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From: To:	General Secretariat of the Council Working Party on Financial Services and the Banking Union (Sustainable Finance) Financial Services Attachés
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PRESIDENCY NON-PAPER FOR WORKING PARTY ON FINANCIAL SERVICES AND BANKING UNION (SFDR review)

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1. Introduction

On 20 November, the European Commission proposed a set of targeted amendments to the Sustainable Finance Disclosure Regulation (SFDR), with the aim of addressing a number of shortcomings identified in the current framework, notably in terms of usability, clarity and effectiveness in tackling greenwashing. The proposal was formally presented by the Commission on 9 December, together with the accompanying evaluation and impact assessment.

Following the initial exchange of views at the working party in December, today's meeting provides an opportunity to continue the technical examination of the proposal and to deepen the discussion on key outstanding issues. In this context, the Presidency invites Member States to provide comments during today's working party and, where appropriate, to further elaborate their positions in the subsequent written procedure, in particular with regard to the following topics:

1. The scope of application of the SFDR, including the entities and financial products covered;
2. The proposed categorisation for financial products and the underlying contribution criteria;
3. Exclusions, principal adverse impacts and related simplification measures;
4. The rules on naming, marketing communications and the use of ESG-related claims.

The Presidency looks forward to a constructive exchange of views to help advance the Council's examination of the proposal.

2. Scope of application of SFDR

This first session will give the opportunity to exchange views on amendments to the SFDR scope and address the questions and issues raised by the Member States during the first working party and / or in their written comments. It will start **with a presentation by the Commission** of the corresponding elements of the proposal. Member States will then be invited to react to these explanations and answer the questions below.

2.1. Entities and services covered

Treatment of financial advisers and portfolio management services

The legislative proposal includes modifications to the scope of entities and services covered by the SFDR, namely by removing financial advisers and portfolio management services. The first working party on 9 December 2025 included a discussion on these changes and Member States were invited to send feedback.

As regards the **removal of financial advisers,** the Commission explained that the proposal aims at directly targeting financial market participants which manufacture, manage or make available sustainability related financial products and that SFDR should rather indirectly concern financial advisers and be reflected under MiFID and IDD level 2 rules at a later stage.

A majority of the Member States seem to support the removal of financial advisers from the scope for simplification efforts and to refocus the SFDR disclosures on financial products. One Member State asked to discuss the legal notion of 'manufacturer of a pension product' which could inadvertently scope in insurance intermediaries who can be manufacturers within the meaning of the IDD directive.

As regards the **removal of portfolio management services**, the Commission explained the rationale behind excluding discretionary mandates given by clients, which are therefore distinct from products manufactured and offered to investors more broadly. The latter was deemed, on aggregate, to carry more type of risks within the focus of the SFDR (greenwashing, misleading investors) than the former. The Commission also pointed out that portfolio management service providers can still disclose under the SFDR and use the categorisation system if the portfolios are managed in accordance with the criteria for the categories under Article 9a.

While a majority of the Member States agree with the removal of portfolio management services, Two Member States expressed doubts about deleting portfolio management service providers from the definition of Financial Market Participants as well as deleting portfolio management from the notion of financial products. They asked for further explanation and discussion on this exclusion.

Finally, the Commission explained that Article 9a is designed for financial products combining different financial products and is not a 'mixed category'. Funds of funds can either categorise themselves provided they invest in accordance with the criteria (investing 70% in categories products and applying the exclusions across the rest of the portfolio) or can disclose their underlying categorised products without being categorised. A more in-depth discussion on the design of Article 9a will be held at a later CWP.

Articles covered by this section:

- Article 1(2)(a)(i) amending Article 2(1)(b) SDFR [deletion of investment firm providing portfolio management from definition of 'financial market participants']
- Article 1(2)(a)(ii) amending Article 2(1)(j) SFDR [deletion of credit institution providing portfolio management from definition of 'financial market participants']
- Article 1(2)(b) amending Article 2 (5) and (6) SFDR [deletion of the definitions of investment firm and portfolio management]
- Article 1(2)(c) amending Article 2(11) SFDR [deletion of financial adviser definition]
- Article 1(2)(d) amending Article 2(12)(a) [deleting the notion of portfolio management from the definition of financial product]
- Article 1(4) amending Article 3(2) SFDR [deleting obligation for financial adviser to publish information on sustainability risk policies]
- Article 1(6)(b) amending Article 6(2) SFDR [deleting obligation for financial adviser to publish information on integration of sustainability risks in investment advice]
- Article 1(6)(c) amending Article 6(3) SFDR [deleting reference to investment firms and credit institutions which provide portfolio management or investment advice]
- Article 1(12) amending Article 12(2) SFDR [deleting obligation for financial adviser regarding the review of disclosures]
- Article 1(14) amending Article 13 SFDR removing any references to financial advisers in marketing communications]
- Article 1(15) amending Article 14 SFDR [deleting the reference to financial advisers]

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Questions for Member States:

1) Do you support the removal of financial advisers from the scope, i.e. do you agree to remove the obligation for financial advisers to report sustainability-related entity-level information (sustainability risk policies, adverse sustainability impacts and integration of sustainability risks into remuneration policies) and product-level information (integration of sustainability risks into investment or insurance advice)?
2) Do you support the removal of portfolio management providers and services from the scope? If not, how do you propose that this is captured under SFDR?
3) Do you agree that portfolio management services are sufficiently covered under Article 9 (a)?
4) Do you have any other comments or proposals under this section?

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2.2. Products covered

Treatment of structured products, registered AIFMs and products targeted to professional investors

The working party on 9 December 2025 included a first discussion on the modifications proposed by the Commission regarding the scope of financial products covered by the SFDR. Notably, the Commission explained that the proposal does not extend the scope to include structured products given the mixed feedback in the preparation of the proposal on how this could be implemented without risking regulatory overreach in the context of overall simplification priorities and due to the challenges in accurately defining these products across different markets for the purposes of the SFDR. The Commission also explained that the issue of how to convey any sustainability features of these and other financial products outside the SFDR to investors could be addressed in amendments to MiFID and IDD level 2 rules.

Finally, the Commission noted that, in its assessment, the flexibilities in the proposed framework justified keeping AIFs sold only to professional investors in the scope of the SFDR categorisation. The alternative could have entailed a significant loophole and risked confusion, in the case that these products were allowed to freely make ESG claims in their names and legal and marketing documentation outside the rules of the revised SFDR.

While a clear majority of Member States seem to support these choices, one favours bringing structured deposits (as defined in MiFID) into the scope, two favour bringing structured products into the scope, and two signal support for allowing registered AIFMs and financial products targeted solely to professional investors to be excluded from the SFDR.

This session will focus on exchanging on these points, starting with the Commission, followed by Member States who are invited to react notably on the questions below.

Articles covered by this section:

- Article 1(1) amending Article 1 SFDR (subject matter)
- Article 1(2)(b) and (d) amending Article 2 (6) and (12)(a) SFDR ([deletion of the definition of portfolio management and of the notion of portfolio management from the definition of financial product)

Questions for Member States:

5) Are you in favour of/against extending the scope of financial products to structured products? If so, which ones, how would you define and capture them, and would you consider there is a need for any specific treatment (e.g. from the criteria of the categories)?
6) Are you in favour of/against allowing exclusions for financial products targeted solely to professional investors? If so, which products and from which provisions?
7) Do you have any other comments or proposals under this section?

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3. Categories of financial products

The working party on 9 December 2025 included a first discussion on the categories and their underlying criteria. The Commission explained that the criteria build on the current definition of 'sustainable investment' and aim at clarifying its underlying components. They are built around 2 pillars:

- the positive contribution (a minimum portion of the portfolio to contribute to a sustainability-related objective and an open list of possible investment strategies and metrics), and
- the avoidance of harm (mandatory exclusions and identification and disclosure of principal adverse impacts for certain products).

The Commission elaborated on the principles which guided the drafting of the criteria, namely, to fight greenwashing, to ensure usability and sufficient continuity with current rules, to increase clarity and to facilitate estimations when data is not available (especially post Omnibus).

3.1. Positive contribution criteria

This session will be an opportunity for Member States to share their views on the main elements of the positive contribution criteria. Member states are invited to exchange views on how the elements of such criteria could be refined in order to better adhere to the principles that guide it. However, the objective is not to go into the details of each concept (e.g. 'credible'; 'transition plans', 'proven track record' etc), but to exchange views on the main pillars of the criteria and identify where more discussion and clarifications are needed. All terms and concepts will be rediscussed at a later CWP.

It will start with a **presentation by the Commission** of the corresponding elements of the proposal. Member States will then be invited to react to these explanations and answer the questions below.

3.1.1. 70% threshold for portfolio positive contribution

The legislative proposal sets a minimum proportion of 70% of the investments to meet a sustainable objective(s) (sustainable and transition category) or to integrate sustainability factor(s) (ESG basics category). The Commission explained that the threshold aims at increasing comparability and boosting integrity of financial products. The Commission also explained that 70% is an increase compared to the

50% of sustainable investment under the ESMA guidelines for funds names while allowing for continuity with the rule of having 80% of investments made in accordance with the ESG claim[1].

Most Member States welcomed the idea of setting a minimum threshold for contribution and reactions to 70% were broadly positive. However, many asked for further explanation on how this figure was set and how it will interact with the thresholds set in the ESMA Guidelines. In their feedback, a few Member States suggested to increase the threshold to 80%and a few suggested that further clarification is needed as to how the remaining 30% of investments can be invested.

Some Member States asked for clarification on the meaning of several terms linked to the contribution, such as 'pursuing' a 'clear and measurable objective', 'appropriate indicators' and 'sustainability factor'. Other Member States also asked for clarification regarding when a product would need to fulfil this obligation .

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Articles covered by this section:

- Article 1(8) replacing Articles 7, 8 and 9 SFDR
  - Article 7(1)first subparagraph point (a), Article 8(1) first subparagraph point (a), Article 9(1) first subparagraph point (a)

Questions for Member States:

8) Do you agree with setting a minimum threshold of contribution for categorised products?
9) Do you agree with the 70% value? If not, please suggest any other elements that could be considered as well as the threshold value you would suggest.
10) Do you consider that further guidance is needed regarding the phase-in period to reach the 70% threshold? If yes, please explain.
11) Do you consider that further guidance is needed regarding the remaining 30% of investments. If yes, please explain.
12) Do you have any other comments or proposals under this section?

3.1.2. Open list of investment approaches and metrics eligible for contribution

The Commission explained that the open list aims to guide Financial Markets Participants (FMPs) by identifying robust existing sustainability standards and encouraging their use while not excluding other approaches under the condition that these provide for the same level of ambition. The Commission also explained that voluntary indicators would be developed at level 2 to measure and disclose the contribution to certain sustainability-related objectives.

Some Member States however raised concerns regarding possible risks of greenwashing, lack of comparability and supervisory difficulties. Feedback on the elements was positive, but most Member States asked for clarifications and additional discussion on central terms. Several Member States pressed to increase the robustness of some concepts to avoid the compliance and supervisory issues

[1] ESMA guidelines requires 80% of assets covered by the sustainability strategy linked to the ESG claims. The Commission considers that this is different from the proposed 70% threshold of contribution, as the conditions for the 70% threshold would be stricter than the current 80% under ESMA guidelines (i.e. new conditions for investments to be deemed as contributing to an objective or integrating sustainability factors). The Commission considers that the minimum 50% of sustainable investments referred to in the ESMA Q&A on "meaningfully investing in sustainable investments" for funds using the term 'sustainable' in their names is more comparable to the proposed 70%.

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currently encountered under the SFDR. Several Member States also stated that further guidance is needed regarding the term "proper justification" for 'other investments' for all product categories. One Member State stated that the term 'other investments' appears to be very broad and potentially open to various interpretations and it might be useful to better define its conditions and limits.

Regarding the transition category, many Member States stated that more discussions were needed on key terms such as 'credible', 'transition plans', 'science-based target', and 'aligned with the Paris-aligned agreement'. One Member State expressed concern regarding the possibility to set a target at the portfolio level and argued that engagement should be mandatory.

Regarding the ESG basics category, several Member States expressed concerns about the flexibility of criteria and asked for the underlying concepts to be further defined in order to avoid an 'all encompassing' category. However, most Member States also reiterated the importance for this category to be more flexible than the transition and sustainable ones and not to be too prescriptive. Three Member States expressed doubts about the name of the category and called for further consumer testing.

Regarding the Sustainable category, two Member States expressed concerns about the term 'comparable assets" and one asked for further details to be provided on the eligibility criteria.

Articles covered by this section:

- Article 1(8) replacing Articles 7, 8 and 9 SFDR
  - Article 7(2), Article 8(2), Article 9(2)

Questions for Member States:

13) Do you agree with the approach of having an open list rather than a closed list of investment approaches and metrics?
14) Do you agree with the elements of the list? Which elements do you think should be further defined and on which ones should the Commission provide more details?
15) Do you have any other comments or proposals under this section?

3.1.3. Possible safe harbours

The legislative proposal suggests safe harbours for financial products using the EU Taxonomy and EU Climate Benchmarks under the sustainable and transition category. The Commission explained that the objective is to encourage and simplify the use of these EU 'gold' standards. This was welcomed by many Member States.

Regarding the Taxonomy safe harbour, many Member States asked for more explanation on the 15% threshold and a few expressed concerns about the 15% threshold which they deemed too low. Several Member States suggested to differentiate the metrics to be used under the sustainable (revenue) and transition (capex) category, arguing that it might be confusing for end-investors to have the safe harbour under both categories. Few Member States argued that the safe harbour should only exist for the sustainable category. In addition, few MS suggested the need for some clarification as to how the remaining 85% of investments can be invested.

Regarding the EU Climate Benchmark safe harbour, two Member States pointed out some discrepancies between the EU Climate Benchmarks exclusions and the one suggested in the SFDR review.

Articles covered by this section:

- Article 1(8) replacing Articles 7, 8 and 9 SFDR
  - Article 7(1) third and fourth subparagraphs
  - Article 9(1) third and fourth subparagraphs

Questions for Member States:

16) Do you agree with retaining the safe harbours to encourage the use of the EU Taxonomy and the EU Climate Benchmarks and increase the coherence and usability of the framework?
17) Do you have views on the threshold proposed under the Taxonomy safe harbour? Do you agree that 15% is an appropriate level to encourage the use of the EU Taxonomy given the current market alignment?
18) Do you agree on applying safe harbours uniformly across relevant categories?
19) Do you consider that further guidance is needed regarding the remaining 85% of investments? If yes, please explain.
20) Do you have any other comments or proposals under this section?

3.1.4. Treatment of general-purpose sovereign exposures

The legislative proposal foresees that general-purpose sovereign debt is not eligible for the contribution threshold of the sustainable and transition category. The Commission explained such exclusion by the lack of comprehensive metrics for gauging the sustainability of such investments and their general nature which fails to prove a specific sustainability-related objective.

However, such investment in general-purpose sovereign debt could be included in the remainder 30% if FMPs can demonstrate that such investment is consistent with the sustainability-related objective. It could also be included in the 70% threshold of the ESG basics category, with FMPs being expected to disclose the assessment methodology used.

Several Member States asked for further clarifications and justifications on the proposed approach as regards the limitations in public issuances that can be captured under the relevant proposal.

Articles covered by this section:

- Article 1(8) replacing Articles 7, 8 and 9 SFDR
  - Article 7(1) fifth subparagraph
  - Article 9(1) fifth subparagraph

Questions for Member States:

21) Do you agree with the approach taken for general-purpose sovereign debt, i.e. exclusion from the contribution for the sustainable and transition categories and possibility to be included in the contribution for the ESG basics category?
22) Do you have any other comments or proposals under this section?

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3.2. Exclusions and principal adverse impacts

This session will be an opportunity for Member States to share their views on the main elements of the minimum safeguards, i.e. the exclusions and the obligation to identify and disclose principal adverse impact. It will start with a **presentation by the Commission** of the corresponding elements of the proposal. Member States will then be invited to react to these explanations and answer the questions below.

Regarding exclusions, the proposal suggests setting a clear list of industries and activities that products cannot invest in. The Commission explained that the exclusions build on the EU Climate Benchmark exclusions (for Paris Aligned Benchmarks 'PABs' and Climate Transition Benchmarks 'CTBs') with additional climate-related ones to further protect end-investors.

Most of the Member States' feedback received was on the **transition category**. Some Member States expressed concerns about the exclusions being too strict and not allowing for fossil fuel and other energy companies that are transitioning to be eligible. Other Member States were against the coal exclusion. Regarding the new exclusion on companies developing new fossil fuel projects, one Member State suggested to review this criterion to better reflect the dynamic nature of the transition and to include companies that are implementing a credible transition plan.

Regarding the obligation to identify and disclose principal adverse impacts, the Commission explained that this obligation aims to substantially simplify the current 'do no significant harm' (DNSH) concept of the SFDR. The proposal suggests giving more flexibility to FMPs on how to identify and disclose their principal adverse impacts by making the currently mandatory indicators voluntary and allowing FMPs to conduct their own assessment.

Feedback from Member States is varied. Four Member States are concerned about the level of flexibility and call for keeping the indicators mandatory (while possibly reducing the list), while two Member States suggests deleting this obligation altogether. Several other Member States requested clarification on whether FMPs would need to take action to address the negative impacts and what 'in part or in full' means.

Articles covered by this section:

- Article 1(8) replacing Articles 7, 8 and 9 SFDR
    - Article 7(1) first subparagraph points (b) to (d)
    - Article 8(1) first subparagraph point (b)
    - Article 9(1) first subparagraph points (b) to (d)

Questions for Member States:

23) Do you agree with the proposed exclusions, notably the ones added on top of the EU Climate Benchmark (PAB/CTB) exclusions? These include coal and companies with fossil fuel expansion activities for the transition category, coal for the ESG basics category, and companies with fossil fuel expansion activities for the sustainable category. If you do not agree please provide specific suggestions.
24) Do you agree with keeping a legal link to the EU Climate Benchmark text (Benchmark Delegated Regulation) to ensure a long-term alignment between the two pieces of legislation?

25) Do you agree with the simplification of the DNSH test, i.e. the obligation for products falling under the sustainable and transition categories to identify and disclose principal adverse impacts in a more flexible way? If not please provide suggestions as to how this obligation could be reframed, bearing in mind the overall target of simplification.
26) Do you have any other comments or proposals under this section?

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4. Naming rules and marketing communications

Use of ESG-related terms in pre-contractual documents, periodic reports and marketing communications

At the 9 December 2025 working party, the Commission explained how the proposal distinguishes between categorised products and non-categorised products, and the extent to which these can make ESG claims and use ESG related terms in their names and marketing communications, subject to horizontal rules for all information to be fair, clear and not misleading. The Commission explained that it had not opted to exhaustively list ESG terms permitted for use by categorised products, to limit scope for regulatory arbitrage.

Member States generally did not express fundamental opposition to the proposed approach on naming rules and marketing communications under Article 13 SFDR. Several Member States explicitly supported the article, while others underlined the need for greater precision and clarification of the wording to ensure consistent interpretation and effective supervision. Overall, Member States appear broadly open to restricting the use of ESG claims in product names and marketing communications to categorised products, allowing limited use of ESG claims in marketing communications by products which invest in other categorised products (Article 9a for separate discussion at an upcoming CWP), and restricting the use of the term "impact" to products meeting the newly introduced definition

While many Member States are open to allowing non-categorised products to include ancillary ESG information in pre-contractual documentation and periodic reports (Article 6a SFDR), some raise concerns that this could blur the distinction between categorised and non-categorised products potentially leading to investor confusion, greenwashing risks and challenges for implementation and supervision. . In this respect, several Member States request further clarification on key aspects of the provision, including the link between the definition of sustainability factors and the notion of ESG claims, as well as whether the requirement that such information should not be central to the product should be more clearly defined or reinforced, for example through quantitative limits. Two Member States would also support further limiting information on how sustainability risks are factored in by financial market participants for all products (Article 6 SFDR).

Articles covered by this section:

- Article 1(14) amending Article 13 SFDR
- Article 1 (6) and (7) amending Article 6 and introducing a new Article 6a into SFDR

Questions for Member States:

27) Do you agree with the overall approach whereby the use of ESG terms in names and marketing communications should be reserved for categorised products while information on how non-categorised products integrate any ESG features should be ancillary, non-central and limited to legal documentation (pre-contractual disclosures and periodic reports)?

28) Do you see a need to be more (or less) prescriptive as regards e.g. how to ensure that non-categorised products convey any ESG information only in an ancillary and non-central manner?
29) Do you have any other comments or proposals under this section?