA\_QUESTION\_SFDR\_11>

1. : 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>

The calculation most accurate and comparable across portfolio is to fo-cus the calculation of PAI on the relevant category of exposures (investee companies or sovereigns and supranationals or real estate assets). Only assets covered by the PAI indicator should be considered to ensure that PAI indicators are less diluted and closer to reality. Thus, it is necessary to confirm the approach adopted for the treatment of PAI's denominator and to clarify that this applies to the relevant category of as-sets and not to "all investments", just like it has been clarified for the numerator. Consistent scope of assets between numerator and denom-nator will provide higher transparency to explain the change of value and the trend of the PAI year over year.

Moreover, consumers/users should have a better understanding of the composition of investment portfolios. Consequently, in the annex 1 re-lated to PAI indicators, it should be possible to add a section on the composition of the portfolio in which financial market participants would disclose the proportion of each asset class (X% corporate, Y% real es-tate, Z% sovereign, A% derivatives etc.)

Finally, further clarity is needed on the baseline to be considered for calculating the value of ‘all investments’. In particular, with regards the perimeter of all investments for insurers, we recommend including only direct investments, unit-linked contracts, capital stocks as well as the cash assets related to the investment activity. Other assets related to operational activities (such as VAT, reinsurance, cedants etc.) should be excluded because they do not properly relate to investments. This perimeter would help achieve coherence and accuracy of PAI indicators, as they will be less diluted compared to the definition currently pro-posed in the consultation paper. It will also ensure consistency with the perimeter retained for Taxonomy-KPI.

<ESMA\_QUESTION\_SFDR\_12>

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

<ESMA\_QUESTION\_SFDR\_13>

Yes, IPD finds that requiring only the inclusion of reported ESRS-information from investee companies is the only practically possible solution. FMPs must be able to rely on the materiality assessment which investees have made in accordance with the CSRD.

<ESMA\_QUESTION\_SFDR\_13>

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

<ESMA\_QUESTION\_SFDR\_14>

IPD recognize that institutional investors will be able to use derivatives to "artificially" reduce PAIs. The treatment of derivatives must be con-sistent so that there is no aggregate exaggeration. The proposed inclu-sion of derivatives leaves many unclear aspects. It is unclear whether the necessary data is available for the FMP’s. Further, we see no arguments for introducing requirements regarding derivatives for all FMP’s – as we find that the use of derivates for insurance and pension compa-nies is limited to mostly interest rates derivatives and broad stock index derivatives. There is no ownership of the underlying asset. Hence no influence. However, especially if FMP’s use derivatives on single stock, a requirement could be relevant.

Therefore, we urge that the European supervisory authorities, before the end of 2023, prepare more thorough analyzes of the scope of the problem, impact analyzes and significance for sustainability and greenwashing, before introducing new regulations in the area. In case of regulation a materiality assessment should be included.

<ESMA\_QUESTION\_SFDR\_14>

1. : 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>

IPD would like to stress the need for more thorough analyzes of the scope of the problem, impact analyzes and significance for sustainability and greenwashing, before introducing new regulations in the area.

<ESMA\_QUESTION\_SFDR\_15>

1. : 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>

Yes. An overarching framework would generate transparency and compa-rability, thus also limiting the greenwashing risk. Currently, the taxonomy-alignment of sovereign debt can not be assessed due to a lack of methodology. The development of a comprehensive methodology is key.

<ESMA\_QUESTION\_SFDR\_16>

1. : Do you agree with the ESAs’ assessment of the DNSH framework under SFDR?

<ESMA\_QUESTION\_SFDR\_17>

We welcome further clarification and guidance on the application of DNSH-related requirements to support consistent and comparable dis-closures for users and avoid legal and reputational risks for preparers. However, the timing of the provision of such guidance (including e.g. threshold values) must be carefully considered to avoid market disrup-tion and given the lack of data. In particular, the significant ongoing industry efforts to implement SFDR requirements including all recent amendments (eg. additional disclosures on exposures to gas and nucle-ar-related activities) should be acknowledged. In addition, while greater alignment could be of benefit, the current lack of quality data must also be taken into consideration.

It should also be noted that while PAI indicators include the entire entity, the SFDR disclosures are product specific. An alignment should not reduce the FMP's ability to ensure focus on the ESG factors that they find important.

<ESMA\_QUESTION\_SFDR\_17>

1. : 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>

IPD finds it positive that investors have the opportunity to publish dif-ferent degrees of sustainable investments, including sustainable in-vestments under article 2(17). One reason is that not all environmentally promoting investments can be qualified as being in accordance with the taxonomy due to a lack of data. However, the formulations for 2(17) are very broad and are interpreted very differently by different inves-tors. It will therefore be positive if there is a clearer voluntary frame-work for how an investment can be qualified as a sustainable invest-ment.

We find that if a voluntary option is introduced to be able to use PAI indicators as a DNSH parameter for 2(17) investments, and 'safe harbor for environmental DNSH', this could lead to greater comparability and usability of 'sustainable investments' under 2(17).

<ESMA\_QUESTION\_SFDR\_18>

1. : 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>

We find that if a voluntary option is introduced to be able to use PAI indicators as a DNSH parameter for 2(17) investments, and 'safe harbor for environmental DNSH', this could lead to greater comparability and usability of 'sustainable investments' under 2(17).

<ESMA\_QUESTION\_SFDR\_19>

1. : 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>

Insurance and Pension Denmark would support addressing the DNSH-related issues in the SFDR level 1 review with the aim of achieving a convergence and alignment of the definitions in SFDR and EU Taxonomy. Ideally, and in line with the objective of the EU Taxonomy to pro-vide for a common understanding in the EU of what can be considered as sustainable, there should be a shift to a single taxonomy-based system for DNSH to increase consistency of the EU Sustainable Finance framework (in particular between the SFDR and the EU Taxonomy) and thereby reduce the current confusion and uncertainties regarding the definition of what is considered to be sustainable. With this approach, as the notion of sustainable investments is only applicable to single eco-nomic activities, only the proportion of the investment related to the sustainable activity of a company should be retained. With this ap-proach, the Taxonomy DNSH should form the basis of environmental DNSH assessments, and the technical screening criteria of the taxono-my could be used to form the basis of the sustainable contribution to an environmental objective.

Nevertheless, the current "parallel existence" of two sustainability/DNSH concepts is problematic but, in the absence of a social and governance taxonomy, inevitable. In addition, while the environmental taxonomy is, to some extent, built on science, social and governance taxonomies, if introduced, would be much more norm-based taxono-mies. Hence it would not be clear that all FMPs would accept such taxonomies.

In order to make taxonomy-compliant investments also SFDR-sustainable, clear guidelines should therefore be available in a timely manner as to which social DNSH criteria exist. These could complement a safe harbour for environmental DNSH to create legal certainty and should also be based on the social PAI indicators. The adjustment of PAI indicators 10 and 11 to the taxonomy minimum protection is therefore clearly to be welcomed, and it would also be conceivable to extend the taxonomy minimum protection to Level 1 based on the social PAI indicators.

In addition, the Platform on Sustainable Finance (PSF) could create appropriate Level 3 specifications or develop a combined Level 2 pro-posal for minimum social protections.

<ESMA\_QUESTION\_SFDR\_20>

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

<ESMA\_QUESTION\_SFDR\_21>

The approach to DNSH should take into account the definition of a methodology with "dynamic" thresholds that enable 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. Conversely, the definition of "static" thresholds could excessively restrict the universe of investable assets, under-mining compliance with the parameters of stability and diversification and, consequently, the profitability of the products themselves. In this regard, for example, the use of quantitative thresholds that allow the monitoring of the trend of the values of the PAI indicators could be preferred, rather than relying on predetermined and fixed values of the PAI indicators.

<ESMA\_QUESTION\_SFDR\_21>

1. : 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>

IPD finds that the current information which must be published in ac-cordance with the Disclosure Regulation is so complex and technical, and that in practice it is primarily aimed at professional investors and not retail investors or ordinary pension fund members who are becoming more aware of the sustainability of their pension. We would therefore encourage that, with the revision of the Disclosure Regulation, user tests be made of the various customer-facing documents, and that the experience gained from this be used to make the comprehensive reporting more understandable for ordinary customers. We expect that con-sumer testing will confirm our above-mentioned conclusion

<ESMA\_QUESTION\_SFDR\_22>

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

<ESMA\_QUESTION\_SFDR\_23>

Yes, the benchmark reference link is preferable to a specific disclosure. If a product follows a benchmark, then it should disclose which bench-mark it is. All other products with decarbonisation as its objective should disclose the targets set at entity level and based on which target setting framework.

On the overall, a simplification of disclosure related to GHG emissions reduction should be followed in order to avoid consumers’ misunder-standing between different financial products.

<ESMA\_QUESTION\_SFDR\_23>

1. : 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.

While it is important that financial market participants provide for products investing in sustainable entities, investors’ high demand in sustainable investment opportunities also include investment products which would support a company’s transition to more environmentally friendly activities thereby including reduced GHG emissions (ie. upon the condition that such company presents a robust transition plan with GHG emissions reduction targets).

Therefore, such distinction could work as a transition tool by bringing transparency and clarity to investors on the manner the financial product allows for a reduction of GHG emissions and could help avoiding reputational risks for investors investing in companies in the process of transitioning (ie. on a path to reduce its GHG emissions following pre-set targets).

<ESMA\_QUESTION\_SFDR\_24>

1. : 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, having a disclosure on the degree of Paris-alignment of Article 9 products would be relevant.

<ESMA\_QUESTION\_SFDR\_25>

1. : 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, the target should be calculated on the relevant portion of the financial product and such portion should be clearly explained. Having targets based on all investments may only dilute the targets and make the understanding of the figures more difficult.

<ESMA\_QUESTION\_SFDR\_26>

1. : 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>

Firstly, we would like to highlight that in the draft ESRS delegated act PCAF is not required, only mentioned – as a standard which financial institutions shall consider. We strongly recommend that PCAF should not be mentioned as the only standard to use for disclosures. The calcu-lation methods and the data suggested by PCAF is generally very useful, however, national specificities prevail for a number of asset classes, and standards that take such specificities into account are being developed. In the case of Denmark, mortgage bonds, which are a very large asset class, represents one such specificity. Further, we would like to encour-age that there should be freedom of method between the three objec-tives in PCAF due to the current data availability, it can e.g. be difficult to obtain data on debt in project financing.

Finally, we would like to point out, in relation to PCAF's calculation method for government bonds, that it is important not to consolidate emission figures for government bonds into investors' total financed CO2 figures, as this will lead to double counting, and we believe that it makes the best sense for CO2 emissions for government bonds to be reported as 'production-based'.

<ESMA\_QUESTION\_SFDR\_27>

1. : 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>

Yes, as companies will report separately on their gross GHG emissions, GHG removals and use of carbon credits under their CSRD reporting requirements, the same approach should be taken for disclosures under the SFDR for the sake of consistency and full transparency on GHG emissions reductions operated by the investee company.

<ESMA\_QUESTION\_SFDR\_28>

1. : 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>

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 the FMP, not mandatory.

The reason for this is that it should be possible for FMPs to set targets based on customers’ needs and interests without having to ensure consistency with entity level targets. Making it compulsory to disclose in-formation on the consistency of targets could effectively make FMP’s refrain from offering investment product with targets.

<ESMA\_QUESTION\_SFDR\_29>

1. : 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>

Firstly, we welcome the steps taken to further ensure the readability of reporting. However, we must see the proposed final version of a dash-board before we can draw conclusions.

It is important that an inclusion of a dashboard will not replace the in-vestment tree and it should not just be an additional layer of reporting, but an actual replacement of existing reporting.

We suggest strongly that accessibility and user-friendliness of the pre-contractual as well as the periodic information is enhanced through the possibility to layer the information as much as possible (and include “ex-tend-on-click” facilities where relevant) In line with this we strongly suggest that providers of pension products be allowed to give the periodic disclosures on investment products via their website rather than in the annual report/CSR report as the latter is very rarely accessed by customers.

We strongly welcome changes aiming at improved simplicity, readability and usability of the templates. Any change should however be thoroughly tested with end consumers before being made.

• Today, the table in place with the two schemes (art. 8 and 9 side by side) could mislead consumers, in particular on art. 8 products. The proposed dashboard would provide consumers with a straight-forward highlight of the key characteristics of the product, but careful consideration must be given to the fact that it does not become an extra layer of reporting/information. Any salient features, the dif-ferent shades of green, that are not represented by the sections with icons, can be reflected in the textual part.

• We also appreciate the effort to simplify the wording (including eg. the definitions in the left-hand margin are made shorter).

• The addition of icons is appreciated as it helps consumers navigate the documents. Consumers can find the key information in the dashboard and more detailed information in the subsequent sec-tions of the document where the same icon is used.

• The two versions of icons (green/grey) improve understanding. It must be however considered when templates are printed in black and white. To address this, some icons present a strikethrough, but not all of them (ie. not for the icon for PAI consideration). Therefore, we would recommend the permanent use of strikethrough icons.

• The inclusion of the box dedicated to target decarbonization would not penalise the comprehension by consumers as long as it can be removed if not applicable.

• Customers would benefit from a summary of the templates, prefera-bly a one-pager combined with a guide on preferences.

In any case, further simplifications of the templates and consumer testing would be needed as it will remain challenging for consumers to access, understand, and interpret information.

<ESMA\_QUESTION\_SFDR\_30>

1. : 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 welcome the effort to make the language of the templates more comprehensible for retail investors. The objective should be to make the templates more likely to be noticed, read, and understood by customers. However, we are concerned that despite the proposed changes, the templates will still be ignored by most retail investors due to their excessive length and detail. In our view, it is essential that the content of the templates is significantly reduced.

We agree with the assessment in the Consultation Paper and in EIOPA’s Progress Report on Greenwashing that the vast majority of consumers will not look further than the dashboard. The remaining, detailed infor-mation is in fact relevant only for more professional investors. Therefore the ESA’s approach regarding the dashboard and the use of hyperlinks points into the right direction but should be pursued much further. The templates should consist only of the following elements:

• The dashboard proposed by the ESAs in the Consultation Paper,

• Very high-level and concise information as required by SFDR Ar-ticles 7, 8 (1-3), 9 (1-5), 11 (1) SFDR and Taxonomy Articles 5 and 6, without standardised text passages (unless prescribed at Level 1) or graphic representations,

• a reference including a hyperlink to the more detailed and more standardised information which can be found on the FMP’s web-site in accordance with Article 10 SFDR.

In this way, the templates could be reduced to one or two pages (filled in), which is the absolute maximum that would realistically be perceived and read by customers. At the same time, this approach would not lead to less information being available to customers since all details remain accessible via hyperlink.

We suggest that the ESAs and the EU Commission follow up with fur-ther guidance aimed at the consumers and the investee companies – to support the understanding of the reporting after SFDR and spread knowledge about the SFDR. This could be done with inspiration from the educational videos to the draft ESRS which EFRAG have made pub-licly available on their website. We have participated with great interest in the ESA’s online webinar regarding this hearing in early June which gave great insights. An additional online webinar should be considered as an implementation tool when changes to the RTS have been adopted.

We furthermore welcome the simplification of the sustainable invest-ment and taxonomy's definitions (with the removal of regulatory refer-ences). However, the sustainable investment concept remains complex for people to understand. For instance, the phrase "This product has some sustainability characteristics, but does not have sustainable in-vestment as its objective" could be rephrased to "This product has some sustainability characteristics." In general, definition and classification of sustainable investment remain unclear, especially with regard to article 8. Furthermore, templates are primarily targeting direct investment, but it is unclear how to apply them for indirect investments.

Finally, in order to improve the readability and simplify the usability of precontractual templates, the first graph on the share of EU Taxonomy investments including sovereign bonds should be removed: the EU Taxonomy only applies to corporate activities and thus a minimum commitment can only be taken on those activities. The information on sovereign bonds does not seem relevant for precontractual information and is operationally burdensome. Nevertheless, the two information (including and excluding sovereign bonds) may be relevant in periodic disclosures.

<ESMA\_QUESTION\_SFDR\_31>

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

<ESMA\_QUESTION\_SFDR\_32>

It is necessary to conduct extensive consumer-testing in all markets, to ensure that the proposals improve consumers' understanding and match their information needs. Full transparency on how the consumer testing is conducted must be provided. 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. For example, the consumer-testing previously performed on the SFDR templates was not satisfactory: it was conducted only in NL (through the Consumer Panel of the Authority for the Financial Markets), and PL (Warsaw School of Economics). The sample was not representative of the variety of EU consumers and markets, especially in terms of education. Moreover, only part of the revised templates was tested in isolation.

<ESMA\_QUESTION\_SFDR\_32>

1. : 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>

YES, a loud and clear yes. We find that the investment tree showing asset allocation in the pre-contractual and periodic information is a good visual communication of the information in the templates. Our members have experience showing that the investment tree is in fact the easiest part of the templates to convey to both other investors and members. In addition, it is a visual element that enables quick and easy comparison between products. We would therefore encourage the in-vestment tree to be retained in the templates.

<ESMA\_QUESTION\_SFDR\_33>

1. : 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>

Improved consistency, readability and simplicity are necessary for consumers given the current complexity and length of the templates. However, increased comparability could be achieved without the adoption of mandatory colours. As is the case with e.g. investment KIIDs. Neverthe-less, the use of colours is obsolete when the documents are printed in black and white. Therefore, we would rather recommend the permanent use of icons with a strikethrough as it is already proposed for the com-mitment to making sustainable / EU Taxonomy investments.

It should be noted that editable versions of the template in all languages should be made available in due time before the entry into force of the new requirements to ensure consistency in the colours used by financial market participants.

<ESMA\_QUESTION\_SFDR\_34>

1. : 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>

Improved readability and simplicity are necessary for consumers given the current complexity and length of the templates. Therefore, Insurance & Pension Denmark agrees to allow the possibility to use a layered approach where the consumer can click on the main questions (ie. those accompanied by an icon) to open the associated section.

For the sake of maintaining a level playing field it should, however, be recognized that in some member states it is required that the reporting must be available in writing for the consumer and for pension providers there is a requirement to place periodic reporting in the annual report. Where that is the cases allowing for electronic, layered and extendable information is obsolete. It is therefore crucial that the suggested changes be accompanied with changes in the level 1 requirements reg. where to make disclosures available.

Further requirements for displaying information electronically should replace - not supplement - the existing requirements.

Finally, we support ESAs intention to conduct a thorough consumer testing on this proposal.

<ESMA\_QUESTION\_SFDR\_35>

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

<ESMA\_QUESTION\_SFDR\_36>

We appreciate the consideration given by the ESAs to situations of una-vailability of the relevant data needed to determine the alignment of certain economic activities with the technical screening criteria established under the Taxonomy Regulation (e.g. cases in which undertakings are not falling under the scope of the EU Taxonomy reporting requirements). In such cases, it is crucial to allow financial market partici-pants to rely on estimates, when necessary and whether it is on entity or product level. In that case, we agree that transparency on the methodology should accompany such disclosure.

As regards the proposed criteria, further clarity should be provided as to the definition of required key environmental metrics and how those can be used to determine substantial contribution in order to ensure con-sistency, comparability and avoid reputational risk for preparers. <ESMA\_QUESTION\_SFDR\_36>

1. : 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>

We believe that introducing ”key environmental metrics” will lead to many FMPs focusing solely on those issues and neglecting other important sustainability matters. SFDR should not develop into a rating or labelling tool but remain a tool for disclosing what FMPs intend to do in the field of sustainability, how they will obtain their aims and to which extent they move in the direction of their aims.

<ESMA\_QUESTION\_SFDR\_37>

1. : 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>

First of all, we suggest that there should be a more clear definition of “sustainable investments” in SFDR 2(17) before rules on the calculation of the proportion of sustainable investments in an investment product can really be useful. Clarity and legal certainty matters.

Having said that, we support a proportional approach to calculating the sustainable investments share of an investment product. We would like to point out that sustainable investments is a concept which is only applicable at economic activity- level, not at entity level. Obviously, one can calculate the share of an entity’s activities that are sustainable, and to this extent, only the proportion of the investment related to the sustainable activity of a company should be retained as sustainable.

<ESMA\_QUESTION\_SFDR\_38>

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

<ESMA\_QUESTION\_SFDR\_39>

Yes, we strongly agree.

The current approach to the obligations for periodic reporting is incon-sistent, operationally difficult to implement and will lead to customers receiving unnecessary volumes of information, often in print. This is due both to the national approach to the implementation of Solvency II in many member states and to the SFDR requirement that pension pro-viders report the periodic disclosures in the annual report.

Cross-referencing would be beneficial to address information overload.

More in details:

• SFDR periodic disclosures can be very long: for example, for MOPs, there might be a need to provide over 60 pages to clients on top of the Solvency II periodic disclosures. Since the RTS clearly provide for a possibility to use hyperlinks to address the excessive amount of information in MOPs pre-contractual disclo-sures, the use of hyperlinks should also be possible for period disclosures to help both clients and providers manage the num-ber of documents. In principle, the European legislator recognizes in Article 20(5) of the RTS that a reference can be an ade-quate means of submitting information.

• Moreover, this is also an issue for insurers in terms of level play-ing field with other providers. Based on the sectorial legislation, insurers are required to deliver the information to clients annu-ally, while UCITS and IORP providers are only required to hand over annual information to consumers on demand. The delivery of numerous pages of periodic disclosures every year creates an additional burden and cost for insurers, who should at least be allowed to use hyperlinks to existing sources of information.

• In addition, it seems disproportionate (and not environmental-friendly) for insurers to send a remarkable volume of paper to clients. We understand this is linked to national approaches with the implementation of Solvency II. As a result, we fear com-plaints or a negative perception of the European legislation on the part of the customers if such a high number of pages of information would have to be submitted on paper every year for sustainable products. Even in a fully digital environment, we do not appreciate the advantage for the client of not using hyper-links to navigate the information.

Furthermore, and though we fully support the possibility of using hyperlinks in periodic disclosures, it should be possible to include a single link to the website page that includes all the relevant annexes. Indeed, providing a link for each annex does not seem operationally feasible and will also be clearer for the customer who is likely to receive the periodic information on a paper format. Annexes would be clearly identified on the website to make sure that customers can easily access the information.

<ESMA\_QUESTION\_SFDR\_39>

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

<ESMA\_QUESTION\_SFDR\_40>

We agree with the fact that website disclosures should include a list of the investment options that qualify the financial product as a fi-nancial product referred to in Article 8(1) or 9(1), (2) and (3) SFDR. The list should be accompanied by the hyperlink to the precontractual annexes.

However, we disagree with the proposal to include summaries of the underlying investment options and additional details. Precontractual annexes already provide synthetic and clear information. Adding summaries will only increase the burden for financial market participants without adding real value for consumers.

<ESMA\_QUESTION\_SFDR\_40>

1. : 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>

We generally support the proposal which should apply to investment options for which issuers are subject to SFDR regulation (e.g. structured products).

In addition, management mandates within an insurance product that are currently excluded from the list of financial products according to SFDR should be included in order for them to be classified as art. 6, 8 or 9 by the asset managers.

<ESMA\_QUESTION\_SFDR\_41>

1. : 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>

There is no need to modify the format or the level of standardisation of precontractual disclosures to make them machine readable. The im-pact of these changes on the template and therefore on consumers’ understanding of the documents is not clear, while duplicating manufacturers’ requirements by asking them to provide equivalent figures in a different format would not simplify the already burdensome precontractual requirements. This would lead to increased costs for insur-ers (and ultimately for consumers) without any improved benefit for consumers. Providing, collecting and keeping updated machinereadable information at product level is even more demanding than providing data at entity level, as thousands of precontractual docu-ments are produced and subject to review and revisions, while reporting is developed once a year by each entity. The SFDR templates are already published on insurance companies’ websites as PDF files. In some countries, National Competent Authorities are accepting receiving the templates in PDF format to comply with certain pre-notification re-quirements (e.g. for the PRIIPs KID).

<ESMA\_QUESTION\_SFDR\_42>

1. : 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>

We believe it’s too early to give an assessment of impact and costs at this point in time as the full reporting requirements have only started in January 2023. Many FMPs are about to issue their first PAI-statement.

We are increasingly alarmed that there appears to be very little aware-ness by policymakers of the need for new regulation to be implemented by the undertakings concerned. This tendency has become particularly evident in the development of the SFDR, eg. the changes made to the SFDR templates in February 2023 with an implementation period of only three days.

In our view, it is part of the tasks of the ESAs, being nearest to the reali-ties of the industry, to raise the awareness of policymakers, especially the EU Commission, of the fact that the implementation of new rules requires time and effort on the part of FMPs. This awareness should include the following elements:

• Requirements at Levels 1 to 3 should be properly drafted and re-flected before they are put into action. Unclear or incorrect references and inconsistencies with other legislation (e.g. SFDR / Taxonomy) results in legal uncertainties, divergent implementa-tion and, eventually, in the need for correction. While we appreciate the ESAs’ efforts to provide clarity via Q&As, it is troubling that, since 2021, numerous sets of Q&A by the ESAs and the EU Commission have been necessary for this purpose. It should be borne in mind that each time the requirements are clarified or modified, FMPs have to adapt and readapt their processes and disclosures. This also increases the costs of products to the det-riment of customers.

• In line with the above we’d like to point out the urgent need for the ESAs to publish a full, consolidated – and thus authoritative - Q&A on the SFDR regulation.

• New rules should be applied only once Levels 2 and (as far as possible) 3 are finalised. Otherwise, FMPs have to undergo the implementation process two or three times for the same legislative act.

• If changes to requirements are necessary, they should, as far as possible, be bundled and put into action with one common appli-cation date. It is significantly easier for FMPs to make less fre-quent yet larger adjustments to their disclosures than to implement a constant stream of modifications. Longer periods without changes to the requirements would also help consumers under-standing by allowing for comparisons of disclosures over time.

• Where new legislation is introduced or changes are made to ex-isting rules, a realistic implementation period needs to be pro-vided. For changes such as the ones proposed by the ESAs in its current Consultation Paper, FMPs would need 9 months from the publication of the final rules in the Official Journal. The ESAs should include a proposal to this effect in the draft RTS in order to underline its importance vis-à-vis the EU Commission.

In view of the above comments, the ESAs should reconsider whether the envisaged changes are necessary at this point in time. In line with SFDR Article 19, the EU Commission is currently evaluating possible changes to the SFDR at Level 1. A legislative proposal for such changes could be forthcoming as soon as 2024 and therefore any changes to the RTS would risk being outdated as soon as they are implemented by FMPs. To avoid such redundant implementation efforts, we suggest using the insights gained in the course of this consultation and the con-sumer testing to continue the work on the evaluation and improvement of the SFDR at Level 1 and preparing any subsequent changes to the RTS.

<ESMA\_QUESTION\_SFDR\_43>

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. [↑](#footnote-ref-1)