Invest Europe position on SFDR 2

February 2026

Executive Summary

The European Commission's proposal to revise Regulation (EU) 2019/2088 on sustainability-related disclosures (SFDR 2):

- Does not fully recognise that professional investors are capable, willing, and actively demanding when it comes to prioritising sustainability in their investments, including requirements for their fund managers and portfolio companies;
- Includes several improvements that clarify legal uncertainties and help minimise administrative burdens and compliance costs; and
- Contains specific areas where the diversity of the alternative investment industry is not adequately reflected, leaving scope for further improvement.

Invest Europe welcomes the European Commission's SFDR 2 proposal, recognising it as both timely and essential. The proposal responds to long-standing concerns over the complexity of the current disclosure framework, seeks to reduce **unnecessary administrative burdens** for financial market participants, and aligns with the EU's broader efforts to **simplify regulatory requirements**. It also represents a step towards a more intelligible and coherent categorisation of sustainable finance products.

We appreciate the Commission's recognition of the practical challenges encountered during the implementation of the existing regime and its commitment to improving clarity and legal certainty for both fund managers and investors. In parallel, we support the Platform on Sustainable Finance's recommendation, as presented in its December 2024 Report, that the future product categorisation regime under SFDR 2 should, given its broad scope covering the full spectrum of financial market participants, be specifically designed to **address the distinct characteristics and needs of different types of participants**, including alternative investment fund managers raising private equity and venture capital (PE/VC) funds. Nevertheless, in its current form, we believe the Commission's proposal falls short of this objective.

SFDR 2 must be designed to support the real economy, not solely listed assets. It should be **sufficiently tailored to accommodate private market investments**, recognising the pivotal role that PE/VC managers can play in advancing the EU's sustainable finance ambitions by mobilising significant pools of institutional capital. Private capital is essential for EU competitiveness, the green and digital transitions, and the financing of strategic technologies. Overly rigid rules risk diverting capital away from EU priorities.

This paper sets out Invest Europe's overall assessment of the proposal, highlighting its **key strengths and persistent challenges**. It also offers **targeted recommendations** to mitigate these concerns and improve the effectiveness of the revised framework, ensuring it remains **flexible and adaptable to the diversity of asset classes and business models**.

Invest Europe is the pan-European association representing the private equity, venture capital and infrastructure industry, including both fund managers and investors. Our members provide businesses with a crucial stream of equity funding — especially in the start-up and scale-up phases — while offering investment opportunities to institutional and sophisticated investors. They play a key role in delivering financing to businesses that can help drive the EU transition towards a more sustainable and digital economy, in sectors as varied as defence, energy, life sciences, biotechnology and deep tech.

Key positives

Invest Europe considers that the proposal contains a number of positives for the PE/VC industry:

1 - **Grandfathering relief for closed funds**: We support the inclusion of grandfathering for closed-ended funds which are created and distributed before the application of SFDR 2 (Article 17(1)).

2 - **Recognition of transition investing:** We welcome the breadth of the transition and sustainable categories. In particular, we support the formal recognition of transition investing in Article 7 – a marked improvement on the current SFDR regime which fails to adequately cater for funds pursuing such strategies.

3 - **Streamlined PAI regime:** We welcome the changes to the PAI regime, including the abolition of firm-level PAI reporting, as well as the flexibility granted to managers in defining the most relevant PAIs at product level for sustainable and transition investments. Given the nature of private asset classes, many managers struggled to obtain the data necessary to report against the PAI indicators reliably and at reasonable cost. The utility of aggregate firm-level PAI reporting was also questionable as investors allocate to particular funds/products and not a manager. In that regard, we request the disapplication of the SFDR 1 rules (Article 4) as of the entry into force of SFDR 2, in order to reduce the significant administrative burden on private fund managers.

4 - **Abolition of product-level website disclosures:** Since these disclosures currently duplicate much of the content of an Article 8/9 product's pre-contractual disclosures, we welcome the proposed removal.

5 - **Transitional period:** We support the 18-month period between the entry into force and application date – noting that (i) given the scale of the proposed changes, managers currently structuring and setting up closed-ended investment funds need sufficient time to adapt such products to the new regime in the best interest of their investors, (ii) a timely adoption of Level 2 measures complementing SFDR 2 is essential, and (iii) additional time should be granted to funds-of-funds since they depend on their target funds' prior implementation of SFDR 2.

6 - **Investment advice:** We welcome the removal of investment advice from the scope of SFDR.

Key points for improvement

For many years, the PE/VC industry has relied on established disclosure practices and standards designed not only to meet regulatory and legal requirements but also to reflect market expectations, including investor needs. These standards demonstrate the industry's commitment to **advancing and enhancing good sustainability practices**. Irrespective of regulatory developments, the industry – including both fund managers and investors – will continue to set and adhere to such standards. While this guidance promotes greater harmonisation and consistency in disclosures, it is ultimately intended to **drive outcomes, tangible results, and real-world impact** – rather than imposing rigid disclosure constraints that do not enhance transparency. The same principle should underpin SFDR 2.

Professional and sophisticated investors do **not require retail-level protections**, and overly restrictive requirements risk constraining the deployment of EU institutional capital. These investors run tenders, conduct due diligence, and often impose their own sustainability requirements.

In this spirit, **Invest Europe's primary ask is the introduction of an exemption for alternative investment funds offered exclusively to professional investors, combined with an "opt-in on demand" mechanism under SFDR 2.** Such a regime would grant professional-investor-only funds greater flexibility to disclose their sustainability approach accurately and comprehensively, whilst ensuring appropriate investor protection.

Even under such an exemption framework, a **more calibrated approach** and **proportionality** remain essential to ensure that the rules operate effectively in practice, as some professional-investor-only funds may choose to opt in or otherwise fall within scope. Ensuring **flexibility** for professional clients is therefore necessary under both scenarios.

Invest Europe's secondary concern is that, in several key respects, the proposal is **insufficiently flexible** and may prove **unworkable for the diverse range of private fund managers operating in Europe**.

PE/VC managers typically operate closed-ended funds that invest across a broad spectrum of illiquid assets, including both direct and indirect investments (such as funds-of-funds and secondary fund interests), and investments contributing to the energy transition. They work closely with portfolio company management teams and deploy strategies based on credible, active engagement to drive sustainability progress.

Against this background, several elements of the current drafting of SFDR 2 **risk generating unintended – and undesirable – consequences** that run counter to the regulation's objectives. For example:

- By limiting the ability of non-categorised funds to communicate meaningfully about their sustainability practices, the proposal risks **creating perverse incentives**. Restricting managers' ability to legitimately describe, and take credit for, sustainability-related strategies that do not meet the (appropriately) high minimum standards under Articles 7, 8 and 9 may **inadvertently lead to increased "green hushing[1]", rather than improved transparency**, or **discourage managers** from pursuing sustainability initiatives altogether.

  Indeed, in practice, this could discourage or even halt sustainability-related activities where product categorisation is not achievable. For example, a manager that actively engages all of its majority-owned portfolio companies on decarbonisation, but whose fund comprises only 50% majority-owned investments, would be unable to qualify under Articles 7, 8 or 9. However, it would still deliver meaningful sustainability outcomes and should be able to disclose information on this. Preventing such a manager from explaining its engagement strategy to professional investors would materially reduce the incentive to undertake these activities in the first place.

- At the same time, the combination of rigid exclusions and inflexible portfolio composition thresholds threatens to **restrict emerging transition finance strategies**, particularly those involving illiquid assets or minority influence models that are essential to decarbonising hard-to-abate sectors. It also **disadvantages EU-based funds and funds-of-funds** investing globally in illiquid assets **in their competition** with funds from other regions.

- Overly strict quantitative and impractical requirements risk **distorting market behaviour**, for example by incentivising artificial sequencing of investments or disposals to maintain compliance, rather than supporting sound investment decision-making aligned with long-term sustainability outcomes.

> Considering the above, SFDR 2 should provide:
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> 1 - **Product categories and accompanying criteria that are suitable for private funds**; and
> 2 - **A more calibrated approach for professional and sophisticated investors** who expect an **open dialogue** about how fund managers will apply ESG policies.

In particular, the proposed restrictions set out in Articles 6a and 13 may **undermine – and potentially disrupt – well-established reporting and accountability practices** between PE/VC

[1] Where managers avoid sharing information about their sustainability-related efforts to prevent regulatory breaches.

funds and their investors, especially where professional investors expect detailed and transparent communication regarding sustainability approaches. In line with established market practice, such investors should continue to be able to receive comprehensive sustainability-related information on fund portfolios, including where a fund cannot, in practice, adopt an SFDR product category or fully comply with all associated requirements.

Therefore, we consider that the Commission's SFDR 2 proposal should be further amended to:

1 - **Remove marketing restrictions for and allow proportionate communication to professional investors:** Enable fund managers to fully describe and communicate sustainability-related information to professional and sophisticated investors in a proportionate manner, ensuring that such communications remain clear, fair and not misleading, and without imposing unnecessary restrictions designed for retail investors. Professional investors typically launch their own requests for proposal, conduct detailed due diligence, have access to external legal/expert advice, and engage in detailed discussions and/or negotiations with fund sponsors to understand the sustainability-related characteristics of a given fund.

2 - **Include a wider range of eligible investments in Article 8, including engagement and impact strategies:** Amend Article 8 to explicitly acknowledge and accommodate engagement-based strategies commonly employed by PE/VC managers, reflecting the important role of active ownership in achieving sustainability outcomes, and open Article 8 to "with impact" strategies according to Article 2(26) (which are currently limited to Articles 7 and 9). In addition, the term "ESG Basics" should be revised as it risks understating the sustainability-related commitments that a fund must meet in order to qualify as an Article 8 product.

3 - **Provide flexible calculation methodologies for the 70% threshold:** Introduce flexibility in the calculation of the 70% minimum investment alignment threshold to reflect the long-term investment horizons and unique characteristics of PE/VC funds, including the ability to use various calculation bases (such as NAV or capital deployed) and to focus on the investment phase rather than divestment periods.

4 - **Offer flexibility to fix breaches that are outside of control:** Introduce an appropriate degree of flexibility in the minimum investment alignment and exclusion criteria reflecting the nature of illiquid investments by ensuring that PE/VC managers are not considered in breach of the requirements where non-compliance arises from circumstances beyond their control, despite having taken all reasonable steps to meet the relevant criteria.

5 - **Allow best-efforts application of exclusions for illiquid assets:** Allow PE/VC fund managers to apply exclusion policies on a best-efforts basis, recognising the practical and structural challenges associated with applying the criteria, while ensuring transparent disclosure of how compliance is assessed and breaches are addressed.

6 - **Provide tailored treatment for funds-of-funds:** Recognise the unique structure and investment processes of funds-of-funds within the regulatory framework by introducing

specific provisions that accommodate the layered nature of these vehicles and avoid significantly restricting their investible universe (e.g., through a longer transitional period).

7 - **Protect confidential professional investor information:** Ensure that any disclosure requirements do not compromise the confidentiality of information provided to or by professional investors, preserving the integrity of sensitive commercial data.

8 - **Disapply firm-level PAI reporting on an accelerated basis:** Allow the provision in SFDR 2 that disapplies firm-level PAI reporting (i.e. the deletion of Article 4 of SFDR 1) to apply from the date of entry into force of SFDR 2. We would also support disapplying Article 4 of SFDR 1 at an earlier date, where legally feasible. Given that firm-level PAI reporting is removed under SFDR 2, its earlier disapplication would prevent unnecessary interim compliance burdens and avoid requiring firms to maintain reporting systems that are due to be phased out.

Each recommendation is explained in greater detail in the following section, with specific amendment proposals presented afterwards.

In more detail

This section provides an in-depth analysis of each challenge from a PE/VC perspective, highlighting the distinctive characteristics of the PE/VC business model, including the fundraising, investment and divestment process.

1 - Restrictions on sustainability-related communications for non-categorised products

The restrictions currently set out in Articles 6a, 7, 8, 9, 9a and 13 should not apply to marketing communications directed at professional investors, provided that such communications are clear, fair and not misleading. Professional investors are typically sophisticated institutional investors that commit significant capital following extensive due diligence and direct negotiations with fund sponsors.

While we recognise the rationale, and need, for certain restrictions in the context of less sophisticated (i.e., retail) investors, they are unnecessary where marketing communications are addressed to professional investors. These communications typically consist of detailed materials and interactions, including PowerPoint presentations, DDQ and/or RFP responses, due diligence meetings, and access to relevant policies and procedures. Provided such communications are fair, clear and not misleading, managers should be able to fully describe their sustainability approach and respond to investor questions without undue restriction.

Background:

As drafted, SFDR 2 risks unduly restricting the ability of financial market participants whose products do not fall within an SFDR product category to communicate sustainability-related information to professional investors. In particular, **Articles 6a and 13 may operate together to significantly limit—or effectively prohibit—accurate, balanced and non-misleading disclosures about sustainability practices, even where such information is relevant to investor decision-making and does not amount to greenwashing**.

Under Article 6a, financial market participants which have not adopted a product category may include information on whether and how that financial product considers sustainability factors in pre-contractual disclosures *only where* such information is not a "central element[2]" of the disclosure, is excluded from the UCITS KIID or PRIIPs KID, and does not constitute a sustainability-related "claim" that would trigger product categorisation. Article 13(3) further prohibits the use of sustainability-related claims in the name and marketing communications

[2] According to the SFDR 2 proposal, information is not considered a central element where it is secondary to the presentation of the product characteristics in breadth and positioning in the document, is neutral, and limited to less than 10% of the space occupied by the presentation of the fund's investment strategy.

of Article 6a products. In light of Article 14(3), it is expected that the ESMA Fund Names Guidelines will be replaced by the new naming rules under Article 13(2) and (3).

Taken together, these provisions raise a number of **material interpretive and practical concerns**.

First, the distinction between Article 6a and Article 8 is not clear. Given the range of sustainability strategies covered by Article 8, competent authorities may interpret the framework in a way that effectively prevents funds from making any statements relating to sustainability characteristics – other than statements purely in relation to sustainability risks – without complying with Article 8.

Second, the scope of the restriction on sustainability-related communications is uncertain. Read together with Article 13(3), Article 6a appears to limit financial market participants from including sustainability-related information in any marketing materials[3] other than the pre-contractual disclosure. In addition, the meaning in Article 6a of "information on whether and how those financial products consider sustainability factors" is unclear and needs to be clarified to ensure market participants understand clearly its use and application. Moreover, competent authorities may take divergent views on whether this includes, for example, information on how a fund reports, but does not necessarily consider, sustainability information, or information relating to a sponsor's firm-level approach to considering sustainability factors.

Third, it is unclear whether the restriction on including sustainability-related claims in the name and marketing communications in Article 13(3) applies only to information that amounts to a type of claim covered by new Articles 7, 8 and 9, or more broadly to any reference to sustainability in their materials.[4] If interpreted expansively, this would prevent financial market participants from using the term "sustainability" in any context, even where no product categorisation is claimed.

Fourth, the proposal lacks clarity as to where sustainability-related information permitted under Article 6a may be included within pre-contractual documentation. The reference to pre-contractual disclosures is understood to mean the prescribed disclosures under Article 23 of

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3 We assume that "marketing communications" is defined in line with the respective sectoral guidance, e.g. ESMA's Guidelines on marketing communications under the CBDD.

4 Note that the Commission impact report sets out the following (Option 3.1 is the draft legislation proposed): "Option 3.1 would create a categorisation system that could potentially scope-in a large majority of ESG financial products (due to the third category). Due to this large scope, the categories would play an important role in limiting which products are allowed to make ESG claims in their marketing documentation and in their names. For example, only categorised products could be allowed to use ESG related terms in their names and add ESG elements in their marketing documentation." The Commission Q&A again has the broader coverage here: "In addition, only products complying with the criteria of the categories will be able to make ESG claims in their names or in their marketing documents."

AIFMD. In practice, within a fund's private placement memorandum (PPM), the Article 23 AIFMD disclosure on investment strategy is generally a short paragraph or few sentences or signposts the section of the PPM that describes the fund's investment strategy. The resulting requirement to limit such information to 10% of that section is not proportionate and would be difficult to apply in practice in a number of different contexts. For instance, the PPM can be amended and/or supplemented multiple times during a fundraise, creating an unnecessary administrative burden and cost to monitor such a restriction to the extent relevant language is changed or updated.

In combination, the restrictions in Articles 6a, 7, 8, 9, 9a and 13(3) risk preventing financial market participants that do not adopt a product category from accurately describing legitimate sustainability-related aspects of their strategies. This includes, for example, managers (i) describing a responsible investment policy that applies to all investments across all their funds and strategies; or (ii) adopting some elements of the product criteria – such as a manager who wants to describe transition investments as part of a fund's investment strategy, and report on their progress to show performance, yet may not wish to adopt Article 7, because it only intends that transition investments form part of the target investments. **It must remain permissible for private fund sponsors to describe their sustainability-related activities and responsible investment approach under their group-wide policies in a truthful and balanced manner, including where they refer to specific sustainability categories under SFDR 2.**

In parallel, it is essential that private fund sponsors are able to communicate their approach to sustainability – using that term – in a range of marketing and reporting documents, including marketing materials provided prior to the pre-contractual disclosure, and to submit voluntary sustainability reports, setting out the fund's sustainability performance and engagement, in response to investor demand (in addition to the periodic report under SFDR). To meet prospectus liability standards, private fund sponsors must be able to provide a true and accurate description of relevant sustainability-related activities and must not omit information that may be relevant to professional investors.

Allowing financial market participants to communicate freely with professional investors about sustainability would enable fund managers to provide a range of bespoke sustainability-related information in their marketing communications, tailored to investor needs and often scrutinised with the support of professional advisors. This is particularly important where an investment strategy does not qualify for one of SFDR 2's product categories (e.g., because it is innovative) or where it qualifies for one category – for example new Article 8 – but not the others. Absent such flexibility, private capital managers' ability to report on investment approaches and strategies for all private asset classes that can support the EU's sustainable finance objectives in circumstances where meeting the strict criteria underpinning the new product categories is not possible, would be severely curtailed. This would cause a practical challenge for such strategies as sponsors would not be able to include sustainability-related information in their marketing communications without meeting the underlying product categorisation criteria.

Rather than limiting the amount of sustainability information that may be provided to investors, SFDR 2 should instead require financial products that do not fall within a product category to clearly and prominently disclaim the use of SFDR product categories in communications with investors. This would enhance transparency while preserving flexibility and avoiding greenwashing. For example, such a disclaimer could state:

> "Warning notice: Although this product may provide information on its approach to sustainability, it does not qualify as sustainability-related financial product under the EU Sustainable Finance Disclosure Regulation (SFDR). It does not meet the requirements set out in Articles 7, 8, 9 and 9a for a [transition], [ESG basics], [sustainable] or [combined] financial product."

This approach could draw on the experience of the UK Financial Conduct Authority's Sustainability Disclosure Requirements regime, which applies only the anti-greenwashing rule to managers of products marketed exclusively to professional investors, rather than the more prescriptive requirements applicable to retail-facing products. Under the regime, managers of financial products offered to retail investors using one of a list of prescribed ESG terms in the product's name or in a financial promotion (other than in a purely factual context) must either use a sustainability label (and adhere to the relevant criteria) or state that the product is not using a label, using prescribed text, why it is not using a label, and produce corresponding disclosures (with the manager restricted from using the terms "sustainable", "sustainability" or "impact" in its name to refer to the product's sustainability characteristics).[5]

2 - A wider range of eligible investments – Recognising engagement and opening Article 8 to impact investing

The Article 8 ("ESG Basics") product category should recognise the role that PE/VC managers play in advancing sustainability through active engagement with underlying investments. As drafted, this category fails to reflect the fact that many PE/VC funds investing in illiquid unlisted assets focus on the ability of the manager to effect positive progress through active engagement-type strategies. It is vital that such strategies are accommodated and that Article 8 products are eligible to qualify as "with impact" products under Article 2(26).

[5] ESG 4.3.2 to 4.3.5.

On a related note, the name "ESG Basics" can be misleading as it does not reflect the level of sustainability-related ambition necessary for a fund to qualify as an Article 8 fund. We also believe that the term "ESG" is politically unpalatable to certain investors.

Background:

As drafted, the types of investments listed in Article 8(2)(a) – (e) are too narrow and would curtail the ability of private capital managers from being able to categorise their funds as "ESG Basics" funds. This is because the listed approaches do not reflect what are commonly accepted sustainability strategies in private markets.

"Private capital" encompasses a range of strategies (venture capital, growth equity, buyout, private equity, secondaries, credit, special situations etc.), which, in turn, employ varying sustainability strategies (ESG integration, active engagement, thematic investing, negative screening, scoring, best-in-class screening, norms-based screening, impact investing etc.). The "best in class" approaches currently set out in Article 8(2) are designed for listed assets, but do not take into account that many private capital funds focus on carrying out activities that are aimed at improving sustainability aspects at the investee company or asset, including through engagement-type strategies. Article 7 captures engagement strategies for funds that predominantly invest in transition investments, and Article 8 should capture sustainability-related engagement strategies for funds that invest in the broader category of assets under Article 7. It is vital that such strategies are recognised by the new "ESG Basics" category.

In addition, PE/VC funds make up a significant part of the global impact investing industry, including strategies that would fall within the scope of the "ESG Basics" (Article 8) product category. While we recognise that products "with impact" under Article 2(26) are not designed to capture the entire industry, it would make sense to permit "ESG Basics" products to qualify as "with impact" products under the same requirements as "Sustainable" and "Transition" products.

Finally, the name "ESG Basics" is not a suitable label for private funds because the term "ESG" is increasingly disapplied on a global basis and may well conflict with approaches adopted by investors in certain jurisdictions, which go so far as to block any investment in products which use this term, thus limiting the competitiveness of European private funds. Moreover, the term "basics" is not helpful from a marketing perspective, as it does not reflect the high ambitions of many products in this category.

3 - Timing and method of calculating the 70% threshold

SFDR 2 should incorporate flexibility in the calculation of the minimum investment alignment threshold to reflect the long investment horizons typical of private market funds, including extended ramp-up and divestment periods. While we welcome the proposal's recognition of "phase-in" periods, further clarity is needed regarding their length and scope. In practice, private capital funds commonly require up to five years to become fully invested.

We would also welcome recognition that the 70% requirement should not apply during a private fund's divestment period. Private funds typically exit investments over several years, and it would be impractical—and potentially harmful to investors—to require disposals to occur in a particular (artificial) order solely to maintain compliance with the threshold. For this reason, private fund managers should be permitted to assess alignment based on the cost of investments made over the life of the fund, with the threshold calculated only once the investment phase has concluded and without regard to subsequent disposals.

In addition, it is vital that the SFDR 2 regime grants private capital managers the flexibility to measure the 70% minimum investment alignment commitment by reference to a variety of measures (e.g., not just NAV but also potentially capital deployed), provided that managers are consistent with their approach and the methodologies are clearly disclosed to investors.

Background:

We support the current drafting of SFDR 2, which appropriately recognises some of the specific characteristics of private funds and the need for a "phase-in" period (see Recital 14 and Articles 7.3(c)(iii), 8.3(c)(iii) and 9.3(c)(iii)). This represents a welcome improvement on the SFDR 1 regime and reflects the fact that private funds typically deploy capital over several years. In this context, it is essential that the Level 2 specifications governing the calculation of the 70% thresholds under Articles 7(1)(a), 8(1)(a) and 9(1)(a) are calibrated to the realities of private equity, venture capital and other funds investing in illiquid assets.

As drafted, the proposal does **not yet fully accommodate core features of private funds**, particularly those investing in illiquid assets such as equity interests (shares) in private companies. In private equity and venture capital strategies, investments cannot be sold at short notice, and each investment might constitute a significant proportion of the overall fund. Acquisitions and disposals often take many months or years, and assets are typically exited during the divestment phase of the fund's life as market conditions permit. Any requirement to dispose of investments solely to avoid breaching a minimum alignment threshold would therefore risk serious detriment to investors and would create a conflict with duties to take into account best interests of all investors and make decisions that achieve the best possible financial outcomes for investors.

While we welcome the recognition of phase-in periods, **further clarity is needed regarding their length and scope**. In practice, private capital funds often require up to five years to become fully invested, and aligning any phase-in period solely with the formal investment period would not capture all capital ultimately deployed. Capital deployment frequently continues beyond the end of the investment period in respect of investments made earlier—for example in capex-intensive real assets strategies, bolt-on acquisition strategies, or delayed drawdown facilities in credit funds. Evergreen funds that are open-ended and continuously raise capital for investment in illiquid assets will need a temporary relief from the 70% threshold following capital inflows or outflows, consistent with the Commission's guidance on ELTIFs.[6]

In addition, the 70% portfolio composition requirement should not apply during a private fund's divestment period. As alluded to above, requiring disposals to occur in an artificial sequence to maintain threshold compliance would be impractical and harmful to investors. For this reason, **alignment should be assessed based on the cost of investments made over the life of the fund, calculated only after all investments have been made (i.e., after the phase-in period) and without regard to subsequent disposals**.

Finally, SFDR 2 should provide private capital managers with **flexibility in how the 70% alignment commitment is measured. Managers should be permitted to use methodologies other than NAV**—such as capital deployed—provided that the chosen approach is applied consistently and clearly disclosed to investors.

For example, a fund that invests in ten assets of equal value, eight of which meet the alignment criteria, would achieve 80% alignment. If the two non-aligned investments subsequently outperform and increase disproportionately in value, a NAV-based calculation could cause the fund to fall below the 70% threshold despite no change in investment intent. If this were to trigger a requirement to sell one of the non-aligned investments – which would, in any case, usually take months – it could result in significant financial harm to the fund's investors if market conditions are unfavourable at the time of sale. By contrast, a capital-deployed methodology, clearly set out in pre-contractual disclosures, would provide greater stability and better reflect the fund's long-term investment strategy, notwithstanding changes in valuation during the fund's life. For evergreen funds that continuously raise capital, a NAV-based approach—subject to appropriate flexibility to address passive breaches—may be more appropriate.

6 See ESMA_QA_2471, available here

4 - Flexibility to fix breaches that are outside of control

SFDR 2 should provide an appropriate degree of flexibility in the application of minimum investment alignment and exclusion criteria to reflect the illiquid nature of private market investments. In particular, private capital managers should not be considered in breach of the requirements where non-compliance arises from circumstances beyond their control, despite having taken all reasonable steps to meet the relevant criteria.

For example, a PE/VC fund may conduct screening against minimum exclusion or eligibility criteria at the time of investment but subsequently fall out of alignment during the holding period due to factors outside the manager's control, such as strategic decisions taken by the management of a portfolio company in which the fund holds a minority stake. Treating such "passive" breaches as regulatory failures would risk perverse outcomes, including forced disposals or fire sales that may be unfeasible or contrary to investors' best interests.

Background:

A failure to meet the 70% minimum investment alignment threshold or applicable exclusion criteria should not automatically result in a product being deemed non-compliant. A breach should arise only where an alternative investment manager has failed to take all reasonable steps to achieve the minimum alignment or, where relevant, to bring the investment into compliance with the applicable exclusions. This reflects the reality that investments may meet eligibility requirements for a product category at the time of acquisition but subsequently fall outside the relevant criteria during the holding period for reasons beyond the manager's control, such as changes in the strategy of a portfolio company in which a private equity fund holds a minority stake.

Such "passive" deviations should not be treated as breaches, given the typically illiquid nature of private fund assets, which makes short-term rebalancing through acquisitions or disposals unfeasible or impracticable. The same approach should apply to temporary deviations resulting from NAV fluctuations, which private funds are similarly unable to address in the short term without risking investor detriment (for example, by disposing of assets at an undervalue).

For the same reasons, breaches of exclusion criteria arising during the holding period and outside the manager's control should not automatically disqualify a product from its category, unless the manager has failed to take all reasonable steps, within its powers, to remedy the breach.

5 - Meeting the criteria for mandatory exclusions

Private fund strategies, particularly in private equity and venture capital, may face structural constraints in applying the proposed exclusion criteria, due to limited ESG data and differing levels of influence over investee companies. Exclusions should therefore be applied on a best-efforts basis, with financial market participants disclosing how they assess compliance and address breaches—where divestment may not be feasible—based on available information, materiality, and their actual powers of influence.

Certain proposed exclusions also sit uneasily with private market practices. Defining violations of UNGC Principles or OECD Guidelines by reference to the Benchmarks Regulation risks misapplication and does not reflect ESMA's clarified legislative intent, making such cross-references unsuitable for Level 1 legislation. Similarly, extending the 1% coal and lignite revenue exclusion to Transition and ESG Basics funds would constrain investment in transition infrastructure and goes beyond the scope of the ESMA Fund Names Guidelines.

Background:

While we appreciate that mandatory exclusions for each category help to streamline the requirements for sustainability-related financial products, some of these exclusions and how they are applied raise significant concerns for private funds.

- **Applying the exclusions on a best-efforts basis**

Due to the lack of readily available ESG data and, in many cases, a lesser degree of sophistication of investee companies, there are a range of approaches applied by PE/VC fund managers as to (i) how the manager will define whether exclusion criteria are met; and (ii) the actions a manager will take to address a breach of these criteria during the ownership period, depending on the strategy and its influence. In particular, in the event of a breach, it may not be possible or in the interests of investors to divest the company. To reflect these diverging approaches and abilities in private fund strategies, we propose that **exclusions should be observed on a best-efforts basis, requiring the financial market participant to disclose how it will use its best efforts to make the relevant assessment and address any breach, depending on its awareness and its available powers, and by reference to the materiality of the violation**. This should be based on the information available to the manager and the type of asset class (for example, managers have very little control for credit strategies).

- **Exclusion for companies that violate UNGC Principles or OECD Guidelines**

The definition of the exclusion for companies that violate UNGC Principles or OECD Guidelines for Multinational Enterprises in Commission Delegated Regulation (EU) 2020/1818 does not fit to the approaches used by private fund managers. First, the application of the exclusion by means of referring to the Benchmarks Regulation may require a benchmark administrator to determine the violation by the relevant company of UNGC Principles or OECD Guidelines. This does not appear to be the legislative intent, following the ESMA Q&A of December 2025.[7] While the ESMA Fund Names Guidelines may have, as administrative guidelines, referred as much as possible to existing legislation, it is preferable not to include such a potentially misleading reference in a Level 1 legislative text.

- **Exclusion for companies that derive 1% or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal or lignite**

Several PE/VC fund managers actively invest in transition infrastructure projects, such as "brown to green" energy generation. It will be challenging for these firms to adopt any of the categories, including the transition category, if they are unable to invest in companies which derive more than 1% of their revenue from exploration, mining, extraction, distribution or refining of hard coal and lignite.

We also note that applying the coal and lignite exclusion to Article 7 (Transition) and Article 8 (ESG Basics) funds goes beyond the ESMA Fund Names Guidelines, which apply this exclusion to funds using environmental, impact or sustainability-related terms, but not funds using transition, social and governance-related terms.

6 - Suitability of criteria within the categories for funds-of-funds and similar products (for example, multi-option products)

Private funds-of-funds invest indirectly through underlying funds, which creates two key challenges for product categorisation: limited control over the application of exclusion criteria at portfolio level, and difficulty for blind pool structures to determine at the outset whether a sufficient share of investments will qualify under Articles 7, 8 or 9—even where this may ultimately be the case in aggregate.

Moreover, the current transitional period is likely to be inadequate for funds-of-funds which rely on reporting from underlying funds to ascertain whether they will definitively be able to qualify for one of SFDR 2's new product categories.

7 It is clear from the ESMA December 2025 Q&A, in the context of the Fund Names Guidelines, that the exclusion referred to in Article 12(1)(c) of the Benchmarks Regulation should be considered to be applied by the fund manager itself, not by a benchmark administrator.

Background:

Private fund-of-fund investors make indirect investments in a range of asset classes, through acquiring fund interests, as primary investor or on the secondary market. These investors may well wish to adopt a product category, but face two main challenges: (i) applying the exclusion criteria under Articles 7, 8 and 9 is difficult, because funds-of-funds have limited control over the investments acquired by the underlying funds; and (ii) under Article 9a, a blind pool fund will struggle to determine at the beginning of its investment period how many target funds will qualify under the required categories. The only option then would be not to categorise under any label, even if in the aggregate 70% of all investments will either be Article 7, 8 or 9 funds.

In addition, if the effect of Article 9a is to restrict any fund-of-funds which does not meet the 70% from making sustainability-related claims (in a similar way to funds making "claims" under Articles 7, 8 and 9), Article 9a will severely restrict the types of sustainability claims that funds-of-funds can make. Similar concerns arise for similar products, such as certain insurance products.

7 - Protecting confidential professional investor information

For private fund sponsors, a requirement to upload all SFDR information which is provided confidentially to professional investors raises concerns over confidentiality and is not helpful or relevant for professional-investor-only funds where public comparability of strategy and terms is not the norm and is not needed to protect investors. Public disclosure would discourage professional-investor-only funds from creating categorised funds.

Background:

The SFDR 2 proposal requires managers to publish and maintain on their websites the pre-contractual disclosures and periodic reports.[8] In addition, Article 18a requires firms, when "making public any information referred to in Articles 3 and 10 of this Regulation", to submit that information to the ESAP (to be established). This obligation covers all SFDR information published under Articles 3 (Transparency of sustainability risk policies) and 10 (Transparency of information published under Articles 8 and 9 on websites).

Information about sustainability efforts and approaches relating to specific financial products can, in many cases, be confidential information a fund sponsor may want to protect from competition. Therefore, publication on a data site or in any other suitable way that is only accessible to fund investors or potential fund investors which are subject to confidentiality

[8] Article 10

obligations is more appropriate than an obligation to publish such information on a public website. We understand that this is an accepted market practice under current SFDR acknowledged by various regulators (e.g., BaFin in Germany).

8 - Disclosure obligations related to data and estimates

While private fund managers recognise investors' legitimate interest in understanding the information basis and methodologies used for sustainability-related data, the current wording of Article 12a goes beyond what is proportionate and would impose undue burdens on managers.

In particular, open-ended obligations to disclose sustainability-related information risk requiring the disclosure of proprietary methodologies developed over time or used by third-party data providers, which is neither market practice nor commercially feasible.

Background:

The SFDR 2 proposal requires managers to provide clients upon request with: [9]

- information regarding sustainability-related financial products other than the information disclosed in accordance with Article 7(3) and (4), Article 8(3), Article 9(3) and (4), and Article 11;
- name, contact details and methodology used by data providers; and
- the methodology, main assumptions and precautionary principles regarding the treatment of missing datapoints underlying estimates where those are not based on data provided by external data providers.

Reflecting market practice to date, managers of professional and retail funds will not agree to an open-ended obligation to provide investors with any sustainability-related information. For many managers, their methodologies are a product of months / years of review, planning and iteration, and are proprietary to their investment process. Managers will not generally agree to provide the methodology used by data providers, for the same considerations, unless such methodology is made available publicly.

While we understand the requirement to have documented arrangements and methodologies for the use of data and estimates, adding "formalised" seems to require much more than is currently best market practice. It is unclear what "formalised" means in addition to "documented", considering that financial market participants are in any case under an obligation to conduct their business (including the use of data and estimates) with due care

9 Article 12a

and adequate skills. In order to avoid exaggerated requirements and unclear interpretation, we would suggest removing this term.

9 - Combining criteria of more than one category

Articles 7 and 8 of SFDR 2 allow managers to devise a product which combines Article 7 and 9 criteria, or Article 7, 8 and 9 criteria. However, under the current draft, any such Article 7 or 8 product which combines criteria in this way cannot make investments under the broader criteria in Articles 7(2)(e) or 8(2)(e). This appears to be a drafting error.

Article 7(2)(f) states that an Article 7 product can combine "investments pursuant to Article 9(2) in combination with any of those referred to in points [7(2)] (a) to (e)".

Article 8(2)(d) states that an Article 7 product can combine "investments pursuant to Article 7(2) or Article 9(2) of this Regulation and the investments referred to in points [8(2)] (a), (b) and (c)".

Where an Article 7 product wants to make a portion of investments under Article 9(2), it cannot make any investments under the sweep-up provision in Article 7(2)(e) but can make investments under the sweep-up provision in Article 9(2)(g). Likewise, where an Article 8 product wants to make a portion of investments under Article 7(2) and/or Article 9(2), it cannot make any investments under the sweep-up provision in Article 8(2)(e) but can make investments under the sweep-up provision in Articles 7(2) and 9(2). This does not appear to be intentional.

Legal drafting suggestions

This section presents specific and targeted recommendations for amending the European Commission's SFDR 2 proposal to address the identified challenges and concerns described in greater detail above.

1 - Exemption for professional-investor-only funds, with "opt-in on demand" option

Invest Europe proposes to:

a. Add the following bullet point 2 to Article 17 "Exemptions" (turning current 2 into 3): "This Regulation shall not apply to financial products referred to in Article 2(12)(b) that are made available exclusively to professional investors as defined in Article 4(1)(10) of Directive 2014/65/EU. Financial market participants may elect to apply this Regulation to such financial products on a voluntary basis."

2 - Restrictions on sustainability-related communications for non-categorised products

Invest Europe proposes to:

a. Clarify that restrictions on including information on sustainability factors (Article 6a(1)-(3)) and sustainability-related claims (Articles 7, 8, 9 and 9a, and Articles 13(2) and (3)) do not apply to any communication directed solely at professional investors, with the exception of the restriction on the inclusion of sustainability-related claims in fund names.
b. Provide clear and harmonised EU guidelines for the concept of "considering sustainability factors" and the term "sustainability-related claims" under Articles 6a and 13, in the context of Level 2, by adding an empowerment to Article 19b.
c. Remove the limitation in Article 6a(1)(a) on including information on sustainability factors ("central communication") and replace it with a suitable and prominent warning notice clarifying that the product does not meet the requirements of Articles 7, 8, 9 or 9a(2), thus permitting non-categorised products to provide information on their sustainability approach subject to the general principle of fair, clear and not misleading disclosures.

3 - A wider range of eligible investments – Recognising engagement and opening Article 8 to impact investing

Invest Europe proposes to:

a. Add the following letter (e) to Article 8(2) (turning current letter (e) into letter (f)): "Investments in undertakings or economic activities for which the financial market participant undertakes activities aimed at improving processes, performance or outcomes related to sustainability factors."

b. Add ",8" after "Article 7" in Article 2(26) and add a new paragraph (4) to Article 8 as follows: "For financial products integrating sustainability factors falling within the meaning of Article 2, point (26), the information to be disclosed shall also contain: (a) the intended impact(s) in terms of specified environmental or social objectives, underpinned by a pre-set impact theory; and (b) provisions to measure, manage, and report on the desired impact pursuant to point (a), including in terms of investments by the financial product and the contribution of investors in the financial product."
c. Clarify in a recital to SFDR 2 that while the definition in Article 2(26) does not define the pursuit of financial returns as prerequisite for "with impact" products, SFDR 2 does not keep "with impact" products from making this part of their strategy, in line with the widely accepted Global Impact Investor Network definition.
d. Change the category's name "ESG Basics" to "Sustainability Integration" or "Sustainability Consideration". Any future product name for Article 8 should be rigorously tested with consumers and end investors to ensure it is comprehensible and fit for purpose – though this should not hold back the finalisation of the RTS.

4 - Timing and method of calculating the 70% threshold

Invest Europe proposes to:

a. Clarify in Article 19b(a)(a)(iii), (b)(a)(iii) and (c)(a)(iii) that the 70% thresholds can be calculated based on a variety of measures, instead of NAV, provided that managers are consistent with their approach and the methodologies are clearly disclosed to investors.
b. Clarify in Article 19b(a)(a)(iii), (b)(a)(iii) and (c)(a)(iii) that financial market participants can define an adequate phase-out (divestment) period during which the 70% thresholds do not apply.

5 - Flexibility to fix breaches that are outside of control

Invest Europe proposes to:

a. For financial products investing in illiquid assets, clarify in a recital to SFDR 2 that changes after the investment has been made that (i) lead to an investment no longer meeting the eligibility requirements for the relevant product category, and (ii) are outside the financial market participant's control, do not lead to a breach of the 70% threshold but must be properly disclosed to investors ("passive threshold breaches").

b. For financial products investing in illiquid assets, clarify in a recital that changes at investment level after the acquisition which (i) are outside of the financial market participant's control and (ii) lead to a breach of the mandatory exclusions ("passive exclusion breaches") do not affect the qualification of the products under its respective product category, provided that the financial market participant uses best efforts to address and remedy the breach.

6 - Meeting the criteria for mandatory exclusions

In order to ensure certainty for financial market participants in the selection and/or monitoring of investments, Invest Europe proposes to:

a. Permit financial market participants to apply the exclusions on a best-efforts basis, by integrating this concept into Articles 7(1)(b) and (c), 8(1)(b) and (c) and 9(1)(b) and (c).
b. Define a separate exclusion in Articles 7(1)(c), 8(1)(c) and 9(1)(c) for violations of UNGC principles or OECD Guidelines, instead of referring to Article 12(1)(c) Commission Delegated Regulation (EU) 2020/1818 (which requires determination by a benchmark administrator).
c. Delete the exclusion in Articles 7(1)(b) and 8(1)(b) in connection with Article 12(1)(d) Commission Delegated Regulation (EU) 2020/1818 (1% revenues from hard coal/lignite).
d. Clarify in a recital to SFDR 2 that "distribution" in the exclusion in Article 9(1)(b) in connection with Article 12(1)(d) Commission Delegated Regulation (EU) 2020/1818 means the active distribution of hard coal or lignite but not its transport or other activities or services that support the active distribution carried out by others.

7 - Suitability of criteria within the categories for funds-of-funds and similar products (for example, multi-option products)

Invest Europe proposes to:

a. For financial products investing in illiquid assets, clarify in a recital to SFDR 2 that funds-of-funds and multi-option products falling into one of the categories may observe the applicable exclusions by various means, depending on their access to information about, and control of the portfolio of, the underlying funds or products and that they are not bound to integrating the exclusions into the documentation of the underlying fund or products or the investment documentation.
b. Remove the requirement in Article 9a(2)(a) that financial products should disclose at the outset the relative share of the underlying products under the Article 7, 8 and 9 categories.

8 - Protecting confidential professional investor information

Invest Europe proposes to:

a. Exclude professional-investor-only funds from the obligation to submit information referred to in Articles 3 and 10 to the ESAP.
b. Clarify, in a recital to SFDR 2, that financial market participants with financial products made available exclusively to professional investors may discharge the obligation to publish on their websites by providing the required disclosures in a password-protected data site or by other suitable means.

9 - Disclosure obligations related to data and estimates

Invest Europe proposes to:

a. Remove the unlimited obligation in Article 12a(b)(i) to provide any requested information regarding sustainability-related financial products.
b. Remove “formalised” from letters (i) and (ii) of Article 12a(a).
c. In Article 12(b)(ii), replace “the methodology used by data providers” by “information on where the methodology used by the relevant data provider is publicly available”.

10 - Combining criteria of more than one category

Invest Europe proposes to:

a. Adjust the text in Article 7(2)(f) to read as follows: “investments pursuant to Article 9(2) in combination with any of those referred to in points (a) to (e), (g) and (h)” to confirm that all eligible investments under Article 7(2) can be combined with eligible investments under Article 9(2).
b. Adjust the text in Article 8(2)(d) to read as follows: “a combination of investments pursuant to Article 7(2) or Article 9(2) of this Regulation and the investments referred to in points (a), (b), (c) and (e) of this paragraph to confirm that all eligible investments under Article 8(2) can be combined with eligible investments under Articles 7(2) and 9(2).”

11 - Disapply firm-level PAI reporting on an accelerated basis

Invest Europe proposes to:

a. Adjust the text in Article 4 to read as follows “It shall apply from [18 months after entry into force], except for Article 1, section (5), which shall apply from the date of entry into force." to allow the deletion of Article 4 (Transparency of adverse sustainability impacts at entity level) of SFDR 1 to apply with effect from the entry into force date of SFDR 2.