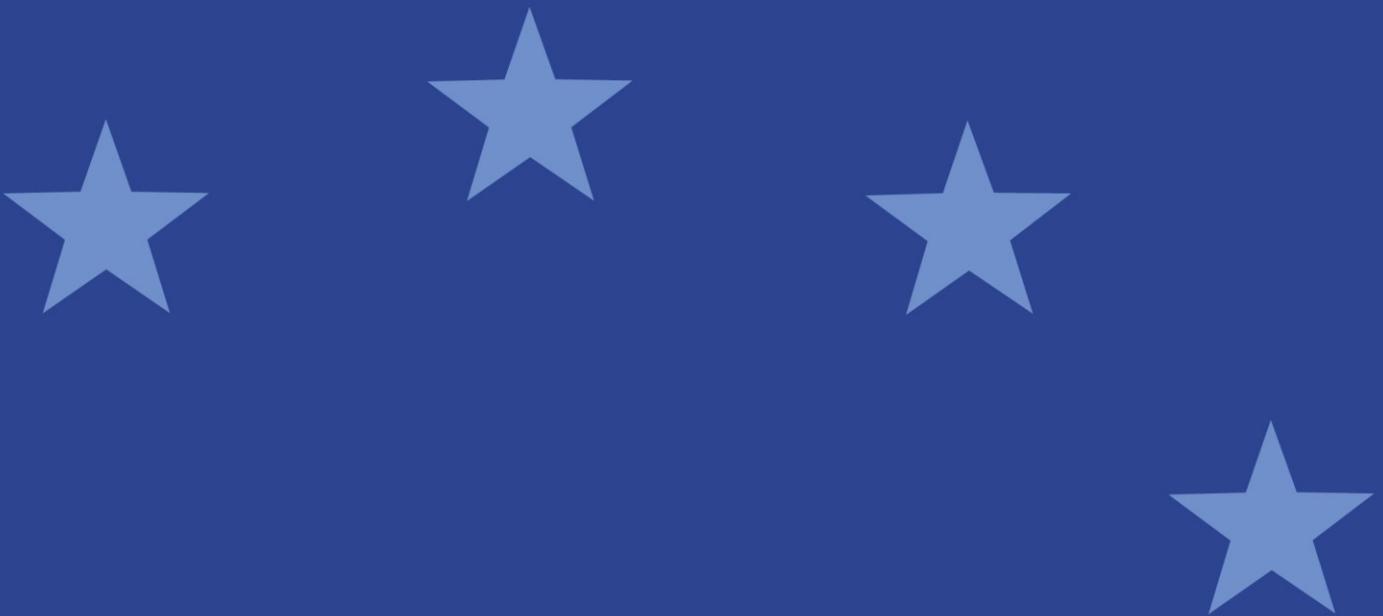


Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclo- sures





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	Finance Denmark
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

Finance Denmark welcomes the opportunity to comment on the draft delegated regulation as regards to the content and presentation of information in relation to environmentally sustainable financial product disclosures in precontractual documents and periodic reports (hereinafter “RTS”).

We appreciate and support the overall approach taken by the ESAs to incorporate the taxonomy-related sustainability disclosures from Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation) into the draft Commission Delegated Regulation supplementing Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (Disclosure Regulation) (hereinafter “SFDR RTS”) by amending the precontractual and reporting templates. This will ensure a single rulebook and minimise the added complexity.

We recognise and accept the mandate given to the ESAs in the Disclosure Regulation to develop additional disclosure obligations for products making use of the environmental taxonomy. That said, we worry that the taxonomy-related information given in the templates is too complex and not comprehensible to the average investor, since the taxonomy in itself is hard to comprehend. Moreover, the extra layer of information adds to already lengthy and complex templates, which further overshadows the financial information given in e.g. prospectuses. We still believe that the templates should be shortened with a focus on providing end-investors with only meaningful information in the most accessible format that helps them choose products. There is a risk that the level of detail and complexity in the information given in the templates will refrain investors from investing in green and sustainable products. We encourage the ESAs to have this in mind when finalizing the RTS, including the templates. In order to make the templates more accessible, it could be considered to develop different templates for different product types.

We note that the ESAs expect a delay in submitting a final draft RTS to the Commission giving financial market participants less time to prepare and implement the revised templates. We also note that the ESAs in the Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation (JC 2021 06) recommend the Commission to postpone the application date for products’ periodic reporting according to the SFDR RTS in order to allow for at least a six months implementation period. We value and support the ESAs recommendation to the Commission and encourage the ESAs to also recommend to the Commission an implementation period of at least six months for both the precontractual and reporting templates in order to ensure an appropriate implementation of the templates. Updating e.g. prospectuses with the required information in the precontractual templates involves extensive work and will take time after the final adoption of the SFDR RTS that includes the taxonomy-related sections inserted into the templates.

Another issue which is also very important to keep in mind is the current lack of available sustainability data. We recommend the ESAs to address this issue in the final advice to the Commission and to recommend a transitional, best-effort approach in the first year of application of the templates.

<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>

We support the proposed approach to amend the existing SFDR RTS. This will ensure a “single rulebook” making the rules more accessible.

As also stated in our introductory remarks, we worry that the consolidated version of the RTS, which includes the taxonomy-related information in the precontractual and reporting templates, will not be finalised in time to ensure an appropriate implementation of the templates, if the application date 1 January 2022 is maintained. We encourage the ESAs to address and discuss the timing issue with the Commission to ensure proper implementation of the templates. We also suggest an implementation period of at least six months in terms of the mandatory use of the templates and call for a transitional, best-effort approach in the first year of application of the templates in order to address the current challenges around data availability.

<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>

We believe that the proposed KPI for the disclosure of the extent to which investments are aligned with the taxonomy is appropriate. However, the chosen approach must be subject to the finalisation of the reporting obligation of non-financial undertakings under Article 8 of the Taxonomy Regulation, which sets out information that can actually be obtained by the undertakings.

As an example, if the final delegated regulation under Article 8 of the Taxonomy Regulation provides flexibility for non-financial undertakings to report on some of the KPIs, e.g. OpEx, the “one approach for all investments” for the financial product disclosure against the taxonomy will not be viable and calls for more flexibility.

Turnover is probably the most relevant indicator. CapEx is, however, also important as regards to companies in transition. We suggest incorporating flexibility in the use of indicators, so that the same indicator does not have to be used for all investments. In our opinion, it should be up to each manufacturer to assess the characteristics of the individual investment and then use the KPI that is deemed most relevant. The same KPI will probably be used for most investments, however, there may be larger positions, where it would be more appropriate to apply a different KPI. Therefore, appropriate flexibility should be ensured.

<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>

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<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>

We think that it is best to exclude derivatives to make it more intuitively easy for investors to understand the exposure towards the KPI. We notice that in its advice to the European Commission on Article 8 of the Taxonomy Regulation, ESMA recommends that derivatives are also excluded from the KPI disclosed by asset managers with the exemption of Contracts-for-Differences (CfDs). Without having a strong opinion on whether CfDs should be included or not, we believe it is important to ensure consistency to other legislative frameworks meaning that CfDs should be included, if they are included in the KPI disclosure by asset managers and vice versa.

<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>

We think that the definitions are sufficiently clear.

<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>

We understand that the suggested approach might be beneficial in terms of overall comparability across all products. However, this comparability requires that investors somehow (from advisers' or from manufacturers' documentation) are made clearly aware of the method. Otherwise, the method will risk pushing taxonomy-focused investors away from products that might suit them well, but which *appear* non-aligned due to the inclusion of sovereign bonds and other assets that cannot be assessed for taxonomy-alignment.

We find it most appropriate for the time being to exclude sovereign bonds, until standards and methodologies have been developed for assessing sovereign exposures. In our opinion, there is a risk that investors with a low risk profile but with high sustainability preferences will compromise their risk profile with the risk of harming themselves financially. To avoid this distortion between high-risk and low-risk products, we recommend that sovereign bonds are excluded from the calculation of taxonomy-alignment. In all circumstances, it should be made optional for financial market participants to disclose an additional KPI, which excludes sovereign bonds and other assets that cannot be assessed for taxonomy-alignment to ensure that funds are not unduly penalised for investing in sovereign bonds.

<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>

We support the proposed approach to include information on, *whether* the statement on taxonomy compliance has been subject to an assurance provided by an auditor or a review by a third party. Information on

assurance is mostly relevant for periodic reporting, as the precontractual documentation only contains a target on taxonomy alignment, which is difficult to review.

A requirement on third party assessment is premature given the current challenges around data availability, but could be considered at a later stage, when the Corporate Sustainability Reporting Directive has been finalised. At that point the ESAs might potentially consider, if the statement as an alternative should be further clarified to address whether the *data* underlying the statement has been subject to third party assurance. A requirement on third party assurance should take into account that some financial products are subject to quarterly reporting, e.g. portfolio management agreements. For those financial products it could be considered, whether a yearly third party assessment could be sufficient, as is the case for other financial products subject to the disclosure requirements in the Disclosure Regulation and the Taxonomy Regulation. In the meantime it could be considered to require the method used reviewed by an auditor or a third party, including the use of data. It should, however, be noted that any requirement on third party assurance is a level 1 matter and requires that the Disclosure Regulation is amended accordingly.

In terms of the proposed statement, we further suggest a rephrasing of the section in the periodic disclosure templates as follows:

“The minimum percentage of investments of the financial product that are made in environmentally sustainable activities are aligned with the EU Taxonomy ~~are made in environmentally sustainable economic activities~~”

The rephrasing is required in order to avoid circular meaning of the statement (noting that the Taxonomy Regulation as of this date only captures environmentally sustainable investments).

<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>

We agree that it makes sense to mirror the proposed pre-contractual disclosures for the periodic disclosures.

<ESA_QUESTION_ESG_8>

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

<ESA_QUESTION_ESG_9>

a) Minimum share of investments aligned with the EU taxonomy

In the proposed pre-contractual templates a minimum percentage of investments of the financial product that are aligned with the EU taxonomy should be stated. This creates a binding minimum level of taxonomy investments meaning that the actual level cannot be lower than the stated minimum level. Neither the Taxonomy Regulation nor the Disclosure Regulation requires financial markets participants to set binding minimum levels of sustainable investments or taxonomy-aligned investments. They are only required to inform about the targets set for the product and report on, whether or not these targets have been met and the reasons why they have not been met, if this is the case. We believe that the wording “minimum share” in the pre-contractual templates should be replaced by “target” so that it becomes clear for the investor that the mentioned level of taxonomy-aligned investments are the intended objectives – or targets – and that the actual level can be higher or lower than the level mentioned in the pre-contractual documentation.

b) Disclosure by Article 8/9 products not investing into taxonomy-aligned investments

Including mandatory information on taxonomy-alignment may (please also see our comments to question 6) pose a risk that some investors are deterred by a low – or even zero – percent minimum taxonomy-investments. If this low number is caused by – for example – an investment strategy related to activities for which no taxonomy-criteria exist, it could be misleading rather than informative.

We therefore suggest that the relevant parts of the templates are supplemented with an additional option stating:

“The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities”.

To enhance transparency, financial market participants should clearly state in a tick-the-box solution whether the financial product (a) invests in economic activities that contribute to an environmental objective or promote environmental characteristics, or (b) does not invest in economic activities that contribute to an environmental objective or promote environmental characteristics.

Only financial products ticking off option (a) should provide the taxonomy statement, whereas financial products ticking off option (b) should provide the disclaimer.

In line with the above, we strongly suggest that the section on “what is the minimum share of sustainable investments that are not aligned with the EU Taxonomy” is supplemented by an option to confirm that the financial product does or does not have a minimum share of other sustainable investments.

Also, we do not believe that it is appropriate to require information on, why a financial product has invested in economic activities that are not environmentally sustainable. It is not a requirement to only invest in taxonomy-aligned activities. Instead, the periodic reporting templates should allow for a more qualitative description on the taxonomy investments.

c) Article 8 – pre-contractual

It is not a pre-requisite for Article 8 products to invest in sustainable investments. Accordingly, the heading “*To which objectives do the sustainable investments contribute and how do they not cause significant harm*” should be supplemented with a “N/A” option for products, which confirm initially in the template not to invest in sustainable investments.

Subject to our comments to litra b) above, the section on “minimum share of sustainable investments that are not aligned with the Taxonomy Regulation” should not be included for Article 8 products. The level 1 text provides no basis for such specific disclosure requirement on Article 8 products.

<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>

In general, we think that it would be beneficial to have different templates for different product types. That said, we recognise that using the same templates can make it easier for investors (especially retail investors) to get comfortable with the structure. However, the risk mentioned in our response to question 9 would need to be mitigated.

<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>

This issue is somewhat similar to the one presented in our response to question 9 (and 6). We suggest mitigating any possible misunderstandings with an additional text, e.g. stating that no detailed taxonomy-criteria for social sustainability currently exist.

<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>

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<ESA_QUESTION_ESG_12>