

EFRAG ESRS Implementation Guidance Value Chain – consultation response

To European Financial Reporting Advisory Group (EFRAG)
From DUFAS (the Dutch Fund and Asset Management Association)

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DUFAS (the Dutch Fund and Asset Management Association) welcomes the opportunity to respond to the public consultation on the ESRS Implementation Guidance Value Chain, as published by EFRAG on 22 December 2023.

Executive Summary

DUFAS considers that financial market participants and their stakeholders require clarity as to the exclusion of the primary activities of asset managers that manage individual portfolios from value chain reporting under the Corporate Sustainability Reporting Directive (CSRD). Therefore, DUFAS calls upon the European Commission to explicitly clarify that investments that are part of individual portfolio agreements do not legally fall within the value chain of asset managers for the purpose of CSRD reporting. Accordingly, DUFAS considers that EFRAG should provide draft standards or further guidance for financial institutions, specifically in the area of asset management, only once this clarity is provided. At the same time, DUFAS members who have been reporting for a number of years on sustainability aspects of their assets under management against various voluntary standards, should be allowed to continue to do so.

Introduction

In this consultation response, DUFAS would like to focus on the issue raised in the consultation document under chapter 3 (frequently asked questions), number 2 (p. 18). There, it is stated that EFRAG plans to work on the development of further draft standards or guidelines for Financial Institutions with respect to the value chain.

Legal clarity sought from the European Commission prior to EFRAG draft standards or guidance

DUFAS would like to highlight that financial market participants and their stakeholders require sufficient clarity as to the exclusion of the primary activities of asset managers that manage individual portfolios from value chain reporting under the Corporate Sustainability Reporting Directive (CSRD). Asset managers are already reporting on the adverse impact of their investments pursuant to SFDR, with further enhancements to the disclosure framework as an integral part of the wider sustainable finance package expected to be realized over the coming years.

It is of crucial importance that, prior to EFRAG developing further draft standards or guidelines, the legal scope of reporting requirements is sufficiently clarified by the European legislator. This concerns most notably the exclusion of investments belonging to individual portfolio management, from the definition of qualifying business relationships that trigger value chain information. Therefore, DUFAS calls upon the European legislator, notably the European Commission, to explicitly clarify that investments that are part of individual portfolio agreements do not legally fall within the value chain of asset managers for the purpose of CSRD

reporting. Accordingly, DUFAS considers that EFRAG should develop draft standards or further guidance for financial institutions, specifically in the area of asset management, only once this clarity is provided.

Individual portfolio management out of scope

DUFAS considers the primary activity of individual portfolio management activities *out of scope* of the CSRD, for the following reasons.

1. As long as asset managers do not hold or own any assets for their own account, asset managers do not own the assets they manage. Such assets are segregated from the assets of asset managers and either held by a collective investment fund or the client itself.
2. Following article 1, paragraph 4 of the Accounting Directive, the management of AIFs and UCITS is not in scope of CSRD reporting. The same should also apply to investments belonging to individual portfolio management agreements, as the rationale of excluding AIFs and UCITS could equally be said to apply to individual portfolio management.
3. Furthermore, the draft explanatory memorandum of the draft Dutch implementation Decree clarifies that managers of AIFs and investment firms that manage individual portfolios for clients are not in scope of CSRD reporting to the extent it concerns the investments done on behalf and for the account of clients and AIFs. This would mean that the primary activities of asset managers (collective and individual portfolio management) are not in scope of the CSRD.
4. Asset managers are not required to report on the sustainability aspects associated with the AUM for external clients and AIFs. This also aligns with the starting position of the CSRD that the sustainability reporting follows the financial reporting. The assets are not owned by asset managers and are also not part of the financial reporting.
5. Asset managers are already required to report on their primary investment activities in accordance with the SFDR disclosure requirements. The SFDR a.o. requires asset managers to disclose information on principle adverse impacts and sustainability risks.
6. In accordance with the MiFID II clients themselves – and not their asset managers – are responsible for setting their sustainability preferences which color the sustainability related features of their investments. Asset managers may not influence sustainability preferences.

Alignment of the CSRD and CSDDD regarding the downstream value chain

Additionally, our members consider that the downstream value chain is *out of scope* for purposes of CSRD reporting, because of the link with the upcoming Corporate Sustainability Due Diligence Directive (CSDDD).

DUFAS considers that the concept of value chain under CSRD and CSDDD should be aligned, as the interrelation and synergy between the two initiatives have been pointed out in the explanatory memorandum to the CSDDD proposal. This is supported by the EFRAG discussion paper of February 2023, which states that ‘the CSDDD definition will be a relevant point of reference for the sector-specific guidance for financial institutions’. Following the provisional agreement reached on 14 December 2023, the CSDDD explicitly excludes the downstream activities for financial institutions, meaning that financial undertakings and asset managers only fall in scope of the due diligence obligations to the extent that their own operations and those of their upstream business partners are concerned. This would mean that the reporting on the due diligence requirements under the CSRD would accordingly exclude the downstream value chain. Hence, this should indicate that the underlying investments of individual portfolio management activities are not part of the value chain for the purpose of CSRD reporting.

Voluntary reporting practices

Several DUFAS members have reported on sustainability aspects of their assets under management against voluntary reporting standards, such as the Global Reporting Initiative and the Sustainability Accounting Standards Board, for a number of years. DUFAS finds it important that these members continue to be allowed to report under these voluntary regimes, while being subject to CSRD. These members are aware of the need for consistency and completeness across disclosures.

Conclusion

As DUFAS considers the primary activity of individual portfolio management activities *out of scope* of the CSRD, it is of crucial importance that EFRAG only develops further draft standards or guidance for financial institutions once the European legislator has provided sufficient clarity in this respect. Additionally, DUFAS also emphasizes the importance of aligning the definition of the value chain for financial institutions with guidance and interpretations of member state governments and the European Commission. At the same time, DUFAS members who have been reporting for a number of years on sustainability aspects of their assets under management against various voluntary standards, should be allowed to continue to do so.

DUFAS: Dutch Fund and Asset Management Association

Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS increases awareness of the social relevance of investing, helps to develop sector standards and represents the sector in the implementation of new laws and regulations. In addition, DUFAS is committed to a single European market with equal regulations.

More information

Would you like to respond, or should you have any questions? We would be pleased to hear from you. Please feel welcome to e-mail Ron Gruijters, DUFAS manager sustainable finance, at rg@dufas.nl.