

Position of the European Financial Congress¹ in relation to the European Financial Authorities' joint consultation on the proposed Regulatory Technical Standards concerning the SFDR Delegated Regulation regarding PAI and financial product disclosures²

Position development methodology

The position has been prepared in the following steps.

Step 1

Given the complexity of the issues presented in the consultation paper and their relative importance to financial market participants, we decided to focus on selected issues and selected questions. A group of experts from the Polish financial sector were invited to participate in the survey. They were asked to read the ESAs' consultation paper and respond to 19 selected consultation questions. The experts were guaranteed anonymity.

Step 2

The European Financial Congress received 14 opinions from financial institutions.

Responses were obtained from:

- Commercial banks
- Insurance companies
- Investment funds
- Regulatory authorities
- Consultancy companies
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Step 3

Based on the responses obtained, the survey's coordinators developed a proposal for a summary position of the European Financial Congress. This proposal was presented to all the experts who provided their opinions in the consultations. They were asked to make adjustments, if necessary. The final version of the responses was translated into English and submitted to the ESAs.

¹ The goal of the European Financial Congress (www.efcongress.com) is to engage in debate on the security and stability of the financial systems as well as sustainable growth of the European Union and Poland. The EFC is run by the Centrum Myśli Strategicznych.

² <https://www.esma.europa.eu/document-types/consultation-paper>

Responses by the European Financial Congress to consultation questions

The EFC fully agrees with the objectives of the RTS review, even given the short period since the EC adopted Delegated Regulation (EU) 2022/1288 on April 6, 2022. The need for this review stems from the implementation of SFDR and practical market observations related to it. We also agree with the directional approach to, among other things, include emission reduction targets, including interim targets, milestones and measures.

We also agree with ESA's broader approach to these consultations than is directly implied by the mandate ESAs received from the EC in these consultations, including DNSH rules, simplification or other technical matters. Dynamically changing regulations and market experience in ESG reporting require a process of mutual learning and adaptation by market participants, regulators and supervisors. Non-professional investors, in particular, lack the relevant knowledge, and many of the proposed solutions should take into account their approach and capabilities.

Given our profile as well as the knowledge and experience of the experts who work with us, we have focused on selected questions. They relate to indicators, targets and DNSH. Below are our answers to questions 9 through 29 and to the final questions 36 and 37.

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

In principle, the ESAs' changes to the Annex 1 formulas are reasonable in our view. These formulas, as presented, should not raise interpretive concerns for the FMP. Some specific comments below:

- formula (6) p. 82 in the name remove the word "production"

- formula (13) p. 85, Gender Pay Gap.

Instead of $\max\{0, \text{formula}\}$ insert $\text{ABS}(\text{formula})$ to capture inequality when women earn more than men

- formula (19) p. 87 'share of employees earning less than the adequate wage' - and definition on p. 78 Since the definition refers to ESRS, and there it is broad "in line with applicable benchmarks" the scope of the definition can be expanded or changed to be more explicit "in line with local minimum wage regulations"

- formula (36) p. 92 introduce a denominator of "total generated waste in company i" into the formula to get a relative indicator

- formula (47) p. 95 'rate of recordable work-related injuries' indicates that dividing by revenue is not needed. We suggest deleting the denominator, i.e., revenue in Meuro.

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 have no comments

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?*

Showing the share of investments where financial market participants rely on information obtained directly from investee companies is a good practice. Such a solution should be considered appropriate, among other things, due to the potential difficulty of obtaining data, particularly from smaller entities. We have no comments.

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?*

The proposed solution is pragmatic and conservative. The use of publicly available data (e.g., public reports of companies) is a good approach, and another solution - such as mandatory acquisition of data from companies, especially smaller entities - could raise significant difficulties in market practice.

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

We agree with the proposed approach that excluding derivatives is possible if they do not lead to a physical investment in the underlying instrument. The netting of instruments at the single counterparty level (limited to positive values) is consistent with accepted market practice in other reporting processes. It would be useful for the ESAs to provide examples of derivative transactions.

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?*

Currently, derivative exposures are outside the scope of analysis. This situation generates an increased risk of greenwashing. The inclusion of derivatives in analyses linked to the degree of compliance with the Taxonomy of Underlying Instruments is an

important element that should be included in regulations. Such analysis is likely, however, to be complex and demanding for financial institutions.

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?

It is not necessary to expand the scope of Article 17 par. 1(g) to asset classes other than equity or sovereign exposures. Expanding the scope would perhaps allow for a more comprehensive assessment of adverse sustainability impacts in different types of investments. It would ensure that a broader range of investments, such as fixed income, derivatives or alternative investments, would be subject to sustainability considerations and disclosure requirements. However, expanding the range of assets subject to Article 17(1)(G) would increase the compliance burden on market participants, as they would have to collect, analyze and disclose sustainability-related data for a wider range of asset classes. This would result in additional costs and administrative burdens, especially for smaller or less affluent market participants. At the current stage of market development and data collection, analysis and disclosure practices, such an expansion is not justified.

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?

Currently, investors have limited ability to compare financial products and to assess how the DNSH rule has been addressed by FMPs. Environmental PAI indicators should be required to disclose the thresholds used to develop DNSH tests. Published thresholds would allow a degree of comparability across financial products. Stretching the implementation of quantitative PAI indicators over time period should be considered.

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

Given the challenges encountered in accessing data and the lack of a uniform methodology, this approach may make sense. This option further simplifies compliance for a company engaged in taxonomy-compliant activities.

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?

Generally, we agree with this opinion, but the current scope of reporting is significant, and it will be possible to assess possible challenges with implementation as obligated entities gain experience in this area. Sustainability disclosure requirements for the financial market and non-financial entities are needed and advisable, but the obligations should be implemented gradually and less haphazardly, allowing obligated entities to gradually prepare and implement processes for collecting the necessary data.

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?

The proposed approach of hyperlinking to benchmark disclosures for products that have GHG emission reductions as an investment objective under Article 9(3) of the SFDR is appropriate. Such an action can allow easy access to more detailed and comprehensive information, ensure the brevity and focus of its own disclosure documents, and allow access to the most up-to-date benchmark test disclosures

Since the right balance between providing concise information and offering comprehensive disclosures is crucial, the use of a hyperlink can help achieve such a balance.

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?

The distinction is as absolutely reasonable and allows for insightful monitoring of the levels of achieved reductions in financed emissions. It can be useful to investors and actionable by financial market participants.

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?

Overall, this would be very useful. The ability to assess the degree of alignment of the product target with the Paris Agreement is limited and subject to a high level of

estimation. The problem is data and different and changing methodologies. In addition, reducing product assessment to a single indicator can be misleading.

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?

We agree with this approach. The requirement that the target be calculated on the basis of all investments of a financial product allows for full consideration of the impact of all assets on sustainability and emission reduction goals. It also contributes to greater reliability and consistency in financial reporting.

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?

From the perspective of the market, comparability of approaches is very important. Therefore, it seems right to identify one common approach, convergent for all market participants. The PCAF methodology is an increasingly widely used approach, constantly evolving, internally consistent, with reasonable assumptions.

Requiring FMPs to use the PCAF standard when measuring emissions and setting GHG reduction targets will reduce the burden of evaluating, comparing and aggregating investment product claims. Increased transparency and comparability will contribute to a level playing field and the proliferation of these investment products in the market.

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?

Disclosure of GHG reduction targets at the product level should reflect gross GHG emissions from investments, while emission allowances should be accounted for separately and should not be treated as a means to achieve GHG reduction targets.

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?

Targets should be set only at the product level - based on the product's investment policy and disclosures to investors. There should be no targets at the entity level for the financial market participant. From the customer's perspective, the amount of disclosures is already large and such additional information is unlikely to matter to the customer. After all, the customer invests in one particular product, not in the FMP as a company.

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

The criteria seem reasonable. However, assuming that the estimates will be based, at least for an extended period of time, on information that is not publicly available and thus non-standardized, without proper practice in this area a comprehensive assessment of their usefulness is not possible. The use of information from reputable suppliers should be permitted. It will not always be possible to clearly verify on one's own whether the source of the information is a given entity. The disclosure should clearly state the proportion of investments where the FMP is based on estimates rather than taxonomic disclosures published by the investee company itself.

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

A precise indication of which environmental measures are considered key would be needed and useful. Any initiative that increases transparency and clarifies the issues described in the regulation is worth undertaking.

There is a need for a more specific definition of "key environmental indicators" to prevent greenwashing. These indicators should be scientifically based, cover a wide range of relevant aspects, and be measured using reliable standards and methodologies.