

## **Targeted consultation on the implementation of Sustainable Finance Disclosure Regulation (SFDR): The Caisse des Dépôts Group's position**

In accordance with its strong commitment to the twin transition, the Caisse des Depots Group much supports the Sustainable Finance Disclosure Regulation (SFDR). This regulation is a crucial tool to ensure financing is directed towards the European green transition, as well as to provide the necessary data for a better integration of Environmental, Social and Governance (ESG) criteria into investment decision making processes. As a major financing operator of sustainability in France as well as a long-term institutional investor with a long-standing commitment to responsible investment, the Caisse des Dépôts group highly support the concepts and disclosures the SFDR requires and thanks the European Commission for the opportunity to explain its experience with the implementation of the SFDR.

Although each of the entity implementing the SFDR regulation shares the same general ambition, the means of achieving it may vary according to the way in which each of them is affected by the Regulation. In this context, the format of the consultation does not appropriately allow to reflect the diversity of the opinions on the implementation of SFDR assumed by the entities being interested within the Caisse des Dépôts Group. This is why the Caisse des Dépôts Group is pleased to submit bellow a few matters that we would like to highlight to the European Commission.

### **I. Complexity of disclosures and limited use by investors**

#### **A) A need to better meet customer expectations**

The use of Article 8 and 9 SFDR product classification as a category is widespread. The complexity and granularity of the information requested don't match retail (and even professional) investors' expectations, understanding and use.

The distinction between the various categories is unclear making it difficult for retail customers to understand the strategy of the product purchased and to identify which elements will be monitored to ensure that ESG objectives are met. On the other hand, the time allocated by the client to his financial advisor is also insufficient to reach the level of granularity under the SFDR.

Furthermore, the disclosures are not included in the Key Information Document (KID) but in the fund prospectus, which is not necessarily read by or given to the retail investor (often dozen pages).

Instead of assisting end-investors in identifying sustainable products, this intricacy runs the danger of discouraging them from re-allocating their resources towards a more sustainable economy. The information should be delivered in a simpler form, and the disclosures should be clarified and adapted to the needs of investors especially retail ones.

## **B) A need to clarify key concepts and methodologies**

Market participants must provide a very wide variety of information for Article 8 and 9 products (pre-contractual, annual periodic report).

During the implementation of the regulation, financial players have encountered problems due to definitions, such as “sustainable investment” or “consideration of the main negative impacts”, sufficiently clear.

The SFDR should provide a precise and binding framework. Market players are free to define their own methodological framework. This lack of standardization allows certain players to adopt a less precise or a favorable methodology. Furthermore, those factors do not allow comparability between actors, create a risk of greenwashing, and expose market participants to reputational risks.

It should be added that, at this stage, SFDR does not provide a sufficient framework to identify or encourage companies to make the transition. Investors find it difficult to obtain data. Even though once the corporate sustainability reporting directive (CSRD) is fully implemented, data would be more available, the Commission must remain steadfast, against the estimation of data (whether by investment funds or suppliers), and for greater (or even total) transparency on methodologies.

## **C) Risk of Greenwashing: Disclaimer for product that are out of the SFDR transparency framework**

Product not reaching any of the categories that will be defined (either by maintaining Article 8 and 9 categories or by creating new categories) should disclose a prominent disclaimer warning investors that they cannot be considered as “sustainable products” under EU legislation. Such a disclaimer would be very effective to prevent any greenwashing from products that would not reach EU minimum standards. Moreover, such disclaimer could incentivize investors to prefer ESG products and hence support the objective of EU’s sustainable finance policy to attract private investment to support the transition to a sustainable economy.

## **II. Difficulties caused by the inconsistencies between regulations**

As a general consideration, the Caisse des Dépôts Group would like to reiterate its commitment to the implementation of the EU Sustainable Finance Strategy, which is consistent with its goal to finance the transition to sustainability. It would also like to point out that the implementation took place in a very reduced lap of time, and was increasingly demanding for the financial players, who had to deal with numerous and heterogeneous concepts and requirements coming from several regulations. In this context, the consistency between these regulations is key to achieve the goals of the Sustainable Finance Framework.

As such, we recommend a full harmonization and regulatory homogenization between regulations (CSRD, MIFID/IDD, PRIIPS, BMR, Taxonomy...). Ensuring that regulations are consistent is essential for a successful and purposeful engagement from financial players in deploying actions that have a real impact on the economy.

## A) SFDR and Corporate Sustainability Reporting Directive (CSRD)

Legal risks have increased considerably while companies have not yet implemented CSRD and cannot respond to our requests for information.

We call for a complete alignment between the indicators of the SFDR (PAI) and those of the CSRD (ESRS) and for the aspects of non-declaration to be integrated (non-materiality or non-obligation) as it was introduced in the European Commission Q&A on the adoption of European Sustainability Reporting Standards<sup>1</sup>. This would allow for increased transparency and comparability.

## B) SFDR and Taxonomy Regulation

The interrelationship between the two regulations is welcome, with a view to converging the European Union's environmental sustainability objectives.

However, we regret that Article 9 funds, and certain Article 8 funds pursuing/promoting environmental objectives/characteristics do not use the Taxonomy framework as indicator.<sup>2</sup>

In addition, and in order to ensure that the Taxonomy Regulation will be effectively used by Financial Market participants (FMPs) in the framework of the SFDR, it is necessary to:

- (i) **Complete the taxonomy** to cover agriculture and silviculture in the climate change objectives as well as to comprehensively cover the four remaining objectives that are not covered on the meaningful activities for contributing substantially to the considered objectives.
- (ii) **Strengthen the support and guidance provided to companies to prepare their taxonomy reporting.** Ensuring a good quality of taxonomy data is key to support an effective allocation of capital flows towards sustainable activities.
- (iii) **Clarify the rules relating to the use of estimates and notably the definition of “equivalent information”**, which are necessary to cover companies outside the scope of the article 8 of the taxonomy (small businesses or companies located outside of the EU). As per Article 17(2)(b) and Recital (35) of the Delegated Regulation (EU) 2022/1288, when Taxonomy-alignment of investments is not available from investee companies, then the use of “equivalent information” from

<sup>1</sup> Questions and Answers on the Adoption of European Sustainability Reporting Standards – 31 July 2023. At the question “What does the approach to materiality mean for coherence with other pieces of EU legislation on sustainable finance”. The European Commission answered “If a company concludes that a datapoint deriving from the SFDR is not material, it will have to explicitly state that the datapoint in question is “not material” rather than just reporting no information. [...] In addition, companies will have to provide a table with all such datapoints, indicating where they are to be found in its sustainability statement or stating “not material” as appropriate. [...] Financial market participants and financial advisers may assume that any indicator reported as non-material by an investee company does not contribute to the corresponding indicator of principal adverse impacts in the context of the SFDR disclosures.”

<sup>2</sup> The possibility could be extended to funds investing in companies that are not currently covered sectorally by the Taxonomy. This should be justified by highlighting the eligibility of the investment fund, and by highlighting the ratio of alignment to eligibility.

It should not be acceptable for a fund whose objective is climate change mitigation to demonstrate 100% eligibility and 5% alignment (ratio of 0.05). It may be acceptable for a fund eligible at 5% to be aligned at only 5% (ratio of 1), as other methodologies may supplement the fund's environmental analysis.

investee companies or third-party providers is permitted. This use of “equivalent information” is only permitted in “exceptional cases” where the FMP cannot obtain the relevant information to reliably determine the alignment with the technical screening criteria for undertakings that are not listed under the Taxonomy Regulation or that are not yet required to disclose such information (cf. EC interpretation of the SFDR, published on 17 May 2022 and amended on 6 April 2023).

Yet, some clarifications should be provided notably on what is meant by “equivalent information”. The ESAs Q&A published in May 2023 indicates that such “equivalent information” is only applicable to “economic activities listed in the Delegated Acts of the Taxonomy Regulation”. This statement is not in line with the EC interpretation that indicates that the use of “equivalent information” is also applicable to “undertakings that are not listed in the Taxonomy”.

### **C) SFDR and Markets in Financial Instruments Directive (MIFID2)/Insurance Distribution Directive (IDD): provisions on sustainability preferences**

MIFID and IDD provisions have neutralized the potential interest of SFDR disclosures and have raised the risk of greenwashing by putting a strong focus on elements that are not sufficiently defined (sustainable investments, Principal Adverse Impacts (PAI) consideration).

MIFID and IDD are central to the distribution of products to retail investors and especially in France where distribution of investment products is mainly channeled through banks and insurance companies. However, MIF and IDD provisions have led distributors to focus on sustainable investment ratio of financial products such that minimum share of sustainable investments is the principal element they consider for assessing whether the product will match investor’s preferences or not. Therefore, the higher the sustainable investment rate is, the higher the chances are for a product to match sustainability preferences, irrespective of their intrinsic ESG objective. And as sustainable investment definition is left to the appreciation of producers, this gives an advantage to loose definitions and hence strengthen the risk of greenwashing.

Once minimum standards have been defined in the SFDR (either by maintaining Article 8 and 9 categories or by creating new categories), MIFID and IDD provisions should directly rely on these categories rather than on underlying characteristics that may not be comparable across products.

### **III. Categorization**

The Caisse des Dépôts group is in favor of adapting articles 8 and 9 and wishes to capitalize on the work carried out but would clarify or refine strategies.

We support adding minimum requirements to SFDR as the disclosure-based approach has proved insufficient to (i) allow investors and distributors to understand the sustainability-features of investments products and (ii) prevent greenwashing.

We also call for a strategy-based approach as it would allow to (i) facilitate investors’ understanding, (ii) enhance ESG products distribution as it would be easier for investors to identify products matching their preferences (iii) better consider the variety of ESG strategies

existing on the market and set tailored minimum requirements.

However, we see merit in maintaining the current A8/A9 classification as (i) it has been widely adopted by the market and (ii) the underlying idea that Article 9 products are very ambitious products and Article 8 products are “mainstream ESG” products has been integrated by the market. It is therefore appropriate to capitalize on these achievements for enhancing the ESG-Regulation.

This is why the Caisse des Dépôts Group supports a “hybrid approach” consisting in maintaining Article 8 and article 9 classifications as overarching categories and defining sub-categories based on strategies.

The Caisse des Dépôts Group believes that it is necessary before each development to carry out a cost/benefit impact study.

The hybrid approach could work as follows:

- Minimum criteria would be defined for each classification and would be applied to all sub-categories. The minimum criteria would be stricter for Article 9 products compared to article 8 products.
- Specific criteria would be defined for each sub-categories and tailored to the strategy considered. A given strategy could be present in both article 8 products and article 9 products (e.g. article 8 transition product, Article 9 transition product, Article 8 thematic product, Article 9 thematic products), with the criteria for article 9 products being stricter than those for article 8 products.
- Product not reaching article 8 category or article 9 category should integrate a prominent disclaimer warning investors that they cannot be considered as sustainable products under EU legislation.

This approach would present the following strengths:

- Relevance: It would allow to tailor requirements to the strategy considered
- Clarity and articulation with MIFDI/IDD: it would establish a clear message for investors on a two-dimensions scale being (i) strategy applied and (ii) ambition level (article 8 vs article 9), allowing for a better articulation with IDD and MIFID.
- Fostering capital flow towards more sustainable products: The disclaimer suggested for “non-sustainable” products could incentivize investors to prefer ESG products and hence support the objective of EU’s sustainable finance policy to attract private investment to support the transition to a sustainable economy.
- Acceptability: As the previous work on the EU Ecolabel or on the EU Taxonomy have shown, defining a unique set of criteria to identify what is sustainable or not is highly complicated as stakeholders may have strong and diverging views. Keeping a two-levels approach for ambition (article 8 and article 9) would help to overcome this difficulty as it would allow to define “dark green strategies” (article 9) and “mainstream strategies” (article 8), and let investors choose which category they want to invest in.