

SFDR 2.0 Trilogues

Priorities for a workable SFDR 2.0 framework for private markets

Preserve the progress already achieved

Invest Europe welcomes the progress made by the co-legislators towards a **simpler and more proportionate** SFDR 2.0 regime. The proposed framework contains several positive elements, including:

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| <ol style="list-style-type: none"> 1. A coherent categorisation regime that recognises different approaches to sustainability 3. Stronger recognition of transition and impact investing 5. Removal of burdensome entity-level disclosures and standalone product-level website requirements 7. A 24-month implementation period, with Level 2 measures available sufficiently before application | <ol style="list-style-type: none"> 2. Recognition of the case for a professional-investor opt-out 4. UNGP/OECD Guidelines exclusion no longer referring to benchmark administrators 6. Simplification of the PAI regime 8. Grandfathering relief for certain closed-ended funds |
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Core issues for private markets

Aspects of the current Parliament and Council compromise texts do not sufficiently reflect how private equity, venture capital (PE/VC) and infrastructure managers operate: investing over multi-year cycles, holding illiquid assets and pursuing sustainability objectives through active ownership, board influence, operational improvement and the long-term transformation of portfolio companies. **The categories under SFDR 2.0 should remain sufficiently flexible to enable private capital products to qualify where this is desirable to help support their capital formation objectives.**

Notwithstanding the above, many private capital managers typically raise capital from professional investors (e.g., institutional investors) who have substantially different information requirements from retail investors, for whom the SFDR 2.0 framework's strict marketing and communication rules are designed. Professional investors undertake extensive due diligence, engage directly with fund managers and may impose their own bespoke sustainability requirements. As such, **SFDR 2.0 should also recognise**, e.g. in a recital, **that for professional investors, continued transparency and information flow is essential and should not be impeded** for funds using the opt-out, or for categorised funds communicating on sustainability strategy elements outside of the prescribed pre-contractual disclosure format. **Private capital managers should not be prevented from communicating transparently with their professional investors.**

Unless these differences are recognised, credible private market strategies may be artificially prevented from satisfying the proposed SFDR product categories and/or maintaining compliance throughout the fund lifecycle.

If the SFDR 2.0 categories create artificial barriers that prevent private capital managers from mobilising institutional capital and leveraging their expertise in active ownership and portfolio company engagement to drive change in the real economy, this would be a missed opportunity. It would also run counter to the objectives of the EU's Capital Markets Action Plan, which seeks to encourage long-term equity financing from institutional investors and improve SMEs' access to alternative sources of funding.

Invest Europe's five priorities for trilogues

The trilogues should preserve the improvements already introduced by the compromise texts while addressing these remaining barriers for PE/VC and infrastructure funds.

Where implementation details are left to Level 2, the Level 1 text should provide a clear mandate to reflect the realities of private markets-style long-term investment in illiquid assets.

TOP PRIORITY: MAKE THE SFDR CATEGORIES WORKABLE FOR PRIVATE MARKETS

RECOGNISE active ownership and long-term engagement as credible means of driving positive sustainability-related outcomes by introducing a **new category of eligible investments under Article 8**. This should cover instances where a financial market participant undertakes verifiable activities aimed at improving processes, performance or other sustainability-related outcomes. Similarly, it is vital that SFDR 2.0 **preserves sufficiently broad eligible investment routes**, including but not limited to the “other investments” provisions in Articles 7 and 8, so that PE/VC and infrastructure funds pursuing relevant strategies can qualify without conditions designed for the listed markets. For example, private market assets will typically not have third-party ESG ratings, benchmark membership, or at the time of investment, a published transition plan or science-based targets.

How? Include dedicated wording for private asset classes to clarify that investments should be eligible under Articles 7 and 8 where a manager uses its influence to implement asset-level sustainability integration or transition plans. This could be supported by introducing a new type of eligible investment, defined as follows: *“Investments in undertakings or economic activities for which the financial market participant uses its influence to undertake activities aimed at improving processes, performance or outcomes related to sustainability factors.”*

ENSURE credible brown-to-green private market transition strategies are not excluded from Article 7 by virtue of the mandatory fossil fuel exclusion. Brown-to-green private markets funds focusing on transforming private fossil fuel assets or supporting non-listed utility companies in their transition would struggle to qualify for Article 7 if, as proposed by the Council and Parliament, Taxonomy-aligned CapEx and a GHG emissions-reduction plan (and a coal phase-out plan) are required from day one of investment. Similarly, as currently drafted, the transition category focuses on actively managed transition strategies, and so thematic transition strategies which support the transition by allocating in assets which support the transition, e.g., renewables, may struggle to qualify.

How? The Level 1 text should explicitly clarify that managers have the ability to phase in compliance with the conditions applicable to the exclusion under Article 7(1)(c).

How? To facilitate thematic transition strategies, we suggest removing the wording *“including in light of the investment options referred to in points (a) to (g) of this subparagraph”* from Article 7(2)(h).

CHANGE the proposed name of Article 8 (‘ESG Basics’) which is potentially misleading as it fails to capture the ambition of products within its ambit.

How? We suggest addressing product category names at a later stage, potentially through implementing acts, and testing them with FMPs to ensure they are fit for purpose and reflect the underlying ambition and criteria.

Four further priorities address specific elements that in our view are needed to make the SFDR 2.0 framework work in practice for private-market funds.

1 – ENSURE A WORKABLE REGIME FOR PROFESSIONAL-INVESTOR-ONLY FUNDS

ALLOW managers to **provide fair, clear and non-misleading information about a fund’s sustainability approach to professional investors**, including in marketing materials and ongoing reports, where the fund opts out of the SFDR 2.0 categories, without being subject to the retail-investor style restrictions under Article 13(2) and (3), provided the fund’s opt-out is clearly disclosed.

PRESERVE the ability of funds to describe their impact-investing strategies to professional investors, including where they do not use a formal SFDR category or impact designation, provided communications are fair, clear and non-misleading.

ENSURE that **“sustainability-related claim” is defined narrowly** so that proportionate factual communication about sustainability integration, active ownership and engagement does not trigger the marketing and communication restrictions.

ENSURE the opt-out applies to funds made available to **all professional investors** (including elective professional investors). Currently, the Parliament and Council refer to professional investor as defined under Section I Annex II of MiFID II. We suggest referring to the definition of professional investor under Annex II of MiFID II. This is consistent with the definition of professional investor used under PRIIPs Regulation and AIFMD.

ENSURE that **indirect exposure** to non-professional/retail investors through pension funds, insurers, funds-of-funds, carried-interest vehicles or employee co-investment arrangements **does not automatically disqualify** a fund from using the opt-out.

It is vital that any opt-out provides a genuine alternative for professional-investor-only funds, rather than a theoretical exemption that remains subject to restrictions which prevent managers from communicating sustainability-related information meaningfully to professional investors. Managers will in any case be bound to communicate with investors in a way that is fair, clear and not misleading.

2 – MAKE THRESHOLDS AND ONGOING COMPLIANCE WORKABLE FOR ILLIQUID FUNDS

RECOGNISE that closed-ended funds investing in illiquid assets may not be able to dispose of assets at short notice without prejudicing the economic interests of their investors. **Requirements applicable throughout the life of such a fund**, such as the requirement to meet the minimum investment alignment thresholds or the exclusions, **should be subject to a commercially reasonable efforts standard**. As a result, any temporary or passive deviations should not be treated as a breach where a manager has taken all reasonable steps to comply. This would also protect investors against value erosion, as premature disposals of assets that require longer investment horizons may crystallise losses or forgo value that could otherwise be realised over time.

ALLOW managers to calculate the 70% minimum investment alignment threshold under Articles 7(1)(a), 8(1)(a) and 9(1)(a) using an **appropriate, consistently applied and clearly disclosed methodology**, including a capital-deployed methodology. For PE/VC funds, capital deployed can provide a more stable and representative measure of investment alignment than NAV or GAV, which fluctuate with asset valuations.

EXCLUDE divestment periods from needing to comply with the 70% threshold to avoid artificial ordering of disposals at inappropriate intervals, which could be prejudicial to end investors' financial interests.

KEEP phase-in periods that reflect the period necessary for private market funds to implement investment strategies but do not impose a rigid three-year maximum as suggested by the Council, as this is inconsistent with the investment cycles of such funds.

ENSURE Level 2 rules are proportionate and calibrated to private-market and other illiquid strategies, including funds-of-funds that rely on data and categorisation decisions made at underlying-fund level. In particular, funds-of-funds should be allowed to certify compliance with the relevant exclusions on a reasonable knowledge basis, reflecting the information available to them and their limited control over underlying funds.

3 – PRESERVE A BROAD AND MARKET-RELEVANT CONCEPT OF IMPACT INVESTING

REMOVE the following **wording in Recital 20** “underserved by market or public interventions” because it unduly restricts impact investment strategies beyond market-recognised definitions.

ALIGN the recital with the Article 2(26) definition and **recognise the diversity of private-market impact strategies** that intentionally pursue measurable environmental or social outcomes alongside financial returns.

4 – KEEP REPORTING RELEVANT AND PROPORTIONATE

MAINTAIN the removal of mandatory entity-level PAI reporting and **AVOID reintroducing inflexible product-level PAI requirements**. Any product-level indicators should only need to be reported where the manager considers them to be relevant to the sustainability goals of a product. Managers should be able to apply their discretion to report relevant sustainability-related data in a **proportionate and workable** manner.

REMOVE the proposed entity-level disclosure of the proportion of AUM and funds in each SFDR category, which provides limited insight into investors' individual fund exposures. Investors in funds do not invest in fund managers and these aggregate disclosures are therefore of limited value.

ENSURE consistency in voluntary PAI disclosures. Articles 8 and 9 expressly allow products to (voluntarily) disclose additional PAI indicators relevant to their objectives, while Article 7 contains no equivalent provision. If the Parliament's approach is retained, the same flexibility should be added to Article 7 to avoid unintentionally restricting Transition products' ability to report additional indicators that may be particularly relevant to their transition strategies.

AVOID overly prescriptive Level 1 requirements, e.g., potentially duplicative assessments of recognised transition plans, targets or methodologies.