Response to Targeted consultation on the implementation of the SFDR by the Banque de France-ACPR

The ACPR is thankful for the opportunity to answer this targeted consultation on level 1 of the SFDR. The ACPR is of the view that increasing transparency towards end investors with regard to the integration of sustainability risks and to the consideration of adverse sustainability impacts is necessary. In that respect, we welcome the set-up of the SFDR.

The usefulness of disclosures and their efficiency can be considered through the following observations. First, based on the content of entity disclosures published in 2022 and 2023, ACPR found out that insurers subject to SFDR improved the inclusion of ESG criteria for investment decisions on all or part of their portfolios more than those not subject to SFDR. Second, insurers declare limited budget dedicated to research of sustainability-related data with less than 1% of the total budget of the insurers and an amount of 295.000€, in average. As such, disclosures are a relevant and cost-effective way to accompany the transition of the economy to an alignment with the Paris Agreement.

Nevertheless we see room for improvement in the SFDR, both in terms of interaction with the other parts of the European framework for sustainable finance, and in terms of clarity and simplicity of the information disclosed to end users. In this position paper, the ACPR proposes recommendations on the evolution of the SFDR, in terms of missions, perimeter and concepts, both regarding entity and product disclosure requirements. Past public consultations and consumer testing related to the SFDR indeed have shown that the current concepts and product disclosures implemented by the SFDR are excessively complex for most end-consumers to incorporate them in their investment decisions.

As far as entity reporting is concerned, the ACPR advocates a streamlining of disclosure requirements within the European framework for sustainable finance. The CSRD seems to be the appropriate vessel for ridding SFDR of entity reporting provisions under the most favourable conditions for companies, customers, investors, and supervisors. The ACPR's response is founded on two observations: first, regulations prove to be redundant, hence the need to rationalise, and second, SFDR current deficiencies call for regulatory adjustments in favour of CSRD.

The initial general observation highlights the existence of a stacking of regulatory demands on entity reporting, leading to regulatory overload for the submitters. They have to provide reportings based on different legal texts (CSRD, SFDR, etc.) each including diverse perimeters, approaches, definitions and KPIs. Piling up disclosure's regulations seems unproductive as it increases the risk of inconsistencies, and thus a lack of clarity for the users, and represents an additional cost for the economy as a whole.

The second general observation highlights the current limits of SFDR. Despite its contribution to achieving its objectives, it encounters certain issues since its inception: the scope of application is challenging to assess; imprecise definitions cause challenges for entities subject to SFDR in understanding expectations, leading to poor reporting. In the end, entity-level disclosures receive limited attention from investors, and are therefore of minimal use to financial advisers as well.

In our view, CSRD appears to be the adequate framework to replace SFDR in carrying the requirements for entity reporting: it states similar provisions, aligned with articles 3, 4, and 5 of SFDR, respectively addressing transparency in sustainability risk integration policies, negative impacts, and remuneration policies, through topical and future sectoral standards.

The solution put forth by the ACPR involves streamlining these obligations within the CSRD. This would result in a reduction of the regulatory burden for businesses, enhanced user understanding of KPIs, and increased consistency within the sustainable finance framework – particularly when the ESAP platform is in operation, as it will offer a unified package of data for entity reporting. In this matter, we would strongly recommend considering future sectorial-based ESRS as *lex specialis*, i.e. when applicable, the future sectorial ESRS requirements would override other equivalent requirements such as entity specific requirements under SFDR[1].

All in all, while CSRD and SFDR requirements can be redundant, they retain slight differences in scope that need to be addressed when streamlining them. The materiality assessment preceding CSRD disclosures deviates from the mandatory Principal Adverse Impacts (PAIs) reporting imposed by the SFDR. This provision poses no issues in most instances where the disclosure of non-material information holds little to no significance. Furthermore, the CSRD exempts from entity reporting the subsidiaries of groups meeting its requirements at consolidated level, whereas the SFDR requires publication by each solo entity. Thus, in some specific and clearly identified cases, for entities with a risk profile markedly different from their group's, to prevent a declaration of non-materiality at the group level that would deprive entity stakeholders of material data at the solo entity level, a regulatory mechanism shall be envisaged, requiring reporting at solo or sub-consolidated level, akin to the approach adopted in Regulation (EU) 575/2013 (CRR)[2]. This special disclosure at sub-consolidated level may include quantitative and qualitative data and shall be enshrined in either disclosure (CSRD) or prudential (Pillar III) regulations. It may be helpful, for example, for conglomerates (banks, insurance, asset management entities within the same group).

Regarding product precontractual information, the SFDR should first provide for a uniform transparency framework applicable to all financial products (whether making a sustainable call or not) with a limited number of mandatory metrics. Simplified transparency rules applicable to all financial products should promote products' legibility and comparability as well as prevent greenwashing risks. Keeping the essence of the SFDR, these rules could be provided for in revised Articles 6 and 7.

Then, the SFDR should also provide for categorisation to be specified in revised Articles 8 and 9. Three to four categories could be based on both existing clarified criteria and new precise criteria regarding in particular (i) environment, (ii) social and (iii) transition. Those criteria should be determined having in mind to improve consistency between the SFDR and other extra-financial standards (in particular the EU Taxonomy) and to amend investors' sustainability preferences accordingly. Those criteria should be reviewed periodically to take into account the increase of investments with progressively higher commitments made available on the market.

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[1] The proposed solution would rely on the use of provisions akin to those in Regulation (EU) 2022/2554 (DORA), relieving an entity of obligations under a certain text when another, more specific text, applies.
[2] Regulation (EU) 575/2013, Article 11, paragraph 6.

In the case of products offering a choice of underlying investment options, sustainability-related information is to be provided on both levels (wrapper and underlying investment options), with an emphasis on the wrapper level as the primary client-facing disclosures which should be accessible, synthetic and consumer-friendly. The burden to analyse and ponder the variety of approaches to sustainable investment (e.g. impact, environmental/social contribution, transition, or/and engagement strategies) should not be left entirely to customers.

For this reason, we strongly support a scaling system for multi-options products, that would reflect the weighting of the various investment options falling under one or several of the categories mentioned above. This would allow for transparency and comparability of products by customers at a glance.