PensionsEurope's Position Paper on the SFDR Level 1 Review: Response to the Joint ESAs' Opinion

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Introduction

PensionsEurope welcomes the ongoing efforts to enhance the framework of the Sustainable Finance Disclosure Regulation (SFDR). Over the summer 2024, three reports were published on this topic, including an assessment commissioned by the ECON Committee of the European Parliament and two opinions respectively from the ESAs and ESMA. Then, in October 2024, the ESAs published their Annual Report on the Principal Adverse Impact disclosures under the SFDR providing an analysis on the current state of entity-level and product-level voluntary PAI disclosures in the framework.

We support the European Commission's ambition to drive the transition towards a sustainable economy by improving sustainability reporting standards. However, the current SFDR framework has led to significant implementation challenges for pension funds, which we highlighted previously in our response to the targeted consultation on the implementation of the SFDR published in December 2023. We stress that the review of the SFDR should align with President von der Leyen's goal to reduce reporting requirements by 25%. Yet, the ESAs' proposal would substantially increase the regulatory burden for IORPs.

Most crucially, the horizontal approach of the SFDR is presenting some challenges to pension funds by requiring the same framework to apply to a broad group of divergent financial market participants (FMPs) and products. We believe the framework is mainly designed for retail investment funds, while pension funds are different in at least three significant ways. First, in many or most cases members are automatically and mandatorily enrolled and have no investment choice. Second, the portfolio of pension funds is far more complex than most retail investment products and typically covers a broad range of listed and unlisted assets. Third, the product-level and entity-level differentiation is, in many cases, irrelevant as the pension fund (entity) only offers a single scheme (product).

PensionsEurope is pleased that these recent publications recognise that the SFDR, in its current form, which has only fully been operational since 2023, is not working as intended. In this paper, we will present our perspectives on these workstreams, with a particular focus on the Joint Opinion paper from the ESAs.

In light of the ongoing discussions, we find it crucial that the SFDR Level 1, the draft Regulatory Technical Standards proposed to the ESAs, and any potential amendments to the IORP II Directive concerning sustainability are well-aligned. This will provide legal certainty while preventing legislative overlap and double efforts.

Regardless of how the SFDR framework evolves, the regulation must ensure that investors and recipients receive clear and comprehensible information about how capital can effectively be directed toward financing the transition. The information should also be tailored to the specific needs of its recipients.

1. Product classification system

- PensionsEurope strongly supports increasing transparency for end-investors and combating greenwashing. We recognise that the proposed categorisation system aims to correct the confusion caused for end-users by the current product classification under Articles 8 and 9. However, a categorisation system should be based on a thorough analysis of the regulation's objectives. Changes to the current framework must be carefully evaluated to avoid additional complexity. Even if the framework is intended to be voluntary, products that are not categorised as sustainable or transition could indeed automatically fall into the ''default'' category, which would impose specific requirements (e.g., naming, marketing, principle adverse impact disclosures).

- We would also like to stress the costs and time FMPs have already invested in complying with the existing Articles 8 and 9. Adapting to a new framework could lead to substantial costs that would negatively impact the expected income of IORPs' members at retirement. It is worth noting that the European Commission's summary report of the open and targeted consultation on the SFDR assessment highlights that 58% of respondents do not view the disclosures' cost to be proportionate with the benefits generated. Therefore, the ESAs should acknowledge the risks associated with overregulating disclosures of sustainable investments, particularly given that the SFDR and Delegated Regulation have only recently come into effect as of 2023. Any future developments in the SFDR should prioritise simplification and reduce the reporting burden on FMPs, which should be reflected in the review process.

- We previously outlined in our response to the EC's targeted consultation on the implementation of the SFDR in December 2023 that a dedicated sub-sectoral RTS for IORPs could be developed to establish adequate disclosure requirements tailored to their specificities. Given the diverse IORP landscape across the EU, this RTS should provide ample flexibility for Member States and NCAs to implement rules that reflect their specific national contexts. This notion could be used for:
  - IORPs and their "products" falling into the proposed transition or sustainability categories (i.e., specific minimum Taxonomy-alignment rates).
  - Some specific Principal Adverse Impacts (PAIs) tailored to IORPs and their characteristics.
  - The limited relevance of PAIs for members and beneficiaries, who have no choice in selecting the pension scheme provider or the scheme itself, should also be considered in the RTS.

  This could provide some relief that corresponds to the structural characteristics of many IORPs.

a. Transition category

- We believe that financial institutions make a more important impact by financing the transition rather than focusing only on companies that are already sustainable. The current SFDR framework does not adequately recognise this approach. Should the European Commission still decide to introduce a categorisation system, we would support the creation of a transition category.

- If such a system is established, the term "transition" should be harmonised across the Sustainable Finance Framework. Currently, "transition" has different meanings between the Taxonomy and the product categorisation system proposed for the SFDR. Concepts and terminology should be straightforward, and financing the transition should be clearly defined and classified as "sustainable investments." The Commission Recommendation of 27 June 2023 on facilitating finance for the transition to a sustainable economy has already made efforts to guide FMPs on the meaning of ''transition'' and encourage the voluntary use of sustainable finance tools and disclosures in ways that ensure the credibility of transition investment opportunities. This could serve as a basis for harmonisation.

- We note the ESAs' acknowledgment that any new transition category must be suitable for long-term products, including pension schemes. The Opinion advocates for a "*clear path*" for these products to meet the category's requirements and for them to improve compliance over time. However, we are concerned about the horizontal application, as KPIs or minimum requirements would most likely not be suitable to IORPs and their diverse portfolios. They would systematically appear less ambitious than equity-only UCITS and fall into lower score categories.

- Therefore, if a transition category is implemented, we recommend the following considerations:
    - These pathways should not apply to government bonds. This principle should also extend to assets held for treasury and liquidity purposes, such as financial derivatives (e.g., interest rate swaps) and money market funds. It should also be noted that pension funds have no influence over governance.
    - Consideration must be given to the treatment of assets where data availability is challenging, particularly in the case of private market investments.

b. Impact sub-category from the transition category

- Should the EC introduce a categorisation system, we believe that the "impact" subcategory is an interesting concept, though the Opinion does not clarify its connection to the transition category. Some of our members would be willing to classify a small portion of their total assets under management as "impact." However, due to concerns around risk management and diversification, this would likely only account for a few percentage points, depending on how strictly investor impact is defined. In this scenario, the pension scheme would be categorised as a "transition with an impact subcategory," with disclosures indicating the percentage of investments classified as impact. Using a separate impact category—even when excluding the issue of government bonds—seems unfeasible for pension schemes.

- We recognise the debate between ''investor impact'' and ''company impact.'' However, we would like to stress that it is nearly impossible to prove the influence an investor has on achieving certain outcomes. This is why the Global Impact Investing Network does not require proof of investor additionality in its definition of impact investing. A stricter approach may therefore undermine the effectiveness of the entire category.

c. Further categories

- Should the SFDR be restructured in line with the ESAs' proposal, we would welcome the introduction of additional categories that better reflect the sustainability strategies implemented by IORPs, as long as the framework remains entirely voluntary and no requirements are imposed on IORPs not opting for a given category.

- We believe that any categorisation system should go beyond "sustainable" and "transition" categories. The European Commission could explore an additional category focusing on exclusion strategies. Moreover, a category based on engagement would be beneficial, as engagement is central to the sustainable finance toolkit for institutional investors and aligns with the core principles of the Net-Zero Asset Owner Alliance. Alternatively, engagement could also be integrated into the transition category, especially since it is currently absent from the ESAs' proposal.

d. Non-category and the possibility to communicate about sustainability

- We welcome the acknowledgment that FMPs may offer products with sustainability characteristics that do not necessarily meet the criteria for the proposed categories. Given the current broad approach of the SFDR, the Commission may find it challenging to set ambitious sustainability targets suitable for various product types. Consequently, despite the ESAs' intention, we believe there is a significant risk that pension funds may be unable to use the categories.

- Under the current framework, FMPs are restricted from communicating about sustainability for non-sustainable products (i.e., Article 6), as doing so would classify them under Article 8 and expose them to the risk of greenwashing accusations. While we welcome the ESAs' proposal to allow products classified as "non-sustainable" or "non-transition" to communicate about sustainability, their approach would put all non-category IORPs and pension schemes into a "default" category, with some disclosure requirements – i.e., also those who do not currently disclose PAIs. Many IORPs already have some sustainability characteristics (indeed, it is difficult to have none). Our expectation for the SFDR review is that it should reduce the regulatory burden for all IORPs compared to the current framework.

- This is not to suggest that we believe inaccurate sustainability claims, which could mislead consumers, should go unaddressed. It is crucial for pension funds to be aware of such risks as buyers of fund products. However, we must emphasise that these claims are not made by pension schemes as "providers." Many participants are automatically enrolled in pension schemes, and even when this is not the case, they do not have the choice to select their pension fund. This absence of direct competition means there is no incentive for pension funds to mislead participants through greenwashing.

e. Indicators

- We have strong reservations about integrating indicators into the SFDR framework. Having both indicators and categories would create unnecessary complexity. In addition, indicators are generally easier for individuals to understand and are likely to be more widely used than a classification system. However, they cannot capture the full complexity of different financial products and ESG investing.

- Assessing the benefits of indicators for pension funds poses challenges for fair and consistent implementation, as well as methodological difficulties in comparison to existing ESG approaches within the proposed categories. In a rating system with five grades, IORPs may only reach the lowest grade. In particular, the allocations to government bonds are heavily influenced by the duration of liabilities (i.e., depending on the age of the participants' group). A population close to retirement may have 50% or more of their investments in government bonds, typically not classified as "sustainable investments." Automatically labelling these funds as less ambitious or ranking them lower could create misplaced incentives and conflict with prudent person principles. A pension fund is not merely an investment fund; its objective is to provide good pensions while balancing risks, returns, and costs. Indicators focusing only on sustainability overlook these crucial aspects of pension provisioning.

2. Improving the definition of sustainable investments

- We note that the ESAs find the current definition of sustainable investments in the SFDR inadequate and are analysing the complex relationship between the Taxonomy Regulation and the SFDR. If the Taxonomy Regulation is to be viewed as the technical foundation for defining sustainability, we understand the idea of building a uniform definition of sustainable investments to ensure consistency in the Sustainable Finance Framework.

- However, this approach would significantly tighten the criteria for sustainable investments. While the Taxonomy framework currently focuses primarily on environmental factors (''E''), the SFDR has a broader scope. Therefore, we encourage the development of a social Taxonomy.

3. Framework for government bonds

- Since pension funds invest significantly in government bonds, this creates challenges with the SFDR. A large portion of these portfolios is currently classified as ''grey,'' meaning that it does not actively contribute to sustainability objectives. We would support an initiative that either better integrates the sustainability characteristics of government bonds or excludes them clearly from sustainability assessments to focus instead on eligible assets such as equities.

4. Consumer testing and the role of pension funds' participants

- We fully support the initiative for increasing consumer testing. The current SFDR disclosures are too long, complex, and legalistic, making them more suitable for professional investors than the average consumer.

- However, we have consistently opposed the use of horizontal regulation that applies the same rules to different products and users' groups. All relevant users must be considered. Pension funds' participants have a different experience than other investors because they often cannot act on the information received. This makes them less likely to engage with lengthy, complex details.

- Moreover, most IORPs do not consult individual[1] beneficiaries on their sustainability preferences. In the case of IORPs, the investment is simply a means to finance the pension promise, yet this crucial aspect is largely ignored in SFDR disclosures.

5. Transparency of adverse sustainable impacts

- In the Joint Opinion, the ESAs propose that the SFDR revision would mandate disclosing ''information'' on all PAIs for the transition category together with some minimal disclosures on key PAIs for all products. More recently, in the ESAs report on Principal Adverse Impact disclosures under the Sustainable Finance Disclosure Regulation, the ESAs suggest that the European Commission could consider alternative ways to introduce proportionality for FMPs. Specifically, they point out that the "more than 500 employees" threshold may not meaningfully assess the extent to which investments contribute to adverse impacts on sustainability. According to the ESAs, a more suitable approach could involve establishing a threshold based on the size of an FMP's assets under management (AuM). A focus on the AuM would imply that IORPs would be under the scope more quickly and disproportionately earlier than any other financial sector entities. We view this proposal as a significant risk, which could further penalise IORPs structurally.

- As previously discussed in this paper, it is important that the SFDR review focuses on reducing burdensome requirements. This is also in line with the European Commission's ambition to streamline and simplify the Sustainable Finance Framework as illustrated recently by von der Leyen's announcement of an omnibus regulation to reduce red tape and reporting burden across the CSRD, CSDDD, and the Taxonomy Regulation. We find it difficult to understand the ESAs' approach to PAIs, which seems to contradict the Commission's broader simplification goals.

- Compared to e.g., UCITS, pension funds' investment allocation is not only much broader but also more complex, with more unlisted assets such as private equity, infrastructure, and real estate. It is more challenging for pension funds to obtain all relevant PAI data for their

[1] Surveys are used as a method to ascertain the collective sustainability preferences in some countries.

investments. In particular, no PAI from pension funds was included in the ESAs' analysis of 65 PAI statements, which mainly come from assets managers and asset management branches of banks and insurance companies. Hence, no conclusions on IORPs can be drawn from this report.

- We are concerned about the use of PAIs as product-related disclosures under the SFDR. Currently, PAI indicators offer limited value to pension fund participants since the data provided lacks context and is difficult to interpret. Therefore, we question the positive view in the third PAI report regarding the gradual improvement in the quality and quantity of PAI statements, as well as the ESAs' recommendation to the EU Commission (para. 90ff) "to consider the high value of the PAI disclosures".

- Additionally, we do not understand the NCAs' claim that SFDR disclosures are "useful and instructive for private investors" (para. 64) . The methodology and the report's content do not include enough evidence, such as consumer or beneficiary surveys, to support this conclusion. The evaluation combines "PAI-compliant" and "non-PAI" data, making it unclear which aspects—e.g., descriptions, indicator values in the PAI statement, or justifications for the non-PAI consideration—are helpful and instructive. Given these shortcomings, there is no compelling case for using PAIs in the PAIs report and introducing some PAI indicators for all financial products in the SFDR review. In addition, concerning IORPs, relevant decisions are taken collectively by the social partners or employer and employee representatives in the management bodies.

- Another critical issue is that FMPs rely heavily on external providers for PAI disclosures, and while smaller FMPs may have lower absolute costs, these costs are disproportionately high relative to their size. For example, an annual cost of EUR 100,000 would account for 10 basis points to a pension fund with 100 million AuM, while for a pension fund with 100 billion, this would only amount to 0.01 basis points. Imposing PAI reporting on pension funds by changing the threshold base to AuM would ultimately result in lower lifetime pensions for members and beneficiaries. EIOPA estimates that a 1%-point increase in costs could reduce lifetime pensions by up to 20%. These challenges highlight the need for a sub-sectoral RTS and ample flexibility for NCAs to effectively address the specific characteristics of IORPs in diverse national contexts.

- Despite our concerns, if PAIs are maintained in the revised framework, the list should focus only on the most relevant indicators. This list should also be restricted to specific asset classes, such as equities, excluding bonds or other types of investments. Additionally, the PAI framework should be aligned with the disclosure requirements under the CSRD and ESRS.

6. Shareholder engagement needs to be recognised

- In some Member States, pension funds play an active role as shareholders and have engagement and active voting policies. While we have seen that some pension funds divest from fossil fuels after unsuccessful engagement efforts, they continue to engage with companies on other issues. We believe that divestment and engagement are complementary strategies. If all socially responsible investors divest, only indifferent shareholders remain. However, for engagement to be impactful, the threat of divestment must be credible.

- The Opinion largely overlooks engagement as a tool for achieving sustainability objectives. This may be because engagement typically takes place at the entity level. For pension funds, the product and entity levels are essentially the same, mostly managed into a single pension scheme.

- If a product categorisation is introduced, we recommend that the European Commission includes engagement. This is particularly relevant for strategies that prioritise engagement over exclusions as a market practice, which is also recognised in the Net Zero Asset Owner Alliance. For example, in transition strategies aiming to reduce greenhouse gas emissions (e.g., a ''Carbon Journey Plan''), the number of engagements with asset managers and companies could serve as a valuable metric. Including engagement would also support carbon neutrality goals for Article 8 products or the proposed Transition Category.

- Nevertheless, if engagement is included in the SFDR framework, it must take into account that in some Member States, particularly for IORPs, engagement often occurs indirectly through Alternative Investment Funds and their contractual arrangements (see Articles 3g and 3h of the Shareholder Rights Directive II).

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes.
PensionsEurope has **25 member associations** in 18 EU Member States and 4 other European countries[2].

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people.** Through its Member Associations PensionsEurope represents **€ 7 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **14 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often "not-for-profit" and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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[2] EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.