**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 | France Assureurs |
| Activity | Insurance and Pension |
| Are you representing an association? |[x]
| Country/Region | France |

**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>

As a general comment, France Assureurs is of the view that ESAs should assess several criteria while choosing indicators to be made mandatory :

* **Relevance to steer investment portfolios**. Beyond the transparency exercise, the indicators should also help entities to identify the adverse impact of their investment decisions and ultimately help them steer their investment portfolios. To this extent, and as PAI indicators are sector-agnostic, indicators that may significantly differ according to economic sectors should not be retained as aggregation may result in figures that will be hard to interpret/understand and ultimately that will not help financial actors in making investment decisions.
* **Data availability**. In this regard, France Assureurs welcomes the fact that the ESAs rely on the disclosure requirements under the ESRS of the Corporate Sustainability Directive as a basis for defining new social PAI indicators. Consistency between both regulations is essential, as investors need the ESG data collected through CSRD to comply with SFDR. Therefore, it seems necessary, in order to avoid any data gaps, that the required SFDR disclosures be timed in accordance with the reporting of non-financial companies, which should occur from 2025. In addition, as the EC has extended the materiality assessment to all data points under ESRS, FMPs’ lack of data may not be resolved by the implementation of CSRD. We urge ESAs to propose solutions to this issue. Several options are possible :
	+ the ESAs could add the disclosure of coverage ratio to PAI indicators and clarify that if the information on PAI indicators is not available for companies subject to CSRD, such companies can be excluded from the denominator of the coverage ratio.
	+ The ESAs could clarify that FMPs can use a “qualified zero” and consider it actual data (and not estimates) for investees that are subject to CSRD-reporting but have not disclosed the information needed for PAI reporting.
	+ The ESAs could clarify that companies for which the data is not available can be considered as “neutral” with regards PAI.

With regards the newly proposed mandatory social indicators, France Assureurs would like to highlight the following points:

* The indicator on the amount of accumulated earnings in non-cooperative tax jurisdictions is not properly speaking related to sustainability as such information is disclosed in companies financial statements as mentioned by the ESAs. In fact this indicator is not required in the ESRS. In addition from an operational point of view the information demanded is not always present in the consolidated financial statements and thus not easily accessible. For these reasons France Assureurs suggests not to retain this indicator as a new mandatory social PAI;
* 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 : indeed ESRS S1-8 only cite formation of trade unions as an example of policy that might be in place and thus disclosed. Consequently, France Assureurs fears that data may not be readily available to financial entities. Even though we fully embraces the fact that this indicator is a key social matter that should be disclosed, we call on the ESAs to further align it with the requirements under ESRS S1-8 to ensure consistency and prevent potential data gaps;
* The indicator on the share of employees earning less than the adequate wage is challenging as the definitions may vary in the CSRD reportings of investees. Several notions regarding wages co-exist, such as “adequate wage”, “minimum wage” or “living wage”. Moreover, the definition of “adequate wage” varies between national laws and regulations. For instance, some countries, like France, have set a minimum wage, when some others have not. We would welcome further clarifications from the ESAs in order to avoid reporting discrepancies and to foster comparability among financial market participants.

Finally, France Assureurs fully supports the inclusion of the new social indicator on the exposure to companies involved in the cultivation and production of tobacco, which is an issue that needs to be addressed in order to properly steer investment portfolio.

<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 investees to be included in their PAI statement for each mandatory indicator. To limit such reporting burden, at minimum, information required under SFDR should be aligned with information that will be provided under the ESRS. In addition as CSRD reporting will only gain maturity over time, we caution against adding too many new mandatory indicators as information is likely to remain fragmentary during the first years of CSRD implementation.

Moreover, it is crucial that the PAI indicators are fit for purpose : they should be relevant to steer the investment portfolio, and not be mere reporting requirements. Indicators that do not serve this purpose should not be considered relevant, and thus not be required as mandatory in the SFDR framework.

<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>

France Assureurs welcomes the fact that the ESAs used the disclosure requirements under the ESRS of the Corporate Sustainability Directive as a basis for defining new opt-in social PAI indicators. Nevertheless, France Assureurs believes that those indicators, at an aggregated level, are not necessarily relevant to make investment decisions. Indeed to understand the figures, a threshold for “excessive use” or “insufficient” should be set for each indicator. Yet such thresholds only make sense at sectoral level or geographical level. To this extent, the sector-agnostic indicators are hard to use while making investment decisions.

In addition, with regards the opt-in indicator on insufficient employment of persons with disabilities, France Assureurs would like to highlight the fact that the metric to be disclosed (average share of persons with disabilities among the workforce of investee companies) is not fit to measure the “insufficient” feature of the indicator. In fact, PAI indicators are supposed to tend towards zero, but with such metric, the higher the number, the more positive the impact. On the other hand, the determination of a disability threshold is not relevant as some countries (ie France) already impose legal thresholds on this matter. Such indicator would then trigger questions about the aggregation level (group vs. country level) as countries have specific employment quotas for employees with a disability. Therefore, we would recommend not to include employees with disability and non-employee workers as interpretation and assessment are too difficult.

<ESMA\_QUESTION\_SFDR\_3>

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

<ESMA\_QUESTION\_SFDR\_4>

France Assureurs would first like to draw the ESAs’ attention on the fact that social matters are subject to sectoral and geographical specifities. We acknowledge the fact that the European Commission mandated the ESAs to adjust and develop social PAIs, but the interpretation of social indicators may significantly differ according to the country or the economic sector, and thus create discrepancies in reportings between stakeholders. Adding new social indicators could only emphasize this phenomenon, and consequently hinder comparability between entities, and make the information required less relevant to steer investment portfolios.

Moreover, France Assureurs is not in favor of new optional social indicators that could eventually burden non-financial companies. Indeed, the investee companies could have to disclose all PAI indicators (mandatory but also optional) to satisfy all the information demand of financial market participants. When extending the list of indicators, this significant effort for preparers should be acknowledged.

Furthermore, the public availability of and access to reliable data should also be taken into account, in particular regarding data needed from investees 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>

France Assureurs supports the replacement of the UN Global Compact Principles by the UN Guiding Principles on Business and Human Rights and the Declaration 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 criteria on minimum safeguards, and with the social ESRS of the CSRD.

<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>

France Assureurs does 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 the FMP invested it, as the data would prove difficult to collect especially when there is different property managers. Nevertheless, if the ESAs were to think of a relevant social PAI indicator for real estate assets, France Assureurs would encourage the use of the existing, such as the French ISR Label and its social mandatory indicators linked to real estate assets regarding accessibility or health and comfort of occupants.

Alternatively, such indicators could be added to those set out in Table III of Annex I (on an opt-in basis) so that FMPs can select them based on the availability of data and on the relevance of such investments in their portfolio.

<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>

In a general comment, France Assureurs strongly supports greater consistency and alignment, where possible and relevant, between the SFDR PAI indicators and the EU Taxonomy criteria. To this extent, we believe that the formula of the PAI indicator 22 should make a reference to the value of real estate assets built before 31/12/2020 with EPC of **D** or below.

<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 interaction between both definitions could be challenging, as the current value of investment is directly linked to changes in rates, making it difficult to measure progress over time and to avoid misinterpretation of the evolution to be measured. In order to ensure transparency and foster comprehensiveness of PAI indicators, France Assureurs suggests that this mathematical bias be clearly explained in the “Explanation” column.

<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>

France Assureurs welcomes the efforts made by the ESAs to extend and clarify the formulae suggested to calculate PAI indicators. Nevertheless, France Assureurs would like to highlight the following points:

* In all formulae, the denominator should only considered the investments 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 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 denominator.
* It would be beneficial if the regulator could further specify how “violations” should be interpreted and if there is a decay on controversies 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 policies to monitor compliance with or with grievance/ complaints handling mechanisms to address violations of the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles, including the principles and rights set out in the eight fundamental conventions identified in the ILO Declaration and the International Bill of Human Rights” still mixes “and” / “or” in the name and description, likewise the wording still leaves a lot of room for interpretation, which leads to incomparable disclosures across FMPs.

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

<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>

France Assureurs would like to draw the ESAs’ attention on the fact that some indicators could prove difficult to collect, as data is not always available from investee companies. To overcome this issue, consistency between SFDR and CSRD is essential and SFDR disclosures need to be timed in accordance with the reporting of non-financial companies (from 2025 onwards) in order to avoid any data gaps.

In addition further clarifications should be provided to encourage an harmonized implementation of indicators and thus foster comparability. In particular:

* With regards sectoral indicators (ie PAI 4 on exposures to companies active in the fossil fuel sector), we believe that the formula should be amended so that the current value of investment is weighted by the relevant revenue of the investee companies. For instance, if only 10% of the revenue of a company is associated with fossil fuel activities, the value of the investment should be weighted accordingly. Providing the full exposure may provide contradictory results as the same company can be active in the fossil fuel sector but also have sustanainable energy activities compatible with the European taxonomy.
* It would be very useful to provide further guidance on some PAI :
	+ The value chain to be considered with regards PAI 4 and PAI 15 (exposures to controversial weapons) should be clarified. Indeed it is unclear if companies not directly active but present in the value chain of fossil companies (ie suppliers) should also be taken into account. The same apply to controversial weapons.
	+ Regarding PAI 20 (Investee countries subject to social violations), it would be useful for financial market participants to have the list of countries that violate the UN guiding principles available. Moreover, the PAI should require to disclose the share of investments rather than the number of countries subject to social violations, in order to provide more consistency to the indicator and ultimately improve comparability.

Finally, insurers would propose changing the attribution factor from GDP to PPP-adjusted GDP for PAI reporting of the Sovereign carbon footprint to be reflected in the update of the SFDR Delegated Regulation (Regulatory Technical Standards Annex I - formula for “GHG intensity of sovereigns”):

* Various industry initiatives (PCAF, ASCOR) as well as the EU Regulator have published methodologies to calculate financed emissions of a Sovereign issuer. PCAF and ASCOR methodologies are fully aligned and are seen as best practice, thereby developing quickly into industry standard. ASCOR was established with the UN-convened Net Zero Asset Owner Alliance and other (institutional) investor groups (like IIGCC). Therefore, the methodology recommended by ASCOR is supported and will be adopted by a large number of asset owners. The methodology prescribed by the EU Regulator deviates from the methodology proposed by PCAF and ASCOR with respect to the so-called attribution factor. While all FMPs based in the EU have to report their Sovereign carbon footprint according to EU Regulation (SFDR), the attribution factor proposed by PCAF/ASCOR makes more sense from an economic perspective and ensures a fairer treatment in particular of countries of the global south. Therefore, the vast majority of EU asset owners will use PCAF/ASCOR methodology for internal steering purposes and EU SFDR methodology for PAI-Reporting. This inconsistency causes additional complexity and misalignment between PAI reporting, sustainability reporting and internal steering.

To calculate the share of emissions financed by a financial institution, it is required to define the total value of the respective borrower. The share of emissions financed can then be calculated by dividing the exposure of the financial institution to the borrower by the total value of the borrower. The key question is how to define the total value of a Sovereign issuer (ie. what is the equivalent to the EVIC of a listed company). Both, PCAF/ASCOR and the EU Regulator use the value of a country’s output measured by GDP as a proxy for the country’s total value. However, the key difference is that PCAF/ASCOR adjust GDP by the Purchasing Power Parity (PPP) factor which leads to a fairer reflection of a country’s actual economy size.

<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>

The disclosure of the share of data coming directly from investee companies is an interesting proposal to foster more transparency for consumers on the quality of ESG data published .

Nevertheless, it should be noted that the lack of publicly available and reliable data requires significant efforts from financial market participants to provide for the PAI information, in particular until the CSRD comes into application, as the requirement to directly obtain all the information from all investee companies is highly inefficient and its alternative creates dependencies on third party data providers. It should also be clarified what is meant by “information received directly from investee companies” : can the information provided by data providers be considered as such when data providers have obtained the information directly from the company?

In addition, France Assureurs believes that the key information that should be disclosed is the coverage rate. Indeed, even though this coverage rate should progressively increase to reach ultimately 100%, the operational reality today is very different and disclosing the coverage rate is key to foster transparency and ensure a better understanding of the PAI by consumers and users of the declaration. It is also key to help investors in their investment decisions (it is difficult to make investmend decision building on PAI indicators with a low coverage ratio).

Finally, in line with the EC’s extension of materiality assessment to all datapoints under ESRS, investees may assess SFDR datapoint to be immaterial for their own reporting and thus not publish the data. In such case, ESAs should clarify how FMPs can deal with this issue. ESAs could for instance :

* + While adding the coverage ratio to PAI indicators, clarify that if the information on PAI indicators is not available for companies subject to CSRD, such companies can be excluded from the denominator of the coverage ratio (solution 1)
	+ clarify that FMPs can use a “qualified zero” and consider it actual data (and not estimates) for investees that are subject to CSRD-reporting but have not disclosed the information needed for PAI reporting (solution 2)
	+ clarify that companies for which the data is not available can be considered as “neutral” with regards PAI (solution 3)

On a general note, it would be beneficial, if the regulator could provide the necessary data infrastructure for companies to upload and verify their data. Present scenario aggravates dependencies on data providers and high concentration of market powers in the data vendor sphere. A public database would lead to transparency and comparability of reports, as well as ease reporting burden for smaller FMPs.

<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>

France Assureurs understands the approach taken by the ESAs to consider all investments in the portfolio in the denominator of the PAI indicators formulae. This proposal encourages better comparability between financial market participants. However, France Assureurs believes that this approach would jeopardize readability and understandability by other users of the declaration and is likely to dilute PAI indicators leading to possible greenwashing accusations.

For this reason, France Assureurs supports the approach in which each PAI is calculated on the relevant portfolio portion, basically considering only the assets covered by the PAI indicator. If this approach could hinder comparability between stakeholders, it nevertheless allows financial market participants to disclose PAI indicators that are relevant, less diluted, and thus closer to reality.

Moreover, France Assureurs is of the view that consumers/users should have a better understanding of the composition of investment portfolios. Consequently, in the annex 1 related 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 estate, Z%sovereign, A%derivatives etc.)

Finally, and with regards the perimeter of all investments for insurers, France Assureurs recommends including only direct investments, unit-linked contracts, capital stocks as well as the cash assets related to the investment activity and to add real estate investments. 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 proposed in the consultation paper. It will also ensure consistency with the perimeter retained for Taxonomy-KPI.

The proposed definition in Annex I para (4i.) should be amended as follows: “for financial market participants referred to in Article 2(1)(a) of Regulation (EU) 2019/2088, the following balance sheet items: holdings in related undertakings, including **property (item R0080),** participations (item R0090), equities (item R0100), bonds (item R0130), collective investment undertakings (item R0180), derivatives (item R0190), ~~deposits other than cash equivalents~~ (item R0200), other investments (item  R0210), assets held for index-linked and unit-linked contracts (item R0220), loans and mortgages (item R0230), ~~deposits to cedants (item R0350~~) and cash and cash equivalents (item R0410), as defined in Annex I to Commission Implementing Regulation (EU) 2015/2452”.

<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>

France Assureurs agrees with this proposal that allows alignment with the materiality assessment of the value chain demanded by the ESRS of CSRD.

Nevertheless, it should be noted that including this information could complexify the comparison of values disclosed by different FMPs as the availability of such information for each individual investee company would depend on:

* whether the investee company is subject to CSRD
* whether the value chain assessment is relevant for the investee company and its activity.

<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>

The inclusion of derivatives in the scope of the indicators would not add significant value to customers. In addition, it would be inconsistent with taxonomy-related disclosures at entity level (for which it is required to exclude derivatives from the numerator of KPIs of financial undertakings). In any case, before introducing derivatives in the PAI reporting, a thorough analysis of this subject is required. For example, derivatives that do not have investee companies, sovereign and supranational issuers as underlying assets (for example derivatives on indices or commodities) should be excluded.

Further, although we recognise that institutional investors would in principle be able to use derivatives to "artificially" reduce PAIs, the use of derivates for insurance and pension companies is limited to mostly interest rates derivatives and broad stock index derivatives so the problem is in our view immaterial. Also, there is no ownership of the underlying asset, hence no influence. If particular FMPs use derivatives on single stock, then a requirement could be relevant, but only in those cases, thereby introducing a materiality assessment.

We urge that the European supervisory authorities prepare more thorough analyses of the scope of the problem, impact analyses and significance for sustainability and greenwashing, before introducing new regulations in the area.

<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>

We would like to stress the need for more thorough analyses of the scope of the problem, impact analyses 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>

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<ESMA\_QUESTION\_SFDR\_16>

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

<ESMA\_QUESTION\_SFDR\_17>

Currently, the lack of clarity and inconsistency in the EU Sustainable Finance regulatory framework, in particular as regards to the multiplication of (competing) definitions of sustainable investment (including eg. in the SFDR, the EU Taxonomy, the IDD, ESMA guidelines on funds’ names, etc.) is creating diverging interpretations and confusion for consumers and investors. This issue should be addressed in the upcoming level 1 text consultation, in order to align the ESG regulatory framework and improve its effectiveness.

The insurance industry welcomes further clarification and guidance on the application of DNSH-related requirements to support consistent and comparable disclosures for users and avoid legal and reputational risks for preparers. However, the timing of the provision of such guidance must be carefully considered to avoid market disruption. In particular, the significant ongoing industry efforts to implement SFDR requirements including all recent amendments (eg. additional disclosures on exposures to gas and nuclear-relaated activities) should be acknowledged.

<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>

The proposed approach to disclose quantitative thresholds related to the PAI indicators to determine that the sustainable investments do not significantly harm any environmental or social objectives would only add complexity, and thereby confusion for users and investors. In addition, it would not provide much added value as financial market participants would keep full discretion on the methodology used, which could consequently hinder comparability of data.

In addition, sector-agnostic thresholds may not be relevant as two different economic sectors or companies in different countries may have be in very different situations and thus require different thresholds. Thresholds only make sense at sectoral level and geographical level.

* Finally, if thresholds were to be added, they should by “dynamic” enabling financial products to make sustainable investments in a wide range of environmental or social objectives, in order to maintain adequate levels of investment stability and diversification. Conversely, the definition of "static" thresholds could excessively restrict the universe of investable assets, undermining 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\_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>

In its Commission Notice on the interpretation and implementation of certain legal provision of the EU taxonomy regulation and links to SFDR (12/06.2023), the Commission clearly states that “investments in Taxonomy-aligned ‘environmentally sustainable’ economic activities can be automatically qualified as ‘sustainable investments’ in the context of the product level disclosure requirements under the SFDR. This means that investments in specific economic activities can be considered to be sustainable investments.” (question 4). To this extent we believe that this is no further an issue.

<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>

Insurers would support addressing the DNSH-related issues in the SFDR level 1 review of the EC 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 provide 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 economic activities, only the proportion of the investment related to the sustainable activity of a company should be retained. With this approach, the Taxonomy DNSH should form the basis of environmental DNSH assessments, and the technical screening criteria of the taxonomy 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 taxonomies. 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 PSF could create appropriate Level 3 specifications or develop a combined Level 2 proposal 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>

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<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>

France Assureurs supports the fact that disclosures on decarbonisation targets would only apply to products for which it is indicated that they contain such targets, in order to limit reporting burdens and information overload for consumers.

Nevertheless, it must be noted that decarbonisation targets are typically entity-level commitments (eg. via Net-Zero Alliances). Such entity-level commitments would therefore need to be reconciled with product-level decarbonisation targets. In that perspective, there might be a lack of available data at product level (ie. low level of investments with decarbonisation targets for insurers to fulfil their reporting obligations).

In addition the information to be published seems very complex and technical. It would be worth carryong user tests before adding this new section to the templates.

The disclosure of intermediary targets is not considered as a useful addition given that progress on the final target will already be disclosed in periodic information. Therefore, adding information on intermediate targets would only add complexity to the templates as currently proposed in the section including unclear and extensive tables on GHG emissions reduction, in particular for periodic disclosures templates.

<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>

The benchmark reference link is preferable to a specific disclosure. If a product follows a benchmark then it should disclose which benchmark it is.

<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, we believe the distinction is useful.

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, we believe that having a disclosure on the degree of Paris-alignement 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, we believe that 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 complexify the understanding of the figures., especially for IBIPs.

<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>

France Assureurs fully supports the ESAs willingness to ensure alignment between SFDR and CSRD that explicitly refers to the GHG protocol standard. However, new innovative quantitative methodologies should be encouraged and, while the PCAF methodology is the most commonly used one for financed GHG emissions, it should not be the only standard to be referenced for the disclosure of those emissions reduction targets as new methodologies could be developed in the future. However, encouraging the development of new methodologies should not lead to inconsistency, and the financial market participants should prevail the use of the same methodology over time to foster coherence and comparability of data.

<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 in 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>

Product targets are primarily focused on customer needs and interests which are not the same as the entity-level targets. Moreover, both targets could vary over time. Therefore, such consistency could not adequately represent the reasons beyond investment choices (in both cases, product and entity) and, most importantly, products and entity-level targets could be confused by retail investors.

In addition, such disclosures would add more complexity. In particular for entities that offer both unit-linked and general account based products, there might be different strategies underlying each product, depending on the underlying investment options. It should be welcomed if FMPs offer more products with more ambitious targets than their overarching targets on entity level. For general account based products, targets are in most if not all cases on entity level. These are the same targets that are also communicated on product level. Transition plans and climate change mitigation measures are also taken on entity level, e.g. when joining initiatives like AOA

Based on the above elements, insurers would recommend not introducing such disclosures. In case of introduction of such comparison, the ESAs should at least take into account that providing disclosures regarding the consistency between the product targets and the financial market participants entity-level targets and transition plan for climate change mitigation should be at the discretion of FMP, not mandatory.

<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>

France Assureurs welcomes changes made by the ESAs aiming at improving readability and usability of the templates. The new proposed dashboard would provide consumers with a straight-forward highlight of the key characteristics of the product, in a simpler way than the previous one. It can also become a useful instrument to favour the matching between consumers sustainability preferences expressed during the adequacy/suitability test and the product features.

 The use of icons is much appreciated and will surely help the consumer navigate the documents more easily and efficiently.

In the previous template of annex III, financial market participants were to precisely disclose the minimum share of sustainable investments with (i) an environmental and/or (ii) social objective – all of which should be close to a total of 100% sustainable investments. France Assureurs recommends to reintroduce this “sub-category” in order to clarify the distinction between sustainable investments made in article 9 products and those made in article 8 products.

<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>

In order to improve the readability and simplify the usability of the precontractual templates, France Assureurs suggests that the second graph on the share of EU Taxonomy investments excluding sovereign bonds be removed from the template of precontractual disclosures. This second graph is not necessary as the EU taxonomy regulation only applies to corporate activities and thus a minimum commitment can only be taken on those activities. The information on sovereign bonds doesn’t seem relevant for precontractual information and is operationally burdensome. Nevetheless, 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>

France Assureurs believes it could be useful to conduct extensive consumer-testing in all markets, to ensure that the proposals improve consumers' understanding and match their information needs. The consumer-testing should replicate a real-life situation where consumers are confronted with the entire document, and not just with parts of the documents. 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 were 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>

While the dashboard which only provides an insight to the proportion of sustainable and taxonomy-aligned investment, the investment tree provides in a customer-frendly way more detailed information on the different investment categories (eg. characteristics applying to entire product, whereas sustainable investments are only a fraction thereof) and how these are interlinked (e.g. taxonomy-aligned investments as subset of sustainable investments). Consumers value such information and therefore the investment tree should remain part of the annex.

<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>

While the use of colours might seem to be a good idea to visually distinguish the sustainable features of the products, it becomes obsolete when the documents are printed in black and white. To address this issue, France Assureurs would rather recommend the permanent use of icons with a strikethrough as it is already proposed for the commitment to making sustainable / EU Taxonomy investments.

It should also 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 between FMPs.

<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>

France Assureurs 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. Improved readability and simplicity are necessary for consumers given the current complexity and length of the templates.

<ESMA\_QUESTION\_SFDR\_35>

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

<ESMA\_QUESTION\_SFDR\_36>

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

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 consistency, 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>

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<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>

France Assureurs supports a proportional approach regarding the calculation of sustainable investments of financial products. The notion of sustainable investments is only applicable to single economic activities. To this extent, only the proportion of the investment related to the sustainable activity of a company should be retained.

<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>

France Assureurs strongly agrees that cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload. The current approach is operationally difficult to implement and will lead to customer receiving unnecessary volumes of information, often in print due to the national approach for the implementation of Solvency II in many member states. We thus fully support the possibility of using hyperlinks in periodic disclosures. However 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.

In addition while we agree that hyperlinks should not redirect to the asset manager website’main page, it should be possible to point to the asset managers prospectus. Indeed asset managers usually do not separate the annexes from the whole prospectus document. Asking insurers to separate themselves the annexes is extremely costly while having a low added value for clients who can easily identify the annexes in the prospectus pdf.

<ESMA\_QUESTION\_SFDR\_39>

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

<ESMA\_QUESTION\_SFDR\_40>

France Assureurs agrees with the fact that website disclosures should include a list of the investment options that qualify the financial product as a financial 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 a general summary of the financial product with underlying investment options (article 49d). This information would not be relevant at product-level, as a client can chose the options he wishes to invest in. France Assureurs is also against further summaries of the underlying investment options and additional details. Indeed precontractual annexes already provide synthetic and clear information. Adding summaries will only increase burden for financial market participants without adding real value for consumers. Indeed it is unlikely that consumers will scroll the entire list of options article 8 /9 (as those can be several hundreds) looking for information.

More importantly, it is the role of finacnial intermediaries to assess the sustainability preferences of their clients (ie IDD) and then propose the relevant product with the appropriate mix of investments options corresponding to those preferences. This requirement will be complemented by the introduction of compulsory training on sustainable finance and sustainable products for financial intermediaries (ie IDD review).

<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 but should not apply to other financial instruments mentioned in the Annex III of MIFID.

<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 pre-contractual disclosures to make them machine readable. The impact 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 pre-contractual requirements. This would lead to increased costs for insurers (and ultimately for consumers) without any improved benefit for consumers. Providing, collecting and keeping updated machine-readable information at product level is even more demanding than providing data at entity level, as thousands of pre-contractual documents 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 requirements (eg. 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>

It is too early to give an assessment on impact and costs at this point in time as the full reporting requirements have only started in January 2023.

Insurers are increasingly alarmed that there appears to be very little awareness 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 realities 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 reflected before they are put into action. Unclear or incorrect references and inconsistencies with other legislation (eg. SFDR / Taxonomy) result in legal uncertainties, divergent implementation 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, FMP have to adapt and readapt their processes and disclosures. This also increases the costs of products to the detriment of customers.
* 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 application date. It is significantly easier for FMPs to make less frequent 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 understanding by allowing for comparisons of disclosures over time.
* Where new legislation is introduced or changes are made to existing rules, a realistic implementation period needs to be provided. 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.

<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)