

# Response to ESAs consultation on SFDR Delegated Regulation



3 July 2023

INREV filed the following response to the ESAs Joint Consultation paper on the review of SFDR Delegated Regulation published on 12 April 2023.

## **Questions to stakeholders**

Question 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)?

[We do not express an opinion on this issue.](#)

Question 2: Would you recommend any other mandatory social indicator or adjust any of the ones proposed?

[We do not express an opinion on this issue.](#)

Question 3: Do you agree with the newly proposed opt-in social indicators in Annex I, Table III (excessive use of non-guaranteed-hour employees in investee companies, excessive use of temporary contract employees in investee companies, excessive use of non-employee workers in investee companies, insufficient employment of persons with disabilities in the workforce, lack of grievance/complaints handling mechanism for stakeholders materially affected by the operations of investee companies, lack of grievance/complaints handling mechanism for consumers/ end users of the investee companies)?

[We do not express an opinion on this issue.](#)

Question 4: Would you recommend any other social indicator or adjust any of the ones proposed?

[We do not express an opinion on this issue.](#)

Question 5: 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?

[We do not express an opinion on this issue.](#)

Question 6: 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?

In our view, it is not 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. Requiring the FMP to apply any PAI indicator related to social matters is sufficient.

Question 7: 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?

We believe that, for real estate assets, it would be helpful to adjust 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. However, while this is an improvement, it still does not adequately address the real problem of EPCs.

Please see the attached Real Estate Solutions paper for a fuller explanation but, in short, we believe that it is imperative, as a foundation for progress, that the EPC methodology and ratings be harmonised across the EEA as required under the Recast European Energy Performance of Buildings Directive and that an EPC methodology is defined on actual in-use (as opposed to theoretical) operational emissions.

In addition, as explained in the attached INREV, AREF and IPF SFDR [Real Estate Solutions](#) paper, it is vital that when disclosing emissions between real estate assets, particularly between existing and newly constructed buildings, that new embodied emissions are considered with operational emissions to enable a valid comparison of total emissions. Focusing on operational emissions only has the potential to mis-signal to some investors that new buildings that are close to net zero are more beneficial and deter the rejuvenation of existing buildings.

Question 8: Do you see any challenges in the interaction between the definition 'enterprise value' and 'current value of investment' for the calculation of the PAI indicators?

We do not express an opinion on this issue.

Question 9: Do you have any comments or proposed adjustments to the new formulae suggested in Annex I?

We do not express an opinion on this issue.

Question 10: 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?

We do not express an opinion on this issue.

Question 11: 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?

We do not express an opinion on this issue.

Question 12: What is your view on the approach taken in this consultation paper to define ‘all investments’? What are the advantages and drawbacks you identify? Would a change in the approach adopted for the treatment of ‘all investments’ be necessary in your view?

We do not express an opinion on this issue.

Question 13: 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?

We do not express an opinion on this issue.

Question 14: Do you agree with the proposed treatment of derivatives in the PAI indicators or would you suggest any other method?

We do not express an opinion on this issue.

Question 15: 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?

We do not express an opinion on this issue.

Question 16: 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?

Because point d of paragraph 1 of Article 17 of the SFDR Delegated Regulation already relates to real estate, we do not believe that it is necessary 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.

Question 17: Do you agree with the ESAs’ assessment of the DNSH framework under SFDR?

While we believe that the ESAs’ assessment of the DNSH framework under SFDR is generally correct, we would urge the ESAs to provide more clarity concerning to how to interpret “Sustainable Investment” for assets with a carbon reduction objective under SFDR Article 9.3 for real estate.

It would be extremely helpful to confirm whether real estate assets with a carbon reduction objective under SFDR Article 9.3 qualify as “Sustainable Investments” and therefore fall under the “safe harbour”, meet the minimum eligibility requirements defined by the SFDR for real estate assets, **without having to meet** DNSH criteria with regard to the fossil fuel exposure and inefficient building criteria (EPC of C or below or not meeting NZEB requirements) and disclose PAI indicators. These assets could simply monitor DNSH and disclose PAI indicators.

This interpretation of what is now a hotly disputed point, would create a means for many real estate transition funds that buy energy inefficient buildings with an EPC label F, for example, and upgrade them to EPC label A or B, to disclose under the provisions of SFDR Article 9.3. This results in making it much easier to attract capital from investor keen to financially support achievement of the Paris Agreement's carbon reduction goals, which is critically needed.

Question 18: 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.

In our view, mandatory disclosures about the quantitative thresholds FMPs use to take into account the PAI indicators for DNSH purposes would not be at all helpful. Instead we would urge that more guidance be provided concerning how FMPs should determine the PAI indicators for DNSH purposes; for example guidance in this regard for real estate loans would be helpful. Transparency about how FMPs meet the criteria for the PAI indicators for DNSH purposes would be much more helpful than thresholds.

Question 19: Do you support the introduction of an optional "safe harbour" for environmental DNSH for taxonomy-aligned activities? Please explain your reasoning.

We strongly support the introduction of an optional "safe harbour" for environmental DNSH for taxonomy-aligned activities, especially if clarity can be provided as we outlined in our response to Question 17 above. As we noted, this would make it much easier to attract capital from investor keen to financially support achievement of the Paris Agreement's carbon reduction goals, which is critically needed.

Question 20: 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.

While we are still considering the full implications of this approach, we do agree that if the criteria are clear and unambiguous, it leads to much less risk of greenwashing, either purposeful or inadvertent. Therefore if using the taxonomy TSCs to form the basis of the DNSH assessment helps deliver on this, then it is a positive outcome. In our view, however, the unintended consequences of not being able to classify investment into a building that is EPC C or below – but with the expressed intention of uplifting it to B or above, remains. This is a major failing of the regulation that will disincentive investment into the transformation of buildings from brown to green.

Question 21: Are there other options for the SFDR Delegated Regulation DNSH disclosures to reduce the risk of greenwashing and increase comparability?

In the attached INREV, AREF and IPF SFDR [Real Estate Solutions](#) paper, we propose other options for the SFDR Delegated Regulation DNSH disclosures for real estate to reduce the risk of greenwashing and increase comparability. These include providing more guidance on

how to apply rules related to the use of EPCs, guidance on determining exposure to fossil fuels, use of pre- and post-31 December 2020 standards for determining inefficient real estate assets, mandating publicly available data to support operational emissions disclosures and including embedded carbon in the DNSH screen.

We urge careful consideration of what we hope are constructive ideas for solutions to make the Delegated Regulations and related measures more workable.

Question 22: 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.

While we believe that the proposed disclosures strike a reasonable balance between the need for clear, reliable, decision-useful information for investors and the need to keep requirements feasible and proportional for FMPs, we note that there is still some room for improvement.

Specifically, we believe that addressing the issues we highlight in our responses to Questions 17 and 21 would go a long way to achieving a better balance.

Question 23: 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.

We do not express an opinion on this issue.

Question 24: 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.

We do not express an opinion on this issue.

Question 25: 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.

We do not express an opinion on this issue.

Question 26: Do you agree with the proposed approach to require that the target is calculated on the basis of all investments of the financial product? Please explain your answer.

We do not express an opinion on this issue.

Question 27: 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.

In our view, PCAF does not work very well for direct real estate investment. However, unfortunately, there aren't any other standards that necessarily work that much better. While the SBTi currently has its real estate pathway open for consultation, it also has some issues. And although the BBP framework is the most workable, we are not certain that it will be specific enough for this purpose.

Question 28: 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.

We do not express an opinion on this issue.

Question 29: Do you find it useful to ask for disclosures regarding the consistency between the product targets and the financial market participants entity-level targets and transition plan for climate change mitigation? What could be the benefits of and challenges to making such disclosures available? Please explain your answer.

We do not express an opinion on this issue.

Question 30: What are your views on the inclusion of a dashboard at the top of Annexes II-V of the SFDR Delegated Regulation as summary of the key information to complement the more detailed information in the pre-contractual and periodic disclosures? Does it serve the purpose of helping consumers and less experienced retail investors understand the essential information in a simpler and more visual way?

We do not express an opinion on this issue.

Question 31: Do you agree that the current version of the templates capture all the information needed for retail investors to understand the characteristics of the products? Do you have views on how to further simplify the language in the dashboard, or other sections of the templates, to make it more understandable to retail investors?

We do not express an opinion on this issue.

Question 32: Do you have any suggestion on how to further simplify or enhance the legibility of the current templates?

We do not express an opinion on this issue.



Question 33: Is the investment tree in the asset allocation section necessary if the dashboard shows the proportion of sustainable and taxonomy-aligned investments?

We do not express an opinion on this issue.

Question 34: Do you agree with this approach of ensuring consistency in the use of colours in Annex II to V in the templates?

We do not express an opinion on this issue.

Question 35: Do you agree with the approach to allow to display the pre-contractual and periodic disclosures in an extendable manner electronically?

We do not express an opinion on this issue.

Question 36: Do you have any feedback with regard to the potential criteria for estimates?

We do not express an opinion on this issue.

Question 37: Do you perceive the need for a more specific definition of the concept of “key environmental metrics” to prevent greenwashing? If so, how could those metrics be defined?

We urge the ESAs to recommend the adoption of sector-specific environmental and social metrics for real estate INREV and several real estate associations developed in January 2023 (Please see the attached [ESG Metrics For Real Estate](#) proposal), the aim of which was is to achieve consistency, comparability and a holistic ESG view – applying decision-useful, robust, transparent, quantifiable, measurable, objective, trackable, and verifiable thresholds and criteria applicable to real estate and aligned to TCFD, SDR, SFDR reporting and disclosure requirements on climate and sustainability and evidence suitability. They are also aligned with INREV’s Sustainability Reporting Guidelines, which are a widely adopted industry standard, both in Europe and elsewhere.

These recommended metrics were submitted to the UK FCA in response to its request for public input to the UK’s Sustainable Disclosures Requirements proposal.

Question 38: Do you see the need to set out specific rules on the calculation of the proportion of sustainable investments of financial products? Please elaborate.

We believe that specific rules on the calculation of the proportion of sustainable investments of financial products are not necessary. If adopted, a “comply or explain” requirement should be used, however, as specific rules could be difficult for real estate transition strategies to comply with, given that the calculation of the proportion of sustainable investments of financial products would be constantly changing as real estate assets are retrofitted and achieving higher EPC ratings, resulting in the proportion of sustainable investments therefore being continually in flux.

Question 39: Do you agree that cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload?

We do not express an opinion on this issue.

Question 40: Do you agree with the proposed website disclosures for financial products with investment options?

[We do not express an opinion on this issue.](#)

Question 41: 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?

[We do not express an opinion on this issue.](#)

Question 42: 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?

[We do not express an opinion on this issue.](#)

Question 43: Do you have any views on the preliminary impact assessments? Can you provide estimates of costs associated with each of the policy options?

[We do not express an opinion on this issue.](#)