

Stockholm 19 June 2023

SSMAs response to ESAs Consultation Paper on SFDR RTS

The Swedish Securities Markets Association (SSMA)¹ welcomes the opportunity to respond to ESAs Consultation Paper on amendments to SFDR RTS.

Before responding to the specific questions, we would like to make the following comments.

1. General comments

- The SSMA supports alignment between different EU-regulations relating to sustainability (e.g., SFDR, CSRD, Taxonomy etc.). It is also important that the alignment relates both to the timing and the content of the rules. Alignment is important for both the financial market participants making the disclosures and the clients who receive the information.
- The SSMA considers that it is very important to further simplify the SFDR templates. The templates are simply too complex for retail clients and financial market participants/advisors to understand. There are signs that the information overload has the effect of making clients refrain from investing in sustainable products, which of course is counterproductive.
- From an operational perspective the many changes to SFDR have been very administratively burdensome and challenging for financial market participants/advisors and their clients. It should be noted that constant changing of the rules makes it more difficult to compare products over time. If the Commission is considering a review of SFDR level 1 within the near future, it could therefore be considered if this is the right time for a comprehensive review of level 2.
- It would have been helpful if ESAs had presented the changes in the RTS in a mark-up. Perhaps this could be considered for future consultations?

¹ The SSMA is a trade association representing the interests of investment firms active on the Swedish securities market.

PUBLIC

2. Specific questions

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)?

The SSMA supports alignment with the CSRD.

Since the amount of accumulated earnings in non-cooperative tax jurisdictions is not included in CSRD, it should not be included in SFDR. Without a requirement in CSRD it will be very difficult to get hold of the data.

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

No.

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)?

The SSMA agrees and supports alignment with CSRD. Having said that, communications with clients in this area is a challenge and it is important that the templates provide easy to understand information.

Clarifications are needed as regards “employment of persons with disabilities.” First of all, the concept is not defined in SFDR and therefore not clear what is to be considered as disabilities in this context. Members are also concerned with record-keeping of this information – is it compliant with GDPR and other legislative acts? Moreover, we note that as regards employment of persons with disabilities, a high number will be something positive. This differs from the other indicators where a high number will be something

PUBLIC

negative. This difference could be difficult for a retail client to understand. We therefore suggest rephrasing “employment with disabilities” in a way so that a high number gives the client “the same signal” as for the other indicators.

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

No.

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?

Yes, the SSMA supports the replacement of the UN Global Compact Principles with the UN Guiding Principles and ILO Declaration on Fundamental Principles and Rights at Work. This will ensure alignment with Taxonomy, CSRD and CSDDD.

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?

No, the SSMA considers that this proposal is too ambitious and premature. It is not clear to us who these entities are and how far back in the value chain one would be required to go.

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?

As a general comment we support alignment.

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?

Yes. Further clarification would be welcome, see ESAs Q&A 17 Nov 2022.

PUBLIC

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

See above.

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?

No comments at this stage.

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?

No, the SSMA does not agree.

Taking into consideration that the reported figures refer to all investments of a financial market participant, the added value of this information in comparison with the cost/time to estimate such percentage is considered minimal to none. Already as part of the disclosures financial market participant needs to disclose what is estimated and what are actual numbers. This has much more added value than who said what.

One additional concern is that it will be a challenge for investment firms to verify from where the information comes from, in particular for smaller financial market participants.

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 see advantages and drawbacks in both approaches.

However, we prefer the alternative approach as ESA’s proposed approach to define “all investments” artificially decreases the reported PAI since assets that are not relevant are included in the denominator. For example, cash will never have an impact on the numerator for any of the PAI indicators. To make the PAI number relevant, it would therefore be preferred that solely relevant assets are included in the calculation of the PAI. As the same type of assets is included in the denominator, we do not agree with the ESA’s statement that this approach may hinder the comparability and limit the relevance of the data disclosed.

PUBLIC

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 definition of value chain for financial institutions needs to be aligned across EU-legislation such as CSDDD and CSRD.

If information on value chain should be included in the PAI calculations, it should be based on reported data (CSRD). However, it needs to be considered that companies that are reporting on value chain could be disadvantaged compared to companies that are not reporting e.g., from outside EU.

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

The treatment of derivatives is a complex issue. First of all, it is important to make a distinction between derivatives used for hedging purposes and derivatives used for investment purposes. In our view there is absolutely no point in including hedging derivatives since they cannot be used for circumvention. Secondly, legal certainty and ensure effective supervision /convergence is important. We therefore propose that ESMA publishes a list of the types of derivatives that are used for investment purposes and should be included.

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?

The treatment of derivatives is a complex issue. First of all, it is important to make a distinction between derivatives used for hedging purposes and derivatives used for investment purposes. In our view there is absolutely no point in including hedging derivatives since they cannot be used for circumvention. Secondly, legal certainty and ensure effective supervision /convergence is important. We therefore propose that ESMA publishes a list of the types of derivatives that are used for investment purposes and should be included.

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

No comments at this stage.

PUBLIC

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

Agree that ESA's assessment of the DNSH framework is correct.

In order to address problems in interpretation and practical application as described by the authorities, aligned definitions between different/inter-connected regulations are to be preferred. The ESG-area along with its underlying concepts is a complex matter to comprehend for clients/investors.

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.

At this stage we support transparency as regards thresholds used, not mandatory thresholds. The information should be published on the webpage and not in the template. However, it must be recognized that transparency will not solve all problems since it will continue to be difficult for clients to compare, in particular for retail.

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

We support a safe harbor for taxonomy-aligned activities. However, the legal text should not be limited to "E" but also include "S" and "G" (even if the taxonomy at present only covers E)

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.

No, it would be too complex and cumbersome to keep two parallel concepts.

However, if two parallel concepts are retained, it's important that legislative changes are conducted in a manner so that the application becomes aligned between and in TR and SFDR

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

More guidance and industry related examples on how to I) understand the DNSH-concept and II) how to relate to it; both on a general basis and in different situations are helpful starting points.

PUBLIC

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.

No comments at this stage.

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.

The SSMA agrees, i.e., we support hyperlinks and do not consider that there will be confusion.

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.

Yes.

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.

Yes.

Question 26: 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.

No comments at this stage.

PUBLIC

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.

Yes, it is a good solution to use standards since it means alignment.

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.

Yes.

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.

Yes. We welcome initiatives that encourage institutes to better "keep together" their ESG-processes (policies/steering documents, routines, sustainability strategies, outcomes in the portfolio management etc.).

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?

At this stage no new information requirements should be added in the RTS, but focus should be on simplifying the templates. We therefore oppose the inclusion of a dashboard in the templates since it would be very burdensome to implement and in fact increase complexity for retail clients.

However, in a future review of SFDR (level 1) we support replacing the requirement to provide retail clients with a 16 pages long template with a dashboard/summary.

PUBLIC

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?

SSMA finds the templates too complicated and include much more information than is needed for a retail client. We therefore support all types of initiatives to simplify the templates. However, the problem is not only related to language but the level of detail as regards the information requirements per se. To fix this information overload, review of SFDR level 1 as a whole, including annexes, is probably needed. It is important to include clients experience from the existing framework in such review.

Our experience also support that sophisticated clients/portfolio clients would like to be able to opt of the information which they do not find useful.

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

SSMA finds the templates too complicated and include much more information than is needed for a retail client. We therefore support all types of initiatives to simplify the templates. However, the information is not only language, but the level of detail as regards the information requirements per se. To fix this information overload, review of SFDR level 1 as a whole, including annexes, is probably needed. It is important to include clients experience from the existing framework in such review.

Our experience also support that sophisticated clients/portfolio clients would like to be able to opt of the information which they do not find useful.

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

See Q 30. The SSMA does not support the inclusion of a dashboard into the existing templates. Focus should be on simplification, not adding new information requirements.

Evidence shows that also the existing investment tree is too complex and difficult for the average retail clients to understand. In fact, in members experience, the tree has proven to be of some limited use only to sophisticated and well-informed clients with strong suitability preferences and knowledge/experience.

PUBLIC

We also understand that many members consider it to be unclear how to interpret the requirements as to how the tree should be populated. This could lead to divergent interpretations in Member States.

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

Yes.

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

Yes.

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

In our view, estimates are not something that is directly reported by the companies. If we use X to source the reported data, we would like that data to be considered “reported” and not “estimates”.

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 do not want any definition of key environmental metrics. If such definition is nevertheless introduced, it is very important that it is clear.

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.

Yes, otherwise there is a risk for different interpretations in Member States.

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

Yes.

PUBLIC



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

No comments.

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?

No comments.

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?

No comments.

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?

All new requirements will increase costs.

PUBLIC