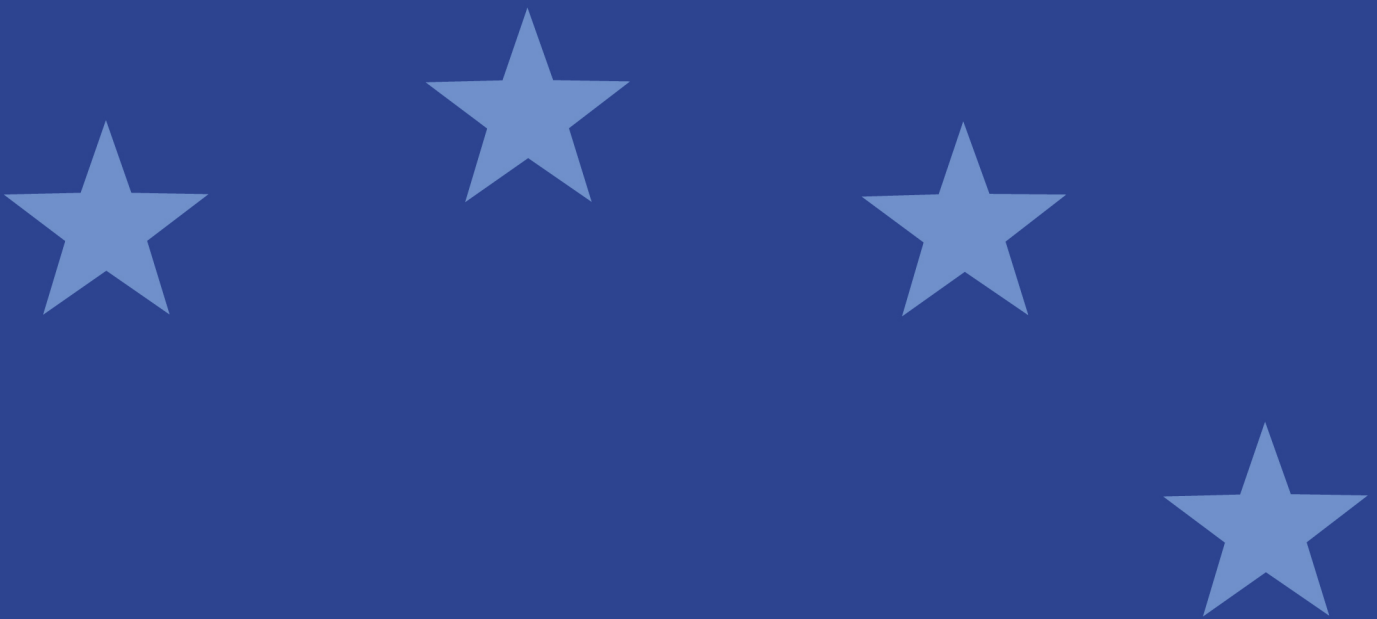


Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclo- sures





Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (hereinafter “RTS”) on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (hereinafter Sustainable Finance Disclosure Regulation “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 12 May 2021.
- 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	Association of the Luxembourg Fund Industry
Activity	Other Financial service providers
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>

ALFI would like to make a general observation with respect to the availability of data from investee companies. Given the absence of robust and/ or comprehensive data from issuing companies in relation to taxonomy (the new CSRD will enter into force after the SFDR RTS will be in place), we would draw the attention of the ESAs to the fact that during a certain transitional period (probably at least one year), financial market participants will lack some data from investee companies to be able to provide a fully-fledged reporting to investors under SFDR and the Taxonomy.

<ESA_COMMENT_ESG_1>

Q1 : Do you have any views regarding the ESAs' proposed approach to amend the existing SFDR RTS instead of drafting a new set of draft RTS?

<ESA_QUESTION_ESG_1>

ALFI welcomes the ESA's proposed approach to amend the existing SFDR RTS. ALFI would however suggest that market participants be offered the option to already start reporting using the draft templates as per this new Consultation, as soon as the final report will have been published by the ESAs. The use of the draft templates would in a sense "override" the templates provided in the SFDR RTS.

<ESA_QUESTION_ESG_1>

Q2 : Do you have any views on the KPI for the disclosure of the extent to which investments are aligned with the taxonomy, which is based on the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies? Do you agree with that the same approach should apply to all investments made by a given financial product?

<ESA_QUESTION_ESG_2>

Some portfolios may be invested in a variety of asset classes (and indirectly in different activities of each of the investee companies). For each of those asset classes, investments or activities, one of the three KPIs may be more suited than another. Against this background, whilst ALFI acknowledges that it may prove complex to calculate the extent to which investments are aligned on the taxonomy through different KPIs, we believe that it is too early stage to rule out any of the three possible KPIs or a combination of those. It is desirable at this stage to permit the use of all KPIs so that all stakeholders may become cognisant with the benefits and drawbacks of each of them. Therefore, product manufacturers should be allowed to choose the indicator (turnover, capital expenditure or operational expenditure), which is the most relevant to weigh a company in a fund portfolio's share of Taxonomy. Policymakers may always wish to reconsider the existing framework at a later stage.

<ESA_QUESTION_ESG_2>

Q3 : Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?

<ESA_QUESTION_ESG_3>

There is some indication that turnover would probably be the most appropriate KPI for non-financial investee companies rather than operational expenditure. That said, as indicated in our response to the previous question 2, at this stage ALFI recommends that financial market participants remain free from selecting any of the three KPIs.

<ESA_QUESTION_ESG_3>

Q4 : The proposed KPI includes equity and debt instruments issued by financial and non-financial undertakings and real estate assets, do you agree that this could also be extended to derivatives such as contracts for differences?

<ESA_QUESTION_ESG_4>

ALFI is of the opinion that as a general rule, the proposed KPI should include equity and debt instruments, as these provide direct financing to undertakings. Disclosure should thus be take into account equity and debt financing, with the option of not integrating the use of financial derivative instruments. Investee companies should however be offered the option of disclosing the KPIs taking into consideration the combined effect of direct financing and the indirect exposure through FDIs.

<ESA_QUESTION_ESG_4>

Q5: Is the use of “equities” and “debt instruments” sufficiently clear to capture relevant instruments issued by investee companies? If not, how could that be clarified? Are any specific valuation criteria necessary to ensure that the disclosures are comparable?

<ESA_QUESTION_ESG_5>

ALFI believes that the use of the two broad categories “equities” and “debt instruments” is sufficient and sufficiently clear at this stage.

<ESA_QUESTION_ESG_5>

Q6: Do you have any views about including all investments, including sovereign bonds and other assets that cannot be assessed for taxonomy-alignment, of the financial product in the denominator for the KPI?

<ESA_QUESTION_ESG_6>

ALFI is of the opinion that all investments should be included in the denominator for the sake of comparability. Taking the example of a portfolio holding 90% of its AUMs in sovereign bonds and 10% in other taxonomy-aligned assets, excluding the portion of AUMs invested in sovereign bonds would result in a ratio of 100% alignment although the product would be invested up to 10% only in sustainable assets – and by comparison, a product invested in 20% of sustainable economic activities would show an identical ratio of 100% when excluding sovereign bonds even though the actual % in sustainable economic activities would in fact be higher. What matters for investors is to be informed on the actual % invested in sustainable economic activities.

<ESA_QUESTION_ESG_6>

Q7: Do you have any views on the statement of taxonomy compliance of the activities the financial product invests in and whether those statements should be subject to assessment by external or third parties?

<ESA_QUESTION_ESG_7>

ALFI is of the opinion that any such statement should be required in the periodic report only. The exact percentage of investments in sustainable economic activities can only be known ex-post. In contrast, such percentage is not known ex-ante and it should thus not be mentioned in pre-contractual documents. ALFI does not see how any such statement in a pre-contractual document could be subject to a review by an external party such as an auditor, expressing an opinion on the minimum percentage.

<ESA_QUESTION_ESG_7>

Q8 : Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?

<ESA_QUESTION_ESG_8>

ALFI would like to make two general observations: (1) as already mentioned in our response to question 7 above, a statement of taxonomy compliance of the activities the financial product invests in and whether any such statement should be subject to assessment by external or third parties should be foreseen in the periodic reports only; (2) a graphic presentation of the breakdown of assets in % of total AUMs is meaningful to investors in periodic reports only as it shows the exact (ex-post), actual different buckets of investments (aligned with the taxonomy, sustainable but not aligned, other investments). In contrast, ALFI believes that this information is not relevant in precontractual disclosure documents as it would necessarily be indicative only (ex-ante). See our comments on precontractual documents in our response to question 9 below.

<ESA_QUESTION_ESG_8>

Q9: Do you have any views on the amended pre-contractual and periodic templates?

<ESA_QUESTION_ESG_9>

Herebelow ALFI's detailed comments on the two templates:

1. Our first general observation is that it would be useful and clearer for investors to build the templates along a decision tree and a drop-down menu. Instead of inducing an investor to read a whole document with some sections being relevant, or on the contrary not relevant to his/ her investment, this would result in a more targeted and reduced amount of information for investors. For instance, if a financial product has no investments in economic sustainable activities that are not aligned with the taxonomy, by ticking a "no" box when addressing that question, the template will skip the questions relating thereto.
2. As a general principle, any reference to a % of assets should always be in relation to total AUMs of the financial product.
3. First bullet point top of page 36, the question reads "*Why does the financial product invest in economic activities that are not environmentally sustainable*" which follows under the section "*What is the minimum share of sustainable investments that are not aligned with the EU Taxonomy*". We believe that the way the question is asked has a very negative connotation, an impression that is reinforced by the symbol for taxonomy-aligned investments being crossed out for these type of investments. A financial product can make sustainable investments which are not aligned with the Taxonomy for different, valid reasons. This does not mean that the financial product does not aim at investing in sustainable economic activities. We would suggest to rephrase the question in more neutral way, asking to comment on those investments in sustainable economic activities that are not (or not yet) aligned with the Taxonomy.
4. Page 34, ALFI notes that the order of the questions has been changed. We suspect that the box in yellow on the right hand side "*Has a reference benchmark been designated for the purpose of attaining the environmental or social characteristics promoted by the financial product*" should not be appearing as a question as it appears again on page 36.
5. Generally speaking in the templates, questions are a copy paste for both article 8 and article 9 financial products. The same box appears for both article 8 and then for article 9 products on page 37, which reads "*Sustainability indicators measure how the environmental or social characteristics promoted by the financial product are attained*".

As a matter of principle, ALFI is of the opinion that the language used and questions asked in the draft template must be aligned with level 1. The term "characteristics" is inappropriate here as level 1 does not speak about characteristics for article 9 products (unlike what is the case in level 1 for article 8 products). In fact, for article 9 products, article 11 refers to "overall sustainability-related impact of the financial products by means of sustainability factors". We recommend that the template wording be aligned to SFDR level 1 wording. The word "impact" as mentioned under SFDR article 11 is not mentioned in the related question either.

6. Top of page 34, second bullet point "*What is the committed minimum rate to reduce the scope of the investments*" – considering the last sentence of recital (25) of the final report draft RTS of 2 February 2021, it is not clear whether this is an option or whether it is compulsory. In the draft template, the question is asked as an option only. In the consultation it was mandatory, however in the body of the draft RTS it is optional.
7. The second question page 35 "*How do they not cause significant harm*" seems to duplicate the question in the second bullet point top of page 36 that reads "*how will sustainable investments contribute to a sustainable investment objective and not significantly harm any sustainable investment objectives*".
8. It is felt that the information on the categories of investments expressed in % of AUMs is not meaningful for pre-contractual documents as it is an ex-ante information. It is in contrast useful to present these % in a graph when it comes to periodic reports. The information is ex-post but then based on the actual figures.

9. Page 37: the use of the singular conflicts with the follow-up question in relation to the taxonomy (last question bottom of page 38 “objectives”). ALFI believes that impact investing funds may have several sustainability objectives. One could simply add the plural in brackets – objective(s) to give the necessary flexibility.
10. With respect to the template precontractual disclosure for article 9 financial products (page 37 to 39), ALFI believes that the information would be clearer for investors if one were, again based on the recommendation to apply a decision tree, to first ask the generic question “*What is the minimum share of sustainable investments* “ then follow with a subsection with a break-down of “*what is the minimum share of investments which are aligned with the Taxonomy*” and what is not aligned with the Taxonomy. As already mentioned, ALFI suggests to remove pie charts from precontractual disclosure documents.
11. It should be made clear that the % of what is aligned or not aligned with the Taxonomy is by reference to the total AUMs (as denominator) (the reader could be misinterpreting the % as calculated by reference to the portion that is invested in sustainable investments).
12. A fixed % is not necessarily the best approach. Instead, financial market participants should be offered the option a targeted % of exposure to sustainable investments (aligned or not with the Taxonomy). This information is relevant and must be made available to distributors of financial products as these are subject to their own requirements under the delegated acts to ensure that from a target market perspective, they have the information required to match their investors’ preferences.
13. Page 40, the first question which reads “*Does this product take into account principal adverse impacts on sustainability factors*” can only be answered by yes or no. By answering yes or no, ALFI is of the opinion that the question does not fully address what is required under article 7 1 a) SFDR (“*clear and reasoned explanation*”, disclosure in periodic report). We also have questions regarding the disclosure timeline (as RTS will apply from 1 January 2022 but article 7 disclosure deadline is 30 December 2022). Further guidelines on how to disclose information required under 7.1 (and related timeline) would be welcomed.
14. Last question bottom of page 40 which reads “*Can I find more product specific information online*” raises the question of when the information will be made available on the website. Even once a financial product is approved by the relevant NCA, it does not necessarily mean that the product will be immediately offered to investors. The actual launch can take place weeks or months after the approval of the pre-contractual documents. In practice this means that the information will be prepared and the website is ready to be activated, but the URL is in effect not operational, so it cannot yet be referenced in a pre-contractual PDF document. Some flexibility would be welcomed such as an indication that the information will (in the future) be made available once the product is effectively offered to investors. This brings us back to the general question whether these templates should be better suited for posting on a website rather than being part of a hard copy of a prospectus.
15. Page 42, the table listing the largest investments mentions the country of the issuer. This information should be optional and more flexibility offered on picking up the indicators which are deemed to be most relevant from an investor’s point of view.
16. Page 43, the second bullet point reads “*In which economic sectors were the investments made*”? ALFI wonders whether the question pertains to all investments of the financial product or just to the category of “other” investments. Incidentally, ALFI wonder whether there is not some duplication of information with the table page 42.
17. Page 45, for the periodic report of an article 9 financial product, ALFI believes that the description of sustainability indicators in the grey box on the right hand side is not aligned with level 1 (article 11 (1) (b) (i) which requires to report on the overall sustainability-related impact of the financial product. This is one of key differences between article 8 and 9.

<ESA_QUESTION_ESG_9>

Q10 : The draft RTS propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products (including Article 5 and 6 TR products which are a sub-set of Article 8 and 9 SFDR products). Do you believe it would be preferable to have separate pre-contractual and periodic templates for Article 5-6 TR products, instead of using the same template for all Article 8-9 SFDR products?

<ESA_QUESTION_ESG_10>

Please refer to paragraph 1 and paragraph 8 of our response to question 9 above. ALFI does not believe that article 8 and article 9 products should be based on identical templates.

<ESA_QUESTION_ESG_10>

Q11 : The draft RTS propose in the amended templates to identify whether products making sustainable investments do so according to the EU taxonomy. While this is done to clearly indicate whether Article 5 and 6 TR products (that make sustainable investments with environmental objectives) use the taxonomy, arguably this would have the effect of requiring Article 8 and 9 SFDR products making sustainable investments with social objectives to indicate that too. Do you agree with this proposal?

<ESA_QUESTION_ESG_11>

ALFI believes that it would quite a negative statement towards investors to state that investment products pursuing social objectives under article 9 SFDR are not aligned with the Taxonomy. Again as mentioned in paragraph 1 of our response to question 9, a decision tree with a drop-down menu would help. This would first point at environmentally sustainable activities (aligned or not) – then sustainable investments with social objectives.

<ESA_QUESTION_ESG_11>

Q12 : 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_12>

ALFI believes that prospectuses and annual reports of investment funds will become bigger and bigger. Already today, investors struggle in reading and understanding lengthy documents. Both from a readability, accessibility and cost point of view, we would recommend that these additional documents/ appendices to the prospectus be made available on the website of the financial market participant. Prospectuses should direct investors having an interest in reading these through a hyperlink contained therein.

<ESA_QUESTION_ESG_12>