



EPRA
EUROPEAN PUBLIC
REAL ESTATE ASSOCIATION

EPRA response

July 2023

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

Introduction

EPRA*, representing listed real estate in Europe, welcomes the opportunity to provide feedback on ESAs' Joint Consultation on Review of SFDR Delegated Regulation regarding PAI and financial product disclosure. EPRA's feedback is focused on the listed real estate sector due to the Association's sector specific knowledge and experience.

The European Public Real Estate Association (EPRA) represents a broad spectrum of the European listed real estate industry, ranging from the major listed property investment companies (i.e. companies that own, develop and trade investment property), to investors and property professionals. When reviewing the SFDR application to listed real estate, we liaise with our member investment community as part of the EPRA SFDR working group.

We remain available to discuss this further at your convenience. Please contact Jana Bour, EPRA ESG Policy & Advocacy Manager, at j.bour@epra.com or at publicaffairs@epra.com.

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Questions

Q1 : 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 propose to limit such disclosures to the extent to which the information are available from the investee companies themselves and to the level the information are applicable to relevant jurisdictions. For example, as for listed real estate outside Europe, we would consider the indicator regarding the interference with the formation of trade unions or election worker representatives as non-applicable. Similarly, the first indicator is not applicable to some jurisdictions outside Europe.

In addition, it will be worthwhile to clarify whether employees refer to 'directly employed workers' or 'employees working on-site' (e.g. for real estate development). Note that some building certification standards clearly define employees as all workers working onsite.]

Q2 : Would you recommend any other mandatory social indicator or adjust any of the ones proposed?

[As above.

In addition, regarding the exposure to companies involved in the cultivation and production of tobacco, we consider it more meaningful to also exclude weapons and unethical business conduct.]

Q3 : 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)?

[No answer.]

Q4 : Would you recommend any other social indicator or adjust any of the ones proposed?

[No answer.]

Q5 : 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?

[No answer.]

Q6 : 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?

[Please note that EPRA has actively worked on establishing common ESG metrics for over a decade, culminating in the “EPRA Sustainability Best Practices Recommendations (EPRA sBPR) Guidelines,” which supports listed real estate (LRE) companies in meeting the growing expectations from the market alongside European regulatory requirements.

As for the social matters, we would propose to consider the following indicator as recommended by EPRA sBPR to listed property companies in Europe:

H&S-Comp Asset health and safety compliance (i.e. companies must report any incidents of non-compliance with regulations and voluntary codes concerning the health and safety impacts of assets assessed during the reporting period).

In addition, we would like to stress that most of the EPRA sBPR but also the CSRD’s ESRS, are presenting requirements to demonstrate the sustainability of the company (business and/or portfolio). However, the PAI indicators in SFDR are not demonstrating the sustainability of the FMPs/products. To the contrary, they are demonstrating adverse effects (=negative impact). Having said that, the EPRA recommendation would be to carefully bare in mind when reviewing the SFDR RTS that simple referencing to the same indicators (as used in the ESRS) with suggestions that their lack indicates a significant harm/adverse impact on society would be a very incorrect approach.

Separately, please note that specifically for real estate, we agree with the Platform’s work on Social Taxonomy and its reference to social/affordable housing as one of the critical contribution the sector can provide to the society. Furthermore, we proposed – at the time - to expand the reference to affordability to align with e.g. MSCI. Affordable commercial properties include commercial spaces for SMEs as these are typically found to be sold/leased at a lower price point. Senior/elderly housing is enlarged by ICMA Social Bond principles to all assets having a care for residential function. In addition, we proposed the healthcare investment property for the considerations. However, as mentioned above, these are the positive affirmations for seeking sustainable objectives and we would not agree to reference the same indicators for the SFDR purpose to demonstrate a significant harm/adverse impact on society.]

Q7 : 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 do not recommend to alter the definition of PAI to equal it with the DNSH under the EU Taxonomy. The nature of the two regulations are different. One is to set a standard of what sustainable environmental economic activity means (i.e. EU Taxonomy), the second is to ensure appropriate level of ESG disclosure by the financial market participants.

As a consequence, the standard of DNSH under the EU Taxonomy ought to be stricter. We would suggest to consider aligning the PAI indicators with the DNSH criteria only when the time comes to creating a minimum standard for financial products' categories, e.g. Taxonomy aligned product (=Green product).]

Q8 : 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?

[No answer.]

Q9 : Do you have any comments or proposed adjustments to the new formulae suggested in Annex I?

[No answer.]

Q10 : 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 would like to raise that there is a specific difficulty in aligning data on listed real estate with the data required for direct real estate investments. In listed real estate, investors (financial markets participants) invest in the underlying real estate through listed real estate company and are thus treated by SFDR as an investment in investee companies. However, the fundamentals of the business are determined by the underlying asset which is real estate. In this context, investors are not clear on whether it is indeed a PAI category for investee companies which is relevant for listed real estate under SFDR or it should be a category of real estate which is also displayed by many data providers, such as in the Bloomberg's terminal.

We would seek a clarification on the above point and if possible a greater alignment. This will be particularly important after the Commission enters into an adoption phase for the sector specific standards.

Besides, we also wish to stress the additional data availability challenges in private real assets. Globally, the reference to the European Performance Certificates is challenging. As a consequence, we would propose to consider adoption of the Commission's approach vis-à-vis the EU

Taxonomy, where in its December 2022 Guidance enabled the use of proxies to EPCs (e.g. LEED or BREEAM) where EPCs are not applicable.

We would also like to highlight the most valued metrics (investee companies) by the investment community within EPRA membership (relevance for listed real estate), which are the following:

PAI No 3.: GHG Intensity of investee companies

PAI No 6. : Energy consumption intensity per high impact climate sector

Furthermore, we stress that with the current list of indicators for real estate it is not possible to demonstrate transformation/decarbonisation of an investment portfolio/financial products as anticipated under Article 9(3). When seeking to create a value/an environmental impact from investments in real estate, it is often that the most inefficient buildings are selected for an energy renovations. The existing SFDR indicator on energy efficiency is failing to facilitate any attempts to invest in inefficient real estate assets even where the objective is to decarbonize those assets, as opposed to simply decarbonize your investment portfolio by divestments. There are many ways to address such issue, for example by creating a separate, rather than additional metrics for Article 9(3) disclosure. We advise to consider reduction of CO2 intensity/year (option 1) or Sqm turned from non-efficient to efficient property (Option to – for operational property) or to add Capex plan for Taxonomy alignment. However, these indicators are not to demonstrate an adverse impact on the environment/society, but the actual progress of the products in decarbonization. |

Q11 : 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 answer. |

Q12 : 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?

[Please note that the investments in real estate companies are typically much smaller than those in real estate assets. As a result, the PAI in direct real estate assets may be underestimated. |

Q13 : 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?

[Yes, we agree. |

Q14 : Do you agree with the proposed treatment of derivatives in the PAI indicators or would you suggest any other method?

[No answer.]

Q15 : 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?

[No answer.]

Q16 : 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 answer.]

Q17 : Do you agree with the ESAs' assessment of the DNSH framework under SFDR?

[We agree with the ESAs view that currently there are significant inherent inconsistencies between the two parallel concepts of sustainability (SFDR's PAIs and the DNSH framework under the EU Taxonomy). We agree that Level 1 reform of SFDR is required to resolve them and we welcome the "comprehensive assessment" of SFDR announced by the European Commission in January 2023.]

Q18 : 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.

[No answer.]

Q19 : Do you support the introduction of an optional "safe harbour" for environmental DNSH for taxonomy-aligned activities? Please explain your reasoning.

[No answer.]

Q20 : 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.

EPRA does not agree with this view as the objectives of the EU Taxonomy regulation (setting up a standard of what environmentally sustainable economic activity is) and the SFDR regulations (fostering ESG disclosure of FMPs) are different.

The EU Taxonomy TSCs are setting up a golden standard on environmental sustainability. On the other hand, the DNSH assessment in SFDR (PAI indicators) are to display the negative impact of investments on the environment. The SFDR is not setting up a minimum standard on its own, but creating a framework on ESG disclosure.

We believe that the SFDR's objective should be reinforced by creating a uniform set of rules for ESG disclosure and by moving away from the differentiation between the Articles 8 & 9 which are currently bringing a lot of confusion on the market in terms of their objectives and application.

We also believe that it is for the ESG labels/products categorization where a deeper discussion needs to take place regarding the setting up a minimum standards. |

Q21 : Are there other options for the SFDR Delegated Regulation DNSH disclosures to reduce the risk of greenwashing and increase comparability?

[No answer. |

Q22 : 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 answer. |

Q23 : 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.

[Yes, we agree with the sufficiency of providing a hyperlink to the benchmark disclosures for products having GHG emissions reduction as their investment objective under Article 9(3) SFDR.

No, we do not believe that the introduction of GHG emissions reduction target disclosures could lead to confusion between Article 9(3) and other Article 9 and 8 financial products. To the contrary, we believe that it could bring forth a greater clarity on the nature of Article 9(3). In addition, it would more easily enable FMPs to disclose supportive information to demonstrate how they achieve the specific decarbonization objective in these specific financial products.

What we would like to suggest is to redesign entirely the specific indicators which are used for the purpose of Article 9(3) as the existing set of PAIs is almost contradicting the nature of transition finance or impact investing which is sought after within Article 9(3). (See also EPRA response to Q10)

As an example, we can look at the energy efficiency of buildings (mandatory indicator) under the real estate category. The logic of this indicator, as mandated, is to show that the FMP is doing a significant harm because is investing in energy inefficient buildings, as opposed to those which are energy efficient. However, the purpose of decarbonization investment decisions in real estate means to acquire energy inefficient buildings and their energy renovations so that their energy performance is improved. Here it is a value/impact created by the financial products which are seeking to decrease the existing GHG emissions of the buildings as opposed to simply do a significant harm as suggested by the current logic of the selected PAIs which are mandatory for real estate investments.

As a consequence, we suggest to have a very different set of PAIs/indicators for Article 9(3) disclosure rather than introducing an additional set of indicators.

For example, we proposed the following metrics to be considered for the real estate specific ESRS:

- ⇒ To specifically address **energy efficiency**, EPRA proposes **total energy intensity in combination with total CO2 intensity (CO2e/m2) as a performance measurements.**

Rationale

Building energy intensity is one of the most effective measures of a building's overall energy efficiency during the occupation and operational phase of the building's lifecycle, and enables analysis of performance over time without the need to exclude acquired or sold properties. Building energy intensity is primarily intended to track changes over time for the reporter's assets and thus very suitable to see improvements of the companies' property portfolio on energy efficiency. This measurement is based on the actual data unlike the EPCs which are based on the estimated data, and therefore it is more meaningful to investors.

The total CO2 intensity is then used to describe the real estate sector's impact on climate change and it is in fact the most wanted performance metric by investors and non-financial rating agencies.

In addition, we would suggest to consider the '**Average stranded year**' of the portfolio as an indicator for real estate assets. The estimation can be, for example, supported by the CRREM tool.

Q24 : 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 propose to keep this distinction as the latter is a prerequisite for an actual impact investment.]

Q25 : 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, a number of tools are in existence to enable the sector plan its transition pathways, calculate performance and report on progress. One of the most prominent tools, which was funded by the EU, is called [the CRREM project](#).]

Q26 : 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.

[Please see EPRA comment in Q12.]

Q27 : 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.

[We agree that there should be a strong alignment between the CSRD, including the ESRS, and the SFDR's disclosure.]

Q28 : 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.

[No answer.]

Q29 : 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.

[No answer.]

Q30 : 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?

[No answer.]

Q31 : 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?

[No answer.]

Q32 : Do you have any suggestion on how to further simplify or enhance the legibility of the current templates?

[No answer.]

Q33 : Is the investment tree in the asset allocation section necessary if the dashboard shows the proportion of sustainable and taxonomy-aligned investments?

[No answer.]

Q34 : Do you agree with this approach of ensuring consistency in the use of colours in Annex II to V in the templates?

[No answer.]

Q35 : Do you agree with the approach to allow to display the pre-contractual and periodic disclosures in an extendable manner electronically?

[No answer.]

Q36 : Do you have any feedback with regard to the potential criteria for estimates?

[No answer.]

Q37 : 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?

[No answer.]

Q38 : Do you see the need to set out specific rules on the calculation of the proportion of sustainable investments of financial products? Please elaborate.

[No answer.]

Q39 : Do you agree that cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload?

[No answer.]

Q40 : Do you agree with the proposed website disclosures for financial products with investment options?

[No answer.]

Q41 : 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 answer.]

Q42 : 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 answer.]

Q43 : Do you have any views on the preliminary impact assessments? Can you provide estimates of costs associated with each of the policy options?

[No answer.]