

## SFDR EC TARGETED CONSULTATION - AMAFI's answer

*Association française des marchés financiers (AMAFI) is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.*

### I. GENERAL OBSERVATIONS

AMAFI welcomes the opportunity to answer the European Commission Targeted Consultation on the implementation of the Sustainable Finance Disclosure Regulation (SFDR) to contribute to the revision of this framework, improve the interaction between SFDR and other sustainable finance legislations<sup>1</sup>, and address the potential expansion of reporting obligations to other financial products.

More than three years after the progressive entry into force of the transparency obligations at product level for financial market participants (FMPs), it has been observed that the classification of financial products under Article 8 and Article 9 is increasingly being used as a labelling system rather than as a classification one, contrary to what was originally intended. We note that similar legislations around the world are implementing "labelling" approaches to bring greater clarity and transparency into the categorisation of sustainable financial products. Major regulatory authorities like the U.S. Securities and Exchange Commission<sup>2</sup>, the UK Financial Conduct Authority<sup>3</sup> and the Securities and Exchange Board of India<sup>4</sup> have already proposed fund categories, demonstrating the common need to provide clear and easily recognisable information to retail investors. While these categories are not always consistent across jurisdictions, some common principles can be identified, such as the importance of considering transitional and "green" or already aligned investments separately.

In this context, AMAFI welcomes the proposal to introduce a categorisation system under SFDR to facilitate investor understanding of the product objectives and to align with the global trends mentioned above. However, AMAFI would like to draw the Commission's attention to the potential impact of changing SFDR from a disclosure regime to a categorisation one. This impact needs to be assessed in case SFDR categories are re-used as references in other regulatory frameworks whose scope is broader than SFDR (as we will further analyse in [section 4.3](#)). The difficulties for the products out of scope of SFDR to meet the minimum criteria defined by SFDR and their potential risk of eviction will need to be addressed.

<sup>1</sup> Specifically, the ones listed under section 2 of the consultation.

<sup>2</sup> [Investment Company Act "Names Rule"](#), amended on September 20, 2023.

<sup>3</sup> [Consultation paper: Sustainability Disclosure Requirements \(SDR\) and investment labels](#), October 25, 2022.

<sup>4</sup> [New category of Mutual Fund schemes for Environmental, Social and Governance \("ESG"\) Investing and related disclosures by Mutual Funds](#), Circular No.: SEBI/HO/IMD/IMD-I -PoD1/P/CIR/2023/125, Jul 20, 2023.

We welcome the consideration of the interaction between SFDR and the rest of the sustainable finance legislation<sup>5</sup>, as we believe this is key to better assessing the potential impact of a review of the SFDR and ensuring consistency with existing obligations. Indeed, we hope that this consultation will be the first of a series that will enable FMPs to actively participate in the design of the new SFDR. We also anticipate that the MIFID2 and IDD rules will also need to be reviewed once the new SFDR regime is defined to ensure that the collection of sustainable preferences, the suitability assessment and the rules on the target market will evolve accordingly.

In our response, we also address the importance of considering the possible extension of SFDR to a wider range of financial instruments (such as structured products), and we reiterate the need to consider the role of derivatives and secondary market products in channelling capital towards a sustainable economy. AMAFI has indeed made several arguments over the years in consultation responses and notes ([AMAFI / 21-47](#), [AMAFI / 23-03](#), [AMAFI / 23-13](#)) about the contribution that derivatives can make to sustainable finance, for example in terms of their impact on the liquidity and pricing of securities in secondary markets, which influences the cost of capital of the companies concerned.

## **II. ANSWERS TO THE QUESTIONS**

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### **1. CURRENT REQUIREMENTS OF THE SFDR**

**Q 1.1 The SFDR seeks to strengthen transparency through sustainability-related disclosures in the financial services sector to support the EU's shift to a sustainable, climate neutral economy. In your view, is this broad objective of the regulation still relevant?**

SFDR has been designed to promote sustainability in financial markets by requiring financial market participants to disclose how they integrate environmental, social, and governance (ESG) factors into their investment decision-making processes and to provide transparency on the environmental, social, or sustainable characteristics of their products.

This objective remains relevant but is not fully achieved today for different reasons.

First, the disclosure framework defined by the RTS has been quite challenging to implement for most FMPs, and the information disclosed is sometimes too detailed and complex for end investors to understand.

Second, the unclear definition of “sustainable investment” and the lack of clarity on the approaches and references that should be used to assess the sustainable characteristics of the investments have led to a wide range of methodologies and different levels of ambition that are difficult to compare. The need to establish a common minimum set of standards (e.g. compliance with some PAIs) to be applied to all financial products is key to ensure comparability and avoid greenwashing. This approach should still leave room for specific criteria according to the type of contribution (Taxonomy, impact, transition, etc.) or the type of product. These common standards should be defined at Level 1, as highlighted in the ESAs final report on the draft Regulatory Technical Standards<sup>6</sup>.

Third, as highlighted in the consultation, even though SFDR was designed as a disclosure regulation, it has largely been used as a categorisation regime based on the notions of Article 8 and 9. This use of SFDR demonstrates the need for FMPs to be able to use a recognised product categorisation system to clearly classify their financial products and to ensure that they are comparable for the same product type and contribution. However, if SFDR were to evolve into a categorisation system, the whole framework would need to be reviewed considering the actual link between SFDR and distribution regulations such

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<sup>5</sup> Such as MIFID II, IDD, CSRD, Future Prospectus regime (ie Listing Act)....

<sup>6</sup> ESAs, [Final Report on draft Regulatory Technical Standards](#), 30 November 2023, Question 38

as MIFID 2 and IDD<sup>7</sup>. This means that the financial instruments that are currently out of scope of the regulation and whose characteristics differ from investment funds and managed portfolios would have to be taken into consideration and the rules on categorisation and disclosure adapted to accommodate these characteristics.

SFDR presents indeed a structural limitation because it is designed to cover only those financial products manufactured to have ESG and/or sustainability characteristics or objectives, which are by definition managed investment products, as per Article 2 point 12) of the regulation<sup>8</sup>. [As we will discuss later in this document](#), while managed investment products may lend themselves well to sustainable commitments because their asset allocation can be regularly reviewed to meet these requirements over time, this does not mean that they are the only types of products that should be considered as sustainable. Currently, the limited scope of the Regulation and the design of the disclosure framework do not allow for the consideration of other financial products that could be designed to meet sustainable characteristics but are not managed investment products, such as structured products and derivatives.

### **Q 1.2 Do you think the SFDR disclosure framework is effective in achieving the following specific objectives (included in its Explanatory Memorandum and mentioned in its recitals)?**

AMAFI mostly disagrees with the following statements:

- *“Increasing transparency towards end investors with regard to the consideration of adverse sustainability impact”.*
  - As mentioned in its response to the ESAs’ joint consultation on SFDR Delegated Regulation on PAIs and financial product disclosures ([AMAFI / 23-54](#)), AMAFI believes that transparency can be further improved with regard to the consideration of adverse sustainable impacts in relation to derivatives. The approach proposed in the consultation to perform netting of derivatives short and long positions at individual counterparty level, but *“without going below zero”* is not satisfactory because it would provide an incomplete picture of the exposure to the asset, which is not consistent with the core objective of SFDR of accurate disclosure. Negative exposures are indeed the reflection of a disengagement from the asset with principal adverse impacts, reflecting the undesirability of the asset, hence putting pressure on its valuation and overall desirability to investors. We note that in their final report of 30 November 2023 the ESAs finally retain the netting and floor approach, but even if our proposal has not been considered, we still welcome the positive outcome of this report recognizing the role of derivatives in sustainable finance<sup>9</sup>.
- *“Strengthening protection of end investors and making it easier for them to benefit from and compare among a wide range of financial products and services, including those with sustainability claims”.*
  - As mentioned above ([answer to Q1.1](#)), the variety of methodologies that have been developed by FMPs to define the sustainability of an investment and the consideration of PAIs makes it difficult for an investor to compare products of the same type and with similar kind of contribution. The implementation of product categories as proposed in

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<sup>7</sup> As we will further address in this document ([Q2.4](#)), two out of three criteria in the suitability process to match product characteristics with investor sustainable preferences are SFDR concepts: Sustainable Investment and PAI (Principal Adverse Impacts).

<sup>8</sup> *“(12) ‘financial product’ means:*

- (a) a portfolio managed in accordance with point (6) of this Article;*
- (b) an alternative investment fund (AIF);*
- (c) an IBIP;*
- (d) a pension product;*
- (e) a pension scheme;*
- (f) a UCITS; or*
- (g) a PEPP”*

[Regulation \(EU\) 2019/2088, Art. 2.](#)

<sup>9</sup> ESAs, [Final Report on draft Regulatory Technical Standards](#), 30 November 2023. Annex: ESMA SMSG Advice, General remarks, XV. 18.

section 4 of this consultation, with defined minimum standards and criteria, will certainly facilitate the investor understanding, but only on condition that the categories are designed to be as simple as possible so that they can be fully understood by retail clients.

- “Channelling capital towards investments considered sustainable, including transitional investments (*‘investments considered sustainable’ should be understood in a broad sense, not limited to the definition of sustainable investment set out in Article 2(17) of SFDR*)”
  - As mentioned above in our [response to question Q 1.1](#), the limited scope of SFDR only partially allows to “channel capital towards investments considered sustainable” as only managed investment products are considered. In fact, there is a significant proportion of financial instruments that actually contribute to channelling capital towards a sustainable economy but are not officially recognised as such under SFDR. While the primary objective of SFDR was to establish a disclosure regime for a defined scope of financial instruments, this regulation has been misinterpreted and it is sometimes assumed that only products within the scope of SFDR can be considered sustainable. This creates a dangerous paradox, where the sustainable characteristics of products outside the scope of SFDR could be questioned, even though, under the revised MIFID 2 regime, all financial products can potentially have sustainable characteristics or can contribute to sustainable objectives (as the ESG aspects of the rules on product governance and suitability apply to all MIFID 2 products).

#### **Q 1.6: To what extent do you agree or disagree with the following statements?**

AMAFI totally agrees with the following statements:

- “Some disclosure required by the SFDR are not sufficiently useful to investors”.
  - As mentioned above in our [response to question Q 1.1](#), we believe that the information disclosed under SFDR are too complex for retail investors to understand. The SFDR RTS require disclosure of a high level of detail, which is not always useful to describe the sustainable nature of the product. The revision of SFDR should be an opportunity to simplify the disclosure requirements, while ensuring that investors' intentions and needs are taken into account.
- “Some legal requirements and concepts in the SFDR, such as ‘sustainable investment’, are not sufficiently clear”.
  - As mentioned above in our [response to question Q 1.1](#), the unclear definition of “sustainable investment” and the absence of a commonly agreed standards and minimum criteria leaves the possibility to use different references (SDGs, ESG Ratings, ...) and approaches to determine the sustainable nature of the investment. In addition to the difficulty of comparing products of the same type and with similar kind of contribution, this diversity of approaches could lead to a risk of greenwashing if the criteria used are not ambitious enough. In order to protect investors and ensure a minimum level of sustainability, clear criteria and thresholds, adapted to each product type should be defined.
- “The SFDR is not used as a disclosure framework as intended, but as a labelling and marketing tool (in particular Article 8 and 9).”
  - This statement is the reason why AMAFI supports the introduction of product categories (further developed in [section 4](#)). However, the SFDR is unlikely to cover the full range of investment products that can be distributed under MIFID 2 and IDD. Hence, given the possible reinforcing link between SFDR and these regulations, such that the SFDR categories would have to be used to capture investors' sustainable preferences (as addressed in [Q4.3.4](#)), these categories need to be designed in such a way that they can also be applied to products that will not fall within the scope of SFDR. This will avoid

creating additional difficulties for these products in the distribution process (as is already partially the case due to the current link between SFDR and MIFID2 and IDD<sup>10</sup>).

- “There are other deficiencies with the SFDR rules (please specify in text box following question 1.7).”
  - As mentioned above in its response to question Q 1.2, AMAFI believes that one of the main deficiencies with SFDR is the inconsistent consideration of derivatives because their role (providing exposure to assets) is only recognised when it has a negative impact, but not when it has a positive one in Taxonomy-alignment and Sustainable Investment metrics (while long and short positions are taken into account when assessing the PAI). In other words, the exposure that derivatives can provide to assets is discarded when those are sustainable or Taxonomy-aligned. As per our response to the ESMA PAI RTS consultation<sup>11</sup>, we strongly suggest the consideration of long and short positions in the 3 indicators in order to ensure consistency in the treatment of derivatives. We noted that this point was also mentioned in the recent ESAs report on SFDR RTS<sup>12</sup> which shows that most of the respondents to the consultation agreed with this approach. The majority of respondents also consider it necessary to establish rules for the treatment of derivatives. Conversion into equivalent underlying positions (through the delta method) seems to be the most supported methodology. These considerations are in line with AMAFI's positions and the ongoing work that the ad-hoc derivatives working group at the EU Platform on Sustainable Finance (Usability and Data group) is finalising, to recommend a unique methodology which will be used to account for derivatives in SFDR funds metrics (TA, SI, PAI).

#### Q 1.7: To what extent do you agree or disagree with the following statements?

In line with its previous answers, AMAFI totally agrees with the following statements for the same reasons already presented:

- “The issues raised in question 1.6 create legal uncertainty for financial market participants and financial advisers.”
- “The issues raised in question 1.6 create a risk of greenwashing and mis-selling.”
- “The issues raised in question 1.6 prevent capital from being allocated to sustainable investments as effectively as it could be.”
- “The current framework does not effectively capture investments in transition assets.”

## 2. INTERACTION WITH OTHER SUSTAINABLE FINANCE LEGISLATION

As addressed in the introduction of section 2 of the consultation, SFDR interacts with several other pieces of Sustainable Finance legislation. In particular, AMAFI would like to address the interaction between SFDR and the Benchmark Regulation (BMR) and between SFDR and MiFID2, IDD and PRIIPS.

Concerning the interaction with BMR, which was revised to introduce EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks and to add sustainable-related disclosures<sup>13</sup>, a recent regulatory proposal<sup>14</sup> could result in the ESG benchmarks not being subject to disclosure obligations anymore, making it more difficult to provide the information related to whether and how this index is consistent with

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<sup>10</sup> See [foot note 7](#)

<sup>11</sup> [AMAFI / 23-54](#)

<sup>12</sup> ESAs, [Final Report on draft Regulatory Technical Standards](#), 30 November 2023. Question 14.

<sup>13</sup> [Regulation \(EU\) 2019/2089](#) as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.

<sup>14</sup> European Commission, [Proposal for a Regulation of the European Parliament and of the Council amending Regulation \(EU\) 2016/1011 as regards the scope of the rules for benchmarks](#), 17 October 2023.

the social, environmental or sustainable characteristic of the product<sup>15</sup>. We address this point in our answer to Q 2.2.

Concerning the interaction with MiFID2 and IDD, which were revised to integrate sustainable factors<sup>16</sup> into the suitability process and product governance framework, as these two pieces of legislation cover a larger scope<sup>17</sup> of products than SFDR, the information needed to define the target market of non-SFDR products and distribute them to investors are not always available. This is made even more difficult by the fact that two of the three criteria (PAI and sustainable investment) considered under MIFID/IDD to collect sustainable preferences are strictly related to SFDR concepts. This leads to multiple interpretations and practical issues that hinder the distribution of these products to retail investors. We address this point in our answer to Q 2.4.

Concerning the link between SFDR and PRIIPS, we would like to comment on the proposal in the Retail Investment Strategy (RIS) to include a sustainability section in the KID for products covered by SFDR to disclose their environmentally sustainable features. We believe that this type of disclosure should not be limited to SFDR products, but that all investment products that may have environmental, social and sustainable objectives should be allowed to publish this information. This position was also supported in our note published in October 2023<sup>18</sup> in reaction to the two notes from the Spanish Presidency of the European Union concerning the revision of PRIIPs<sup>19</sup>.

#### **Q 2.2: To what extent do you agree or disagree with the following statements?**

AMAFI mostly disagrees with the statement below:

- *“The ESG information provided by benchmark administrators is sufficient and is aligned with the information required by the SFDR for products tracking or referencing these benchmarks”.*

Considering the proposal published on 17 October 2023 to revise BMR<sup>20</sup>, as part of the package to rationalise and simplify the reporting requirements of EU companies, the disclosure of the methodology and benchmark statement (together with other information<sup>21</sup>) would no longer apply to administrators of non-significant benchmarks. This means that only administrators of critical benchmarks and significant benchmarks will continue to be obliged to disclose the information required under the BMR<sup>22</sup>, which is not the majority given that the ESMA register currently lists 73 EU benchmark administrators, 66 of which only provide non-significant benchmarks. Administrators of EU Paris-aligned Benchmark or EU Climate Transition Benchmarks will remain within the scope of the BMR, regardless of their significance, but these obligations will no longer apply to the administrators of other ESG benchmarks, potentially limiting the access to information for FMPs.

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<sup>15</sup> As required under article 8 point 1 (b), and Article 9 point 1 (b) of SFDR.

<sup>16</sup> [Commission Delegated Regulation \(EU\) 2021/1253](#) (MIFID2), [Commission Delegated Regulation \(EU\) 2021/1257](#) (IDD)

<sup>17</sup> Financial instruments and financial products.

<sup>18</sup> [AMAFI / 23-78EN](#)

<sup>19</sup> A note in which the Spanish Presidency synthesized the written comments submitted by various Member States and queried all States about their positions (Annex 1), and a note drafted by the German representatives proposing the establishment of a synthetic indicator of the sustainability of PRIIPs, which would be used to describe the ESG characteristics of these PRIIPs in the KID (Annex 2).

<sup>20</sup> [Proposal for a Regulation of the European Parliament and of the Council amending the Regulation \(EU\) 2016/1011](#).

<sup>21</sup> (i) governance and conflicts of interest, (ii) oversight function and a hierarchy and monitoring of input data; (iii) setting up of codes of conduct as regards input data; (iv) reporting of infringements.

<sup>22</sup> Titles II (Benchmark integrity and reliability), III (Requirement for different types of benchmarks), IV (Transparency and consumer protection) and VI (Authorisation, Registration and Supervision of Administrators) of the regulation.

**Q 2.4 To what extent do you agree that the product disclosures required in the SFDR and its Delegated Regulation (e.g. the proportion of sustainable investments or taxonomy aligned investments, or information about principal adverse impacts) are sufficiently useful and comparable to allow distributors to determine whether a product can fit investors' sustainability preferences under MiFID2 and the IDD?**

AMAFI partially agrees that the product disclosure required in the SFDR is sufficiently useful to allow the distribution of those financial products that are already within the scope of the SFDR, even if FMPs consider that the information contained in the EET file (which is not a regulatory disclosure document) is more useful than the information contained in the SFDR pre-contractual documentation (this is mostly true for the PAI). As mentioned, several times in our responses to the above questions ([Q1.1](#) and [Q.1.2](#)), we do not agree with the fact that the disclosures required in the SFDR fully allow comparability between financial products.

On the other hand, we totally disagree with the above statement for the financial instruments and financial products that are distributed under MiFID2/IDD but fall outside the scope of SFDR. This is the case, for example, for structured products and single securities (vanilla equities and corporate bonds), which by their very nature fall outside the scope of SFDR but should still be assessed from a sustainability perspective in order for a distributor to be able to sell them to investors with sustainable preferences.

For equities and corporate bonds, distributors usually do not have access to normalised information<sup>23</sup> to assess the fit with investor's sustainable preferences (MiFID2 criteria a) Taxonomy, b) Sustainable Investment or c) PAI<sup>24</sup>) or to define a target market. Only Taxonomy alignment information may be available if these are published by the company. The distributor can decide to consider the financial instruments as non-sustainable<sup>25</sup>, but they could not be proposed to investors with sustainable preferences. It could also perform itself the sustainability assessment but this requires resources that it may not have.

For structured products, manufacturers get around these difficulties by providing distributors with the information required under the three criteria for both suitability assessment and target market<sup>26</sup> through the EET. In some cases, distributors may also require an "SFDR-like pre-contractual" document to present the features of a), b) and c) to end-investors, which obliges the manufacturer to indirectly apply the SFDR rules even if the structured products are not recognised in the scope of the Regulation.

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<sup>23</sup> More information will be available from 2025 with the first CSRD reporting, but only Taxonomy alignment information and PAIs when those are considered as "material" by the companies. Sustainable investment metric will still need to be calculated by the FMPs. ([Final Report, Guidelines on certain aspects of the MiFID II suitability requirements](#), Q6. 38.).

<sup>24</sup> Under MiFID II, investment firms must collect the sustainable preferences of customers (or potential customers) and consider those in the suitability process. Article 1 of the [Commission Delegated Regulation \(EU\) 2021/1253](#) describes the different criteria to determine if a financial instrument can meet the client (or potential client) sustainable preferences.

<sup>25</sup> For the sake of simplicity, we will only consider the case of individual investment advice, without mentioning the portfolio approach where it is possible to include in a portfolio allocation instrument for which the distributor has been able to assess none of the three criteria if other components of the portfolio make it possible to ensure the respect of the investors' minimum preferences.

<sup>26</sup> Extract of the [Guidelines on MiFID II product governance requirements](#) (March, 27<sup>th</sup>, 2023) "*distributors shall take all reasonable steps to ensure that the level of product information obtained from the manufacturer is of a reliable and adequate standard, to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where all relevant information is not publicly available (for example, through the PRIIPs KID or a prospectus), the reasonable steps should include entering into an agreement with the manufacturer or its agent in order to obtain all relevant information enabling the distributor to carry out its target market assessment*".

### 3. POTENTIAL CHANGES TO THE DISCLOSURE REQUIREMENTS FOR FINANCIAL MARKET PARTICIPANTS

#### **Q 3.2.1 Standardised product disclosures - Should the EU impose uniform disclosure requirements for all financial products offered in the EU, regardless of their sustainability-related claims or any other consideration?**

Concerning the question related to the possible extension of uniform disclosure requirements to “all financial products”, it is not clear whether “financial products” is to be understood as the ones listed under article 2, point 12) of SFDR, which are the products already in scope of SFDR, or whether “financial products” should be considered more broadly as products that are not yet covered by SFDR.

In the first case, we understand that the potential extension of disclosure requirements would affect the financial products presently classified as Article 6, rather than Article 8 and 9 products. AMAFI does not support this proposal, because Article 6 products by definition do not make sustainable-related claims (even if they can have ESG or sustainable characteristics), which implies that manufacturers do not want to use those characteristics to promote their products. Article 6 products are categorised as such because they promote investment objectives other than ESG, which are described and disclosed using information relevant to those objectives rather than ESG. Mandatory disclosure of ESG and sustainable characteristics for these products would lead to over-communication, which would confuse investors and discourage them from reading the information even more than today. Already today, the information provided to investors under SFDR is considered to be too complex and detailed to be fully understood by retail investors. In line with our proposal to reduce the reporting burden and simplify the information disclosed, only the information relevant to the investment objective should be disclosed.

In addition, the systematic integration of sustainable-related characteristics for all products would create an additional burden to FMPs which are already facing significant costs and operational challenges to ensure the correct assessment of Article 8 and Article 9 products. Such a measure should therefore be subject to a rigorous impact assessment.

In the second case (extension to all MiFID financial products), we propose studying at least the potential inclusion of structured products as a type of secondary market products which do not directly invest in assets but that are still manufactured to meet sustainable objectives through the exposure to an asset.

Structured products are a critical part of the ESG offering in the EU market as they often provide a level of capital protection. Like funds, they can be manufactured to follow sustainable objectives. As mentioned above in our answer to question 2.4, manufacturers already categorise structured products as “Article 8-like” or “Article 9-like” to make it easier for distributors to assess suitability and define target market. Therefore, these products should be in scope of the revised SFDR.

AMAFI strongly believes that the extension of SFDR to a wider range of financial instruments that have environmental, social and sustainable characteristics would bring significantly more benefit than the extension of the disclosure obligation to financial products that have no ESG or sustainable claims (Article 6 products). Such an extension would contribute to improving transparency and facilitating the collection of information required to meet the regulatory requirements imposed by MIFID2 and IDD.

However, if structured products were to be included in the scope of SFDR, the regulation should be adapted to take account of the specific characteristics of these products. Indeed, in view of their different nature, structured products cannot be treated in the same way as the other financial products listed under article 2 point 12), which are managed during their lifetime to meet the specific ESG commitments defined in their pre-contractual documentation. The achievement of these commitments must be disclosed in the periodic reports (according to article 11 of SFDR). When these commitments are not achieved, FMPs are obliged to adjust their allocation accordingly, which is possible because these are “managed investment products”.



The same logic cannot be applied to structured products where the performance is linked to the pre-defined product formula over which the producer has no control once the product is issued (there is no scope for investment management).

In addition, the assessment and disclosure of the sustainability-related characteristics of these products should be done through different metrics adapted to the nature of these products. For example, among the examples of disclosure listed in question 3.2.1 b), only "Taxonomy-related disclosure" and, in some cases, "exclusion" would be relevant.

Finally, if structured products are included in the scope of the SFDR, they should be subject to specific disclosure templates similar to the KID, adapted to the type of information fit for these products.

#### **4. POTENTIAL ESTABLISHMENT OF A CATEGORISATION SYSTEM FOR FINANCIAL PRODUCTS**

##### **4.1. POTENTIAL OPTIONS**

As stated in the introduction, AMAFI is in favour of a simple, clear, and easily understandable categorisation approach, which will make clearer the sustainable characteristics of each financial product and ensure compliance with minimum requirements. We believe that the current confusion between Article 8 and Article 9 can be solved by defining categories referring to social, environmental, and sustainable aspects, which should be closer to the investors' perception of sustainable finance.

Therefore, we fully agree with the following statements of question 4.1.1:

- *"Sustainability product categories regulated at EU level would facilitate retail investor understanding of products' sustainability-related strategies and objectives."*
- *"Sustainability product categories regulated at EU level would facilitate professional investor understanding of products' sustainability-related strategies and objectives."*

However, we believe that a categorisation system does not necessarily require removing the references to Articles 8 and 9, as we believe that both approaches may be useful and appropriate.

We also support the voluntary aspect of the product categorisation, meaning that the category's criteria should only be applied to those products which want to fit into the defined categories. In addition, it should be possible for other financial products that do not fit into these categories to still be considered ESG or sustainable under certain conditions. Furthermore, given that the categories will be designed to meet current investment needs (e.g. transition, impact, taxonomy) and will largely be adapted to products within the scope of SFDR, the "generic ESG" category could be useful to leave room for product innovation and specific categories that may be developed in the future (e.g. biodiversity). In addition, we believe that the categories should be mutually exclusive, even if the product meets the criteria of several categories, in order to facilitate investors' understanding of the main purpose of the product.

We would also like to highlight that we are not in favour of a catch-all approach that will not allow to distinguish the different natures of the financial instruments and their different contributions to sustainable objectives, even if we understand the need for common principles across products and the need for criteria common to products of the same type in order to ensure comparability.

Even if some general criteria can be considered for all financial products, others more specific (for example engagement strategy) may not concern all of them. If structured products are included within the scope of SFDR, some specific criteria should be considered to assess their contribution to sustainable objectives.

#### 4.3 CONSEQUENCES OF THE ESTABLISHMENT OF A SUSTAINABILITY PRODUCTS CATEGORISATION SYSTEM

AMAFI welcomes the consideration of the impacts of introducing categories in SFDR on the other sustainable finance regulations and the possible use of those categories and criteria in other regulatory frameworks.

There is a need that the different definitions set by each regulation converge in order to reduce the confusion for FMPs and investors. A single classification system of sustainable or ESG products will help to ensure such convergence.

As suggested in this consultation, the implementation of a categorisation system can also be done only for SFDR as it has been already done in similar legislation of other jurisdictions (US, UK and India<sup>27</sup>). However, the fact that SFDR covers only managed investment products must be considered if, as addressed in this section, SFDR categories are to be used as a reference in other regulations.

Therefore, in our response to question 4.3.4. on the use of the new SFDR categories as a reference to the sustainable preferences of MIFID2 and IDD, we draw the EC's attention to the fact that financial instruments outside the scope of SFDR are already facing some difficulties due to the current link between SFDR and MIFID2/IDD, and that these difficulties may be exacerbated if the criteria of the future categories are designed to fit only SFDR products (managed investment products) and if these categories are used to collect sustainable preferences from investors. In this scenario, products such as equities and bonds (which are outside the scope of SFDR) will have to meet the criteria of the SFDR categories in order to be distributed, a process that could be very complex depending on the nature of the product, which could discourage direct investment in companies, contrary to what RIS aims to achieve.

Therefore, even if a convergence between SFDR and MIFID2/IDD could be beneficial for the distribution of sustainable products, the conditions under which this would work need to be fully explored and perhaps the logic for collecting sustainable preferences under MIFID2/IDD should also be reviewed.

Regarding the impacts on other regulations, in response to question 4.3.1, AMAFI agrees that the product categories should be disclosed in the PRIIPS KID to share the information with investors. In addition, as mentioned in the introduction to [section 2](#), we suggest that the sustainability section of the KID should also be used by non-SFDR products to disclose their environmental, social and sustainable characteristics.

Regarding question 4.3.2 on the possible alignment of the criteria set for ESG benchmarks and those set for SFDR product categories, as in the case of MIFID2/IDD, the feasibility of such alignment will depend on the nature of the ESG benchmarks (composition, objective, ...), the existence of disclosure requirements applicable to such benchmarks and the criteria that will define each SFDR category. In any case, if a convergence of the categorisation systems is contemplated, BMR should probably also be reviewed to take into account the new criteria and adapt the disclosure requirements.



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<sup>27</sup> See [introduction](#)