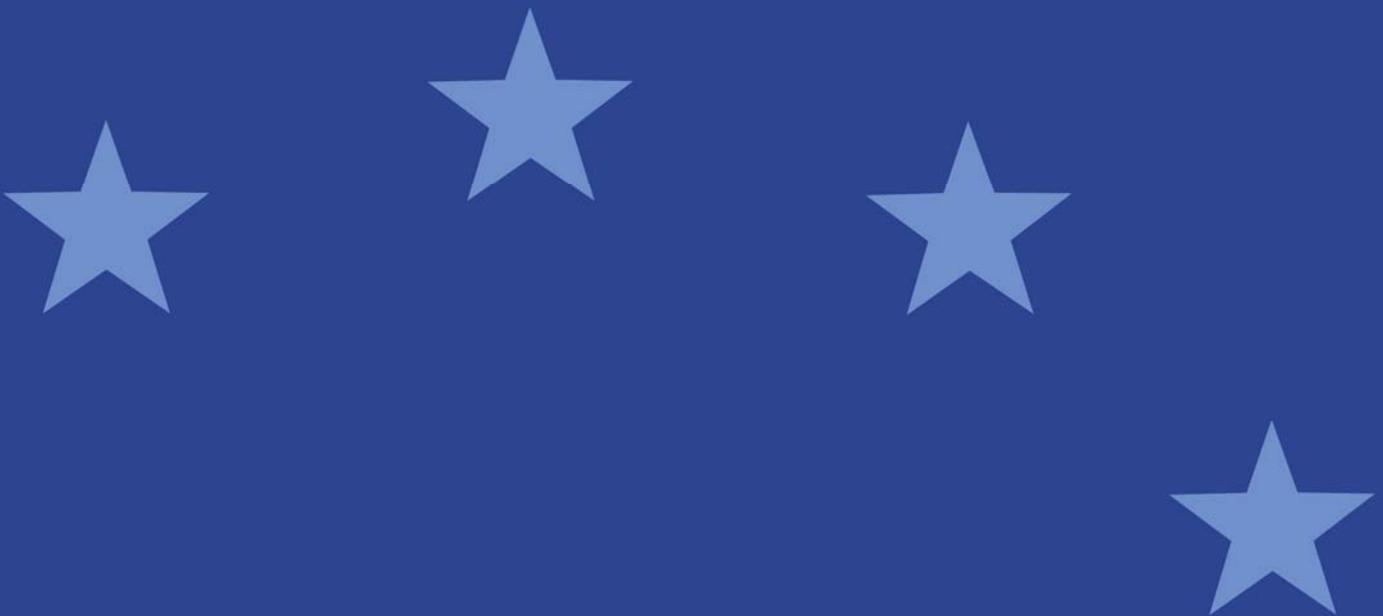


Response form for the Joint Consultation Paper concerning ESG disclosures





Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter “SFDR”) and in particular on the specific questions summarised in Section 3 of the consultation paper under “Questions to stakeholders”.

Comments are most helpful if they:

- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.
- The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](#) under the heading ‘Your input - Consultations’ by **1 September 2020**.
- Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725¹. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

¹ Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	ALFI (Association of the Luxembourg Fund Industry)
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Luxembourg

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

We welcome the draft RTS consultation and acknowledge the extent of the work accomplished by the Joint Committee, appreciating the technicalities of the matters, the complexity (and interconnectivity) of the sustainable finance regulations, the cross-sectorial added constraints and the short timeline.

We remain concerned about the timing of implementation – final RTS will be required in order to finalise website disclosures and prospectuses updates. If draft RTS are released in January, it will not be possible to finalise website and prospectuses disclosures for all products by 10 March 2021. Hence, and in order to avoid confusion for investors, distribution and product manufacturers we strongly propose to postpone the application date to 1st of January 2022. This would allow for a solid practical implementation while at the same time would align the SFDR implementation with Taxonomy-related disclosures that shall result in further adaptations of RTS and will also become effective by 1st of January 2022. Periodic reporting timeline will also be challenging, and we propose to clarify that, in line with recital 32, it will apply to the reporting period starting from 1st January 2022. Similarly, we propose to clarify that, in order to be consistent with SFDR article 7, quantification of PAI will not be required before 30 December 2022.

Classification of financial products between article 6, 8 and 9 (and the explanation of these classifications to end investors) constitute one of the main immediate challenges in implementing SFDR. In that context, we recommend avoiding further complexity and confusion by requiring article 8 products to disclose sustainable investment information. We would also welcome the RTS to clarify that the triggering factor for a product to be considered as article 8 is the fact it is promoted as an ESG products to the investors. Mention of ESG factors or risks monitoring (as required under article 6) or group policies and restrictions will not trigger article 8 classification.

Regarding the use of templates, we would like to stress that, unlike other regulations such as Piiips, the objective of SFDR was not to provide comparability over different types of products performance but to provide meaningful disclosure to investors as to how sustainability risks, factors and objectives are considered in the investment decision applied to their investment

products. The regulations apply to a very wide range of products and investors and relevant information may vary significantly between products. We are therefore worry that the use of mandatory templates could undermine the relevance and meaningfulness of information provided to investors, for the argument of comparability, which were not expressed as SFDR objective or intention.

We also strongly advocate against quantification of PAI at entity level. As elaborated in our answer, this would end in totally meaningless information provided to investors. In our view, providing such meaningless disclosure would run the risk of switching off investors from the consideration of principal adverse impact indicators, which would be counterproductive vis à vis of the objective of the SFDR. We therefore strongly recommend following the approach outlined in level 1: disclose the policies for consideration of principal adverse impact indicators (which ranges of products, how PAI are identified, prioritised and measured) at entity level and quantification of such indicators at product level (for those products where relevant, i.e. where the adverse impact indicators are considered within the investment decision process).

<ESA_COMMENT_ESG_1>

Q1 : Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an “opt-in” regime for disclosure??

<ESA_QUESTION_ESG_1>

We understand that the intention of the JC is to require FMP to quantify the indicators at the entity level, aggregating the indicators of all positions in all portfolio.

We do not agree with such an approach and consider it to go far beyond the level 1 requirements for the following reasons:

-The list of mandatory indicators does not take into consideration the fact that these indicators are not relevant for many investments/strategies. For instance, the proposed indicators are not relevant for investment in sovereign bonds. Relevant indicators also vary based on the sector of activity of companies as evidenced by the work of the TEG on the taxonomy screening criteria. Combining quantification of positions where the indicators is not relevant will undermine the meaningfulness of the aggregate data reported as the ultimate figure will be more influenced by the products/portfolios mix than any impact of the asset management consideration or engagement.

-For many companies/investments, such information is not (readily) available. Asset managers have such information for portfolios where impact considerations are part the investment strategy, but not necessarily for the other portfolios/investments. Requiring such information for portfolios (which may represent thousands of companies) where this information is not used as part of the investment decision will represent a very significant challenges (and for many investments, we may expect that such information will not be available at all.

-Given the limited availability of data, disclosures, if applied across all product ranges, will be based on estimates/ data with limited reliability (NFRD will solve part of the data challenge, but not in the immediate future and for some EU companies only).

-Such quantification at the asset managers’ level would leave the impression that the asset managers create the risks/impacts and not the operating companies themselves.

-Consideration of adverse impact indicators will depend on the product mix mandate rules (i.e. investors demand). Aggregating indicators for portfolios where such impacts are considered and those where they are not will leave the impression that it is the asset manager’s choice, regardless of the mandate/products rules.

Based on the above, we are convinced that aggregation of indicators at the entity level will result in meaningless information for end-investors/other stakeholders and could potentially undermine the credibility of principal adverse impact indicators at product level and the consideration thereof within the investment policy.

We therefore favour option 1 (disclosure of policies at the entity level and quantification where relevant at product level) which, in our view, will provide the best information to investors, while complying with the level 1. Indeed, the combination of description of due diligence policies (including how they apply to the different types of products, how indicators are identified and prioritised) together with relevant information (including quantification when relevant) at product level is the best way to achieve the

objectives of the SFDR, i.e. providing meaningful information as to how principal adverse impact indicators are being considered in the investment decisions of the particular financial product.

Finally, we do not agree with the assumption that any positive value for all adverse impact indicators would automatically result in a “principal” adverse impact – the concept of materiality should be integrated.

We would also like to clarify the timeline of implementation and the transitional provision under article 53, If quantification of indicators would also be required at entity level, as such quantification result from the aggregation of the various portfolios values, it will rely on the product quantification. Timing thereof shall be aligned to the timing foreseen in article 7 (30 December 2022) as entity aggregation cannot happen earlier than quantification at product level.

<ESA_QUESTION_ESG_1>

Q2 : Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?

<ESA_QUESTION_ESG_2>

Regarding the "Size, nature, and scale of financial market participants activities, SFDR Article 4 (1) b, complemented by Article 4 (3) and (4), offers an opt out (comply or explain) option for "small" entities.

But even for large asset managers, the cost, time and challenges of implementation should not be underestimated, as it will require massive resources to obtain the data, ensure reliability and to compile the information across all portfolios as currently proposed.

Regarding the type of products, we believe that applying the same list of indicators to all products is not appropriate.

The proposed approach does not take into account different investment strategies (e.g. index, bonds, sovereign, alternatives, real assets). We have the impression that overall the proposed indicators are mostly only relevant for equities.

It is also critical to define more precisely the calculation rules of the adverse impact indicators at asset class level. For instance, the normalisation factor of Carbon footprint is defined as "enterprise value", but this is not applicable to sovereign bonds. In this case the market participants will either go for GDP, or total debt, or population as normalisation factor, which could result in cherry picking and poor comparability.

Rules for derivatives should also be defined precisely, in particular to define the "current value of investment" used for weighted average calculation (derivatives are usually contracted without initial exchange of money, so the market value of the investment does not represent the exposure as it would for an equity).

<ESA_QUESTION_ESG_2>

Q3 : If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?

<ESA_QUESTION_ESG_3>

We recommend to quantify the impact indicators at the product level rather than at the entity level. At the entity level, there should be explanations of the policies. At product level, asset managers shall then report (including quantification) on the relevant indicators (based on the type of instruments, sector of investments, engagement and impact approaches adopted). Investors would then be provided relevant information in order to be able to adequately compare consideration of principal adverse impact between comparable products.

<ESA_QUESTION_ESG_3>

Q4 : Do you have any views on the reporting template provided in Table 1 of Annex I?

<ESA_QUESTION_ESG_4>

We would also like to reiterate here that this template (at entity level) does not result in meaningful information to clients. We disagree that all indicators should be mandatory and would encourage a principle-based approach at entity level to facilitate the dialogue with clients and help them understand the policies.

Regarding the template itself, we believe that there should be no more than one metric per line/cell. This is currently not the case (e.g. items 5 and 6).

We would like to highlight that some definitions are not aligned with the Benchmark Regulation (e.g. Enterprise value, carbon).

Regarding the order of the columns: we would rather have the “explanation” before the year by year metrics (if the year to year matrix is to be reported – see our comments above).

It is hard to compare one year to the previous year: you may have different AUM, different product mix that makes the comparison irrelevant.

What to do in case information is not available is another issue that should be clarified. We suggest to add another column to indicate the (percentage of) coverage level in order to provide an indication on the reliability of the figures provided.

<ESA_QUESTION_ESG_4>

Q5 : Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies’ GHG emissions)?

<ESA_QUESTION_ESG_5>

First of all, we would like to reiterate that we believe it is not appropriate to require quantitative indicators at the entity level (see our above comments in this regard). Please see below our detailed comments on the indicators:

Table 1

Greenhouse Gas Emissions:

- The figures should not be named "Carbon" but rather "GHG"
- The normalisation factor of GHG footprint is not in line with the Benchmark Regulation (Enterprise value versus Enterprise value including cash)
- Definition of normalisation factors should be provided for each asset class

Energy performance:

-Principal adverse impact of energy consumption is the impact on climate. This information is already captured with GHG emissions. We recommend moving this section to table 2.

- "Share of energy" (item 6): when "share" is used, we are not convinced it really shows the impact.

Pollution: We recommend adding indicators relative to pollution in table 1.

- 9 Biodiversity and ecosystem preservations practices: we believe this item is very subjective and wonder if this includes assessing hydroelectric projects according to the World Commission on Dams recommendations, fishing companies regarding fishing methods/compliance with permits/quotas.

-10: "Natural species and protected area" is also very subjective

-12: Water emissions: we suggest including a calculation formula.

-13: We think that this is more an absolute indicator rather than an impact indicator

Social aspect:

-18: "gender pay gap": we suggest adding the normalisation

-19 Excessive CEO pay ratio: is this indicator weighted or not?

We would like to get clarity for all the social aspects indicators on whether it is at company level or group level?

-23 Human rights policy: with reference to page 57 of the consultation paper, 'human rights policy' is meant to be understood in relation to the UN Guiding Principles on Business and Human Rights, which encompass the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the ILO core conventions.

Although Table 3 includes some additional indicators for inter alia human rights, perhaps some more clarity could be given regarding the applicable human rights policies for businesses within the context of the UN Guiding Principles on Business and Human Rights, such as health and safety at work policy, transparent and fair HR policies, remuneration/promotion practices, compliance with national social security and labour laws etc

28 Number and nature of identified cases of severe human rights issues and incidents: we believe the number itself is not relevant because it depends on the number of companies in which we invest.

29 Exposure to controversial weapons: how is "any investment" expressed? As a percentage, AUM? Direct/indirect?

What about chemicals production facilities which have failed their national or international verification programmes? Refer to this link:

<https://www.opcw.org/chemical-weapons-convention>

Or biological weapons banned under the biological weapons convention?

Or generally exposure to weapons that violate fundamental humanitarian principles through their normal use, or exposure to the development, production, stockpiling, use of weapons or precursor materials intended for military use to states, warring parties, that are subject to investment restrictions or weapons sales restrictions.

Or to the production, trade and use of asbestos, or other pharmaceuticals, pesticides, toxic substances under the Rotterdam Convention, Stockholm Convention, WHO Pharmaceuticals: Restrictions in Use and Availability, ozone depleting substances under the Montreal Protocol, being subject to phasing-out or to national/regional/international bans, trade in waste under the Basel Convention

31 Cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery: we consider this to be very judgemental and subjective: clarification as to how to define it would be welcome. We would like more clarification on the use of "share" as indicator and "cases" as metric.

32 Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws: it will be the number of publicly known convictions only. Are all the convictions known? If publicly known convictions should be relied upon, will the state of rule of law, degree of judicial independence be considered? Such as by reference to the <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>. Should incidents investigated by internal/external auditors also be disclosed?

Table 2

6 Water recycled and reused: this is more of a positive impact indicator rather than an adverse impact indicator

8 Land degradation, desertification, soil seating: we would like to have more clarification on how to define this indicator

11 Share of securities not certified as green: we would like to understand how this can be defined.

Table 3

1 Number/rate of accidents, injuries, fatalities, frequency: which metric should be used? Number, rate and frequency are not the same. We would also like to know how to weight that figure compared to the size of the portfolio.

4 Grievance/complaints handling mechanism: we would like to understand how to weight: compared to the size of the portfolio and companies?

5 Incidents of discrimination: We suggest using "the share of investment that had... "rather than "number of incidents" We would also like to have a precise definition of discrimination (e.g. gender, salary, racial?).

6 Lack of separation of CEO and Chair function on the boards of investee companies: different companies can have different structures
7 Share of securities not certified as social: we are not aware of a social securities certification mechanism. Could you clarify what is foreseen here?

We do not recommend additional indicators.

Forward looking indicators are a great tool for market participants to influence the investee companies, however it is hardly interpretable when aggregated at portfolio level.

We would rather recommend disclosing the "decarbonisation rate/trajectory", on a year by year basis (geometric average), similarly to the figure described in the benchmark regulation.

<ESA_QUESTION_ESG_5>

Q6 : In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?

<ESA_QUESTION_ESG_6>

Disclosure of "decarbonisation rate" would give a strong indication with the alignment with EU 2030 targets.

It should however not be forgotten that portfolios are also largely invested outside the EU and that the same standards may not be available outside the EU.

<ESA_QUESTION_ESG_6>

Q7 : The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?

<ESA_QUESTION_ESG_7>

We believe that the share of companies is not relevant if it not properly weighted by the size of the AUM.

In addition, not all policies make sense for all sectors (e.g. biodiversity, deforestation don't make sense for a pure service company). The objective should not be to encourage companies to have policies that are not relevant for their sector.

<ESA_QUESTION_ESG_7>

Q8 : Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?

<ESA_QUESTION_ESG_8>

We recommend rather a disclosure of the decarbonisation rate of the portfolio on year to year basis.

<ESA_QUESTION_ESG_8>

Q9 : Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?

<ESA_QUESTION_ESG_9>

Yes, these indicators are equally important as environment and should therefore be considered. We would like however to highlight challenges with data availability (even if NFRD was to address partially this shortfall in the medium term, we shall remember that a significant portion of the portfolios are invested outside EU).

<ESA_QUESTION_ESG_9>

Q10 : Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?

<ESA_QUESTION_ESG_10>

We believe that 10 years is not appropriate for the following reasons:

- Over time, we expect data availability will increase. For example, if one year an indicator is available only for 60% of the portfolio and the next year 100% is available then we might end up in showing deterioration in the indicator because more data is available and calculation more precise. We anticipate that this will be the case over the next 10 years, affecting significantly the comparability of the indicators over time.
- As mentioned above, when the indicator is computed at entity level, the product mix has a significant influence on the end result. Product mix vary a lot from one year to another, due to investors' investment choice and mandates and will distort the comparison over time.

We are concerned that it would end up in a very complex table, confusing readers. Disclosing huge volume of figures is usually at the detriment of providing transparency (simple, concise and comprehensive information).

If comparative figures are to be provided, we suggest to limit the comparison to a period of 1 year, 3 years at maximum.

<ESA_QUESTION_ESG_10>

Q11 : Are there any ways to discourage potential “window dressing” techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of

investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?

<ESA_QUESTION_ESG_11>

We do not believe that window dressing is a risk:

-For very liquid products like UCITS, the risk diversification requirement of the portfolio implies that few positions cannot significantly influence the indicator at portfolio level.

-For less liquid product like AIF, even if some portfolio are less diversified by nature, the less liquid nature of the investment would make any window dressing transactions complex and very expensive to achieve (whilst it is unlikely that the position would have an impact at the entity level).

<ESA_QUESTION_ESG_11>

Q12 : Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?

<ESA_QUESTION_ESG_12>

We see merits in proposing templates in order to facilitate comparability of products and preparation of the disclosure. However, this regulation is a cross-sector regulation and reporting is not done in the same way for different types of products under scope with different strategies, underlying assets, investment horizon etc. If the same template was imposed onto all products and all investors' type, it would end up in a disclosure that is not appropriate to all situations (e.g. sovereign bond funds, FoF, real estate funds) nor to all investors (retail versus professional). We believe that for any template for pre-contractual disclosures and periodic reports to be useful, it should allow the possibility to capture ESG considerations in a way that accurately reflects the funds' characteristics, assets and strategies and the types of investors.

The template should therefore be indicative (non-binding) with some room for adaptation.

It should not be a mandatory template as it is important to ensure that information provided to investors is relevant for them.

We understand from the hearing that the ESA's interpretation of the article 20 (3) of the SFDR is that the new periodic requirements would apply to reports issued from 1 January 2022. We believe that such interpretation conflicts with recital 22. Moreover, it would lead to severe implementation challenges, as it would apply retrospectively to period prior to 10 March 2021 and even prior to the release of the draft RTS by the joint committee.

In the case of a fund with a year-end 31 December, the report issued beginning of 2022 will cover the period from 1 January 2021 to 31 December 2021, covering a period prior to the SFDR implementation. Even worse, in the case of a fund with a year end 30/09 issuing its 30/09/21 annual report beginning of 2022, it would be required to include the periodic information for the period from 1/10/20 to 30/09/21 (so for a period starting before the implementation date and before the RTS would have been issued). Based on the Recital 32 SFDR, we understand that the article 20 (3) has foreseen a different start date for the periodic reporting to ensure that the periodic report requirements will apply to a full year after the SFDR implementation date. We therefore suggest clarifying this on the RTS using some commonly used language in accounting directive such as "Articles 36 to 52 shall apply to periodic reports covering reporting periods starting from 1 January 2022)

<ESA_QUESTION_ESG_12>

Q13 : If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?

<ESA_QUESTION_ESG_13>

The format should be adapted to the nature of the financial product.

There should be paragraphs that could be adapted to the focus of the product (environmental vs social objective for example).

<ESA_QUESTION_ESG_13>

Q14 : If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.

<ESA_QUESTION_ESG_14>

We are in favour of a harmonised [non-binding] reporting template but with the ability to adapt to the strategy and to the type of product. Indeed, only comparable products can be compared. We need to be able to adapt to ensure that the information remains relevant for the investor based on the specificities of the product. As much information as possible should be accessible on a website (see our comments below).

<ESA_QUESTION_ESG_14>

Q15 : Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?

<ESA_QUESTION_ESG_15>

Investment fund prospectuses include detailed information on the investment policy including the investments allowed and those restricted. Annual report provides ex-post details on the portfolio breakdown and position. Information on portfolio breakdown is not provided ex-ante in the prospectus as it varies regularly, based on the investment decision taken by the investment managers and market circumstances. Providing ex-ante breakdown would be at the detriment of the investors' interest as it would needlessly constrain investment managers to a pre-fixed portfolio, which by essence is in contradiction with the concept of asset management. Moreover, mentioning such breakdown in prospectus would imply frequent updates of the prospectus as soon as the breakdown changes, which is impossible. Indeed, for regulated funds, amendments to pre-contractual information requires local regulators' approval and approval/registration in all the countries of distribution, which is a time consuming and onerous process, particularly for funds distributed internationally. Numerous prospectuses updates would also be confusing for investors.

Any information subject to evolve over time depending on market circumstances should be on the website or in any other pre-contractual document and not in the prospectus.

We consider that the portfolio breakdown, illustrative data presented should be ex-post (on the website and annual report) and not ex-ante. In the case of more detailed information the pre-contractual documentation can provide a link to the website.

<ESA_QUESTION_ESG_15>

Q16 : Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.

<ESA_QUESTION_ESG_16>

The differences between the two is an important consideration and we believe that Article 8 as introduced by the draft RTS is a source of potential confusion.

A practical issue faced today is defining sustainable investment and consequently the distinction between article 8 and article 9 products. The differences between article 8 and article 9 products is that article 8 products are products that promote ESG characteristics while article 9 products are managed with a sustainable investment the objective (e.g. to have positive impact on environmental and social matters). We however think that it is difficult to draw the line between the two.

The difference between ESG characteristics and sustainable investment definition is a very complex matter that very few investors would grasp. The nuance introduced by the legalistic definition of sustainable investment (article 9) is not intuitive as the word “sustainable” is also used to describe ESG approaches.

We believe it is essential to clarify the concepts and definitions so that investors will not be confused. Introducing mandatory disclosure on portion of article 8 products invested in sustainable investment or a disclaimer thereof (article 16.1) would add to the confusion for investors. From a perspective of a retail investor, the proposed sentence is neither self-explanatory nor comprehensive as there is no universal understanding of the legal term “sustainable investment”. In result, we deem it necessary to completely delete the “warning” proposed in the respective draft RTS article 16.1

Distinction between article 6 and article 8 products is also important to clarify. We understand that the key element in determining whether a product falls into the definition of article 8 is that the product is promoted as an ESG product. Confirmation of this key concept of the definition would be welcome. In this context, we would suggest modifying the wording the recital 21, removing the reference to the mandatory investor disclosure. Indeed, many investment prospectuses may (or will with the introduction of the SFDR article 6) refer to some ESG consideration or exclusion (applied at group level for instance) without being promoted as ESG products.

We also consider important to clarify that an ESG integration policy and the relevant ESG criteria can be a component for article 8 products and allow sufficient discretion to demonstrate how they give effect in the investment policy. This interaction with the investment process shouldn't be prescribed in a specific way (e.g. exclusions) but allow flexibility to explain which specific conditions and process are followed for the selection of assets.

This would be consistent with the objective of SFDR Level 1 that framed a wide scope of the products with environmental and social characteristics of Article 8 in order to cover all financial products with different environmental or social ambitions.

Requirements under Art 30 on a designated index for article 9 products goes beyond the provision of the level 1 by requiring that the benchmark be continuously aligned with the environmental or social objective. There are however very few potential benchmarks aligned with these objectives and this is as

a result unduly restrictive, preventing the possibility to mention reference benchmark for sustainable investment.

<ESA_QUESTION_ESG_16>

Q17 : Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?

<ESA_QUESTION_ESG_17>

We strongly advocate to not put graphical breakdown in the prospectus because this information should be able to evolve over time by nature.

The information could be used in the annual report for example where we explain the breakdown and how the indirect investment has contributed or not harm the sustainable objective.

Art 15 is a problem for funds of funds: what is the point of differentiating between indirect holding and other type of exposure to these companies?

<ESA_QUESTION_ESG_17>

Q18 : The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?

<ESA_QUESTION_ESG_18>

We believe graphical representations are not appropriate for the prospectus.

They shall only appear on the website and the annual report because these can be updated more regularly.

We may reasonably consider that any kind of graphical representation not based on prescribed methodology may intrinsically contain biases and may not provide a coherent comparable information to investor. We would also suggest aligning the portfolio breakdown information with the information required for UCITS funds (Schedule B).

<ESA_QUESTION_ESG_18>

Q19 : Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?

<ESA_QUESTION_ESG_19>

We believe it depends on the investment objective. We wonder why solid fossil-fuel should be singled out: if a fund has a social objective, exposure to fossil-fuel is not relevant. It is also not relevant to disclose if there is no material impact.

In addition, a comparison/exposure does not make sense if the portfolio is mainly invested in the service sector industry for instance.

A key issue is the availability of data on the underlying companies, which will require very specific databases.

We also wonder how to calculate direct/indirect exposure to solid fossil fuel (solid fuel exploration?).

In conclusion, we think that it should be voluntary at this stage and optional, based on the relevance of the information, given the nature of the investment policy.

<ESA_QUESTION_ESG_19>

Q20 : Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?

<ESA_QUESTION_ESG_20>

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<ESA_QUESTION_ESG_20>

Q21 : While Article 8 SFDR suggests investee companies should have “good governance practices”, Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including “sound management structures, employee relations, remuneration of staff and tax compliance”. Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?

<ESA_QUESTION_ESG_21>

Whilst we see some merits in aligning approaches to good governance practices between articles 8 and 9, we do not suggest introducing additional requirements for article 8 products at this stage. Proposals at EU level for development of sustainable governance standards are expected in the coming years. Meanwhile, there is no common reference as regards “good governance practices” and rules regarding governance and company law are largely national. Moreover, quantifiable data in this area is still largely missing.

<ESA_QUESTION_ESG_21>

Q22 : What are your views on the preliminary proposals on “do not significantly harm” principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?

<ESA_QUESTION_ESG_22>

The principle adverse indicator is a plain list which does not take into account the materiality. We also question how these will align with the DNSH concept within the taxonomy.

Whilst this list has the advantage of being simple and granular, we prefer that for sustainable products market participants will define how they will monitor the “do not significantly harm”.

Finally, we recommend to keep “do not significantly harm” principle disclosures for article 9 only as we believe that introducing sustainable investment element in article 8 definition will confuse investors.<ESA_QUESTION_ESG_22>

Q23 : Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?

<ESA_QUESTION_ESG_23>

There are already existing definitions (e.g. Eurosif, GSIA, EFAMA). Even though there are some nuances, the broad definitions are aligned. These approaches are not exclusive, you may have different approaches being combined towards a strategy. We support using aligned denomination as we believe this is in the interest of investors since it helps the comprehension and helps them make more informed choices.

We therefore think there is no need to have definitions from the ESAs, as defining these concepts in a regulation would unduly restrict future financial products innovations. Providing examples by way of a non-exhaustive list of types of strategies could however help in providing further clarity.

<ESA_QUESTION_ESG_23>

Q24 : Do you agree with the approach on the disclosure of financial products' top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?

<ESA_QUESTION_ESG_24>

For funds, the information will be disclosed in the annual report, which already requires granular information on the portfolio (refer to the UCITS Directive).

We suggest to align with UCITS and AIFMD and not add an extra layer because the requirements are already covered by UCITS and AIFMD.

<ESA_QUESTION_ESG_24>

Q25 : For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.

- a) an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);
- b) a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);
- c) a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and
- d) a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.

<ESA_QUESTION_ESG_25>

a) This element flows in the pre investment decision, investors will look at this before investing and it should therefore rather be in the pre-contractual disclosures or on the website. Such exclusion rate shall nevertheless evolve with time (and companies improving their sustainability practices) It shall be an optional disclosure as it depends on the investment strategy.

b) This practice should only be only on the website.

c) We agree with the proposition to disclose on the website.

d) Sustainability data is usually drawn from different sources that are used to assess quality, challenge or enrich data points. An internal scoring system will then be sourced by different flows of internal and external data. In this context, providing a proportion between internal and external data would neither be possible nor relevant. Proportions should therefore not be required.

<ESA_QUESTION_ESG_25>

Q26 : Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?

<ESA_QUESTION_ESG_26>

The use of derivatives will depend on the fund Policy, philosophy and process. For UCITS, it is already a requirement to clearly state the purpose of derivatives use (hedging/EPM/portfolio management). If derivatives are used only for efficiency reasons/efficient portfolio management (i.e. not only for hedging), this would already be included in the narrative of the portfolio composition.

If derivatives are a core instrument to attain a sustainable objective, it should be subject to a specific section within the graphical and narrative explanation. It should be explained how the overall use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product.

<ESA_QUESTION_ESG_26>

Q27 : Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

<ESA_QUESTION_ESG_27>

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