



To the Secretariat of EFRAG
Brussels, Belgium

Submitted electronically

Subject: Eumedion response to EFRAG's Draft Implementation Guidance Value Chain

Reference: B24.03

The Hague, 2 February, 2024

Dear Sir, Madam,

Eumedion appreciates the opportunity to comment on EFRAG's Draft Implementation Guidance Value Chain ('Draft Guidance'). We understand that the Implementation Guidance may prove to be helpful to stakeholders in providing an well readable overview of the European Sustainability Reporting Standards (ESRSs) and provide suggestions on how to implement them, on a non-authoritative basis. The Draft Guidance, and the feedback received on it, may even help inspire suggestions for future improvements to the actual ESRSs themselves. In this light, we decided to highlight one pressing issue to you, for your consideration.

Eumedion is the dedicated representative of the interests of 53 institutional investors, all of whom are committed to a long term investment horizon. Collectively, our participants invest over € 8 trillion of capital in equity and corporate non-equity instruments. Eumedion aims to promote good corporate governance and corporate sustainability at the companies our participants invest in.

The key issue we wish to highlight to you is related to Chapter 3, FAQ 2:

'Are financial assets (loans, equity and debt investments) considered business relationships that trigger Value Chain information?'

The Draft Guidance states:

'75. Yes. Business relationships and Value Chain as defined in Annex II of the July 2023 delegated act does not exclude any types of activities and business relationships'

and

'77. Per paragraph 49, for equity investments there is currently only disclosures under Category 15 of GHG emissions where significant under ESRS E1'

and

'78. EFRAG plans to work on the development of further draft standards or guidelines for Financial Institutions and on that occasion, specific solutions will be consulted on for comments.'

We recommend that the final Guidance be revised to provide a more nuanced approach. This approach should explicitly exclude certain activities from the definition of qualifying business relationships that trigger a requirement for Value Chain information. The activities that should in our view should be excluded are:

- Investment done via alternative investment funds (AIFs) or UCITS, managed by AIF managers or UCITS managers. These managers have the discretion to undertake investments and adopt the investment policy of an AIF/UCITS. Financial products in the form of AIFs/UCITS are explicitly exempted under the CSRD;
- Investments managed by investment firms or managers of AIFs/ UCITS under an individual discretionary portfolio management agreement with a specific client:
These firms manage portfolios based on clients' discretionary preferences, where clients themselves are in control over investment and sustainability investment policies.

As a consequence these entities should not be obliged to report sustainability information.

We believe there is good reason to make the above changes, when considering the legislation and regulations already applicable to institutional investors (such as Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector ('SFDR')), and the scope of the Corporate Sustainability Reporting Directive (CSRD). Under SFDR, financial market participants and advisers are already required to make disclosures regarding sustainability information to end investors and asset owners. This regulation aims to reduce information asymmetries and to promote sustainability considerations. It follows from the CSRD that it does not apply to the following financial products: AIFs and UCITS. Nor does the CSRD apply to pension funds, provided they are not companies within the meaning of Article 19a CSRD. Managers of AIFs, UCITS, pension funds and investment firms which provide portfolio management services¹ are already subject to reporting obligations under the SFDR. According to recital 10 of the SFDR, that regulation:

¹ I.e. managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis.

'aims to reduce information asymmetries in principal-agent relationships with regard to the integration of sustainability risks, the consideration of adverse sustainability impacts, the promotion of environmental or social characteristics, and sustainable investment, by requiring financial market participants and financial advisers to make pre-contractual and ongoing disclosures to end investors when they act as agents of those end investors (principals).'

It would be disproportionate if managers of AIFs, managers of UCITS and investment firms which provide portfolio management would also have to report on their clients' investments under the CSRD (in other words on investments that do not belong to themselves). The recitals of the CSRD do not seem to assume this either. For example, recital 2 points out that the European Parliament and the Council have adopted a number of legislative acts in the context of the implementation of the Action Plan on Financing Sustainable Growth. In this context, it is stated that the SFDR governs how financial market participants and financial advisers are to disclose sustainability information to end investors and asset owners. In addition, the recitals to the CSRD refer to the importance of coherence with the SFDR in several places so that financial market participants covered by the SFDR can gain insight into the risks and impacts of their investments and can comply with the disclosure obligations of the SFDR. The above has been explained in the Netherlands as part of the transposition of the CSRD into Dutch legislations.

We also point to the EFRAG Secretariat paper of February 2023 in which not only a link with the SFDR has been recognised, but also with the CSDDD. The EFRAG Secretariat at that time stated:

'The CSDDD definition will be a relevant point of reference for the sector-specific guidance for financial institutions and appropriate consideration in the timeline and approach should be given on how to ensure compatibility.'

As the CSRD and CSDDD are closely inter-related and complementary to each other, we emphasize the need to align the ESRS and CSDDD definition of 'Value Chain' for the financial sector in accordance with the CSDDD text based on the provisional deal that was reached on 14 December 2023 by delegations of the European Council and the European Parliament. In that text the definition of Value Chain for the financial sector is limited to only the upstream Value Chain.

Furthermore, we note that recital 44a of the CSDDD clearly makes a link between reporting on due diligence under the CSRD and due diligence requirements under the CSDDD. Recital 44a reads as follows:

'The requirement on companies which are under the scope of this Directive and at the same time are subject to reporting requirements under Articles 19a, 29a and 40a of Directive 2013/34/EU to report on their due diligence process as stipulated in Articles 19a, 29a and 40a of Directive 2013/34/EU should be understood as a requirement for companies to describe how they implement due diligence as provided for in this Directive.'

The CSDDD due diligence requirements for financial institutions do not cover the downstream value chain (clients and investments are excluded), as opposed to the ESRS sector agnostic definition of Value Chain.

Of course, we are available to further explain this letter if desired. Our contact person is Martijn Bos (email: martijn.bos@eumedion.nl, tel. 070 2040 304).

Yours sincerely,

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