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Consolidated questions and answers (Q&A) on the SFDR (Regulation (EU) 2019/2088) and the SFDR Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288)

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This document combines responses given by the European Commission to questions requiring interpretation of Union Law according to Article 16b(5) of the ESA Regulations, which are colour coded in blue, and responses generated by the ESAs relating to the practical application or implementation of SFDR under Article 16b(1) of the ESA Regulations, which are not colour coded.

Disclaimer: The answers provided by the European Commission in this document clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

Acronyms and definitions used

AIFs	Alternative investment funds
AIFMs	Alternative investment fund managers
CapEx	Capital expenditure
Clarifications document	Clarifications on the ESAs' draft RTS under SFDR (JC 2022 23)
CSRD	Corporate Sustainability Reporting Directive
Delegated Regulation	Commission Delegated Regulation (EU) 2022/1288
EFRAG	European Financial Reporting Advisory Group
ESAs	European Supervisory Authorities
ESRS	European Sustainability Reporting Standards
FMP	Financial market participant
GHG	Greenhouse gases
IORPs	Institutions for Occupational Retirement Provision
KPI	Key performance indicator
MOP	Multi-option Product
NCA	National Competent Authority
OECD	Organisation for Economic Co-operation and Development
OpEx	Operating expenditure
PAI	Principal adverse impacts
PEPPs	Pan-European personal pension products
PRIIPs	Packaged retail investment and insurance-based products
SFDR	Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088)
TR	Taxonomy Regulation (Regulation (EU) 2020/852)
UCITS	Undertakings for Collective Investment in Transferable Securities

I. Scope issues

1. Does Regulation (EU) 2019/2088 (SFDR) apply to registered (sometimes referred to as sub-threshold) AIFMs referred to in Article 3(2) AIFMD?

The reference in point (4) of Article 2 of Regulation 2019/2088 to point (b) of Article 4(1) of Directive 2011/61/EU means that 'financial market participant' also comprises AIFMs subject to registration referred to in point (a) of Article 3(3) of Directive 2011/61/EU.

Article 17 of Regulation 2019/2088 on exemptions from that Regulation and any other provision in that Regulation, lay down neither exemptions nor derogations from obligations under that Regulation for AIFMs subject to registration referred to in point (a) of Article 3(3) of Directive 2011/61/EU.

In consequence, entity and financial product related requirements of Regulation 2019/1088 apply to such AIFMs.

Since disclosures to investors referred to in Article 23(1) of Directive 2011/61/EU and annual reports referred to in Article 22 of Directive 2011/61/EU, as referred to in point (a) of Articles 6(3) and point (a) of Article 11(2) of Regulation 2019/2088 respectively do not apply to AIFMs subject to registration referred to in point (a) of Article 3(3) of Directive 2011/61/EU, such AIFMs should apply those provisions by analogy, i.e. information is to be included in pre-contractual and periodic documentation made available to end investors under national law.

Managers of qualifying venture capital funds and qualifying social entrepreneurship funds registered in accordance with Article 14 of Regulation (EU) No 345/2013 or Article 15 of Regulation (EU) No 346/2013 must include the relevant information in documents referred to in points (d) and (e) of Articles 6(3) and points (d) and (e) of Article 11(2) of Regulation 2019/2088 respectively.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 14 July 2021)

2. Does Regulation (EU) 2019/2088 (SFDR) apply to non-EU AIFMs, for example when they market a sustainable EU Alternative Investment Fund under a National Private Placement Regime?

It follows from points (1) and (4) of Article 2 Regulation 2019/2088 that for the purposes of the Regulation a 'financial market participant' comprises an 'alternative investment fund manager', as defined in point (b) of Article 4(1) of Directive 2011/61/EU¹, including those which have their registered office in a Member State (EU AIFMs) and those which have their registered office in a third country (non-EU AIFMs). Directive 2011/61/EU lays down the conditions under which a non-EU AIFM, i.e. an AIFM from a third country, may carry out its activities within the Union. Given the absence of the activation of the AIFM third country passport under Article 67(4) and (6) of that Directive, access to end investors in individual Member States may be on the basis of national laws set out in National

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

Private Placement Regimes. Where an AIFM from a third country enters the market of a given Member State by means of a National Private Placement Regime, that AIFM must ensure compliance with Regulation 2019/2088, including the financial product related provisions.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 14 July 2021)

3. Article 17 of Regulation (EU) 2019/2088 exempts insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice that are enterprises irrespective of their legal form, including natural persons and self-employed persons, provided that they employ fewer than three persons. As there is no definition of “employ” or “employee” in Regulation (EU) 2019/208, how are self-employed staff, owner managers or part-time employees counted?

The headcount in Article 17 of Regulation (EU) 2019/2088 applies regardless of the features of the employment relationship, i.e. part or full-time.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

II. Definition of sustainable investment

- 1. How does the definition of “sustainable investment” in Article 2, point (17) SFDR apply to investments in funding instruments that do not specify the use of proceeds, such as the general equity or debt of an investee company? For example, would an investment in an investee company which has one economic activity, among several other economic activities, that contributes to an environmental or social objective (and none of the economic activities significantly harm any environmental or social objective and the company follows good governance practices) be considered to be a “sustainable investment” as a whole or in part?**

The definition of sustainable investment set out in Article 2, point (17), SFDR does not prescribe any specific approach to determine the contribution of an investment to environmental or social objectives. Financial market participants must disclose the methodology they have applied to carry out their assessment of sustainable investments, including how they have determined the contribution of the investments to environmental or social objectives, how investments do not cause significant harm to any environmental or social investment objective and how investee companies meet the ‘good governance practices’ requirement. This is reflected in Commission Delegated Regulation (EU) 2022/1288² which, for example, requires financial market participants to explain how the indicators for adverse impacts on sustainability factors have been taken into account when carrying out the ‘do no significant harm’ test of sustainable investments.

The reference to ‘economic activities’ in the definition of sustainable investment set out in Article 2, point (17), SFDR seems to target cases in which funds are allocated to a specific project or activity, or to a company engaged in one single type of activity. However, financial market participants in scope of the SFDR can invest in funding instruments that do not specify the use of proceeds, such as the general equity or debt of an investee company. As an example, financial products referred to in Article 2, point (12) SFDR, such as UCITS and AIFs, can invest in the general equity or debt of an investee company. Moreover, pursuant to Article 9(3) SFDR, products tracking a Paris-aligned Benchmark (PAB) or a Climate Transition Benchmark (CTB), often based on portfolios of shares or bonds of companies, are deemed to make sustainable investments (see reply to question 5)³. In light of the above, the notion of sustainable investment can therefore also be measured at the level of a company and not only at the level of a specific activity.

(Answer provided by the European Commission on the interpretation of the SFDR, published 6 April 2023)

² Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).

³ Please note the question referred to in the parentheses (question 5) is [Q&A V.7](#) in this document.

2. How should “investment in an economic activity that contributes to an environmental objective” or “investment in an economic activity that contributes to a social objective” in Article 2, point (17), SFDR be interpreted? Are any (or all) of the following features sufficient for an economic activity to meet the definition of Article 2, point (17) SFDR, i.e. to contribute to an environmental (or a social) objective?

a) should the economic activity being carried out by the investee company in itself contribute to an environmental or social objective (for example, an issuer investing in micro-finance activities in the developing world to assist in the development of socially disadvantaged communities)?; and/or

b) can any economic activity potentially contribute to an environmental or social objective simply because it is carried on in a sustainable manner by the investee company (examples: (1) an investee company manufacturing a product in a more environmentally sustainable way than its peers/the sector, or (2) an undertaking that stands out for its social impact, for instance through its HR management or the representation of women); and/or

Can any economic activity contribute to the general environmental objective of climate change mitigation if it is only covered by a transition plan (for instance a plan aiming to reach climate-neutrality based on the ACT methodology)?

In order to qualify as ‘sustainable investment’ as defined in Article 2, point (17) SFDR, a financial product must (1) be invested in an economic activity that contributes to an environmental or social objective, (2) not significantly harm any of those objectives; and (3) ensure that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.

The SFDR does not set out minimum requirements that qualify concepts such as contribution, do no significant harm, or good governance, i.e. the key parameters of a ‘sustainable investment’. Financial market participants must carry out their own assessment for each investment and disclose their underlying assumptions. This policy choice gives financial market participants an increased responsibility towards the investment community and means that they should exercise caution when measuring the key parameters of a ‘sustainable investment’.

Furthermore, investments considered as ‘sustainable investment’ under Article 2, point (17) SFDR shall not significantly harm any of the objectives referred to in that Article. Therefore, referring to a transition plan aiming to achieve that the whole investment does not significantly harm any environmental and social objectives in the future could for instance not be considered as sufficient.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

III. Current value of all investments in PAI and Taxonomy-aligned disclosures

1. What does “current value” mean?

The basis used to calculate the “current value of all investments” in the PAI indicators applicable to investments in investee companies should be consistent with the definition of the “investee company’s enterprise value” as defined in point (4) of Annex I of the Delegated Regulation, whereby ‘enterprise value’ means the sum, at fiscal year-end, of the market capitalisation of ordinary shares, the market capitalisation of preferred shares, and the book value of total debt and non-controlling interests, without the deduction of cash or cash equivalents.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

2. How should “all investments” be understood? Gross asset value including cash, other assets, other liabilities? Or only actual investments, e.g., only private equity / private debt assets?

“All investments” as a concept is used in both the PAI disclosures in Annex I of the Delegated Regulation and in the calculation of Taxonomy-alignment referred to in Article 17 of the Delegated Regulation.

PAI calculations

For the purpose of calculating the PAI indicators in Annex I, especially the indicators for the carbon footprint (indicator 2 table 1), the GHG intensity of investee companies (indicator 3 table 1) and the GHG intensity of sovereigns (indicator 15 table 1), “all investments” should be understood to mean both direct and indirect investments funding investee companies or sovereigns through funds, funds of funds, bonds, equity instruments, derivative instruments, loans, deposits and cash or any other securities or financial contracts.

Additional considerations for certain types of financial market participants’ PAI calculations:

- **Asset managers:** For AIFM, managers of venture capital funds, managers of social entrepreneurship funds, management companies of UCITS, “all investments” should be considered the same as that Section 1.2 of Annex III of Regulation (EU) 2021/2178, i.e. all Assets under Management resulting from both collective and individual portfolio management activities;
- **Insurers:** “All investments” should include the following aggregates from the prudential balance sheet as defined in the Commission implementing regulation 2015/2452: holdings in related undertakings, equities, bonds, collective investment undertakings, derivatives, deposits other than cash equivalents, other investments, assets held for index-linked and unit-linked contracts, loans and mortgages and deposits to cedants and cash and equivalents;
- **IORPs:** For IORPs all investment should include the following lines from the balance sheet (PF.02.01.24) as laid down in the decision from the Board of Supervisors of EIOPA on EIOPA’s regular information requests towards NCAs regarding provision of occupational pensions

information ([EIOPA-BoS/20-362](#)): property, equities, bonds, investment funds/ shares, derivatives, other investments, loans and mortgage, cash and cash equivalents; and

- Banks or investment firms providing portfolio management or investment advice services: “All Investments” should include all the securities and financial contracts (which should be considered to include cash and cash equivalents) held by credit institutions and investment firms as part of the mandates given by their clients as referred to in article 4 (1) point 8 of Directive 2014/65/EU.

Taxonomy-alignment calculation

In order to disclose “investments of the financial product in environmentally sustainable economic activities”, Article 17(1) of the Delegated Regulation sets out a closed list of investments that are “investments of the financial product in environmentally sustainable economic activities”. Article 17 does not set any limitation to the definition of “all investments of the financial products” in the denominator which therefore includes all types of securities or financial contracts. Finally, Article 17 of the Delegated Regulation explicitly highlights that the investments in the numerator and denominator should be valued at market value.

This is not the same as the “net asset value” of a financial product. While the net asset value would be netted by the financial product’s liabilities, the market value of all investment is the sum of all assets held by the financial product. Using the net asset value would lead to a higher share of Taxonomy-aligned investments than using the sum of all investments and could theoretically even lead to a share higher than 100% if all assets are Taxonomy-aligned and the liabilities would be deducted in the denominator.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

3. Do the ESAs have a view on how to incorporate short positions within the PAI indicators – should they be excluded, by being deducted from the PAI indicator calculations where the shorts relate to a brown asset, or should they be added for each of the PAI indicators?

The rules do not specify separately any particular instruction for the disclosure of short positions with regard to the principal adverse impact disclosures in Annex I of the Delegated Regulation. The ESAs are of the view that publishing short positions separately from the main calculation would not help the comprehensibility of the PAI disclosures. The calculations for short positions should apply the methodology used to calculate net short positions laid down in Article 3(4) and (5) of Regulation (EU) No 236/2012 of the European Parliament and of the Council. The principal adverse impacts of long and short positions should also be netted accordingly at the level of the individual counterpart (investee undertaking, sovereign, supranational, real estate asset), but without going below zero.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

IV. PAI disclosures

- 1. As regards Article 4(4) of Regulation 2019/2088, must the calculation of the 500-employee threshold to the parent undertaking of a large group be applied to both EU and non-EU entities of the group without distinction as to the place of establishment of the group and/or subsidiary and does the due diligence statement include impacts of the parent undertaking only or must it include the impacts of the group at a consolidated level?**

The “comply or explain mechanism”

The underlying objective of Article 4 of Regulation 2019/2088 is to encourage financial market participants to pursue more sustainable investment strategies in terms of reducing negative externalities on sustainability caused by their investments. The compliance with disclosure requirements under Article 4 should incentivise the interest in investing in activities that do not harm environment or social justice, curb greenhouse gas emissions of their investments, stimulate investee companies to transition away from unsustainable activities and improve their environmental impacts or and even induce portfolio adjustments and divest from investments in activities that are harmful to sustainability. Article 4 also encourages financial advisers to pay more attention to how the consideration of negative externalities is integrated in their investment or insurance advice.

This is why the “comply or explain mechanism” under Article 4(1) of Regulation 2019/2088 distinguishes between ‘principal adverse impacts’ and ‘adverse impacts’.

Whilst the “comply mechanism” under point (a) of paragraph 1 encompasses the consideration of principal adverse impacts of investment decisions, financial market participants that decide not to apply the “comply mechanism”, must under point (b) of that paragraph that establishes “explain mechanism”, provide clear reasons for why they do not consider ‘adverse impacts’ of investment decisions on sustainability factors. Under point (b), by way of example, financial market participants must provide clear reasons for why they do not consider degradation of the environment or social injustice caused by their investments.

The aim of Article 4(3) and (4) of Regulation 2019/2088 is to introduce a more stringent “disclosure mechanism” and reduce a hypothetical incidence of application of “explain mechanism”. Large financial market participants, on solo or group basis, as specified in those two paragraphs of Article 4, must publish and maintain on their websites statements on their due diligence policies with respect to the principal adverse impacts of investment decisions on sustainability factors, i.e. in other words that and how they consider principal adverse impacts.

The 500-employee criterion

The 500-employee criterion, as laid down in Article 4(3) of Regulation 2019/2088, relates to a financial market participant.

The 500-employee criterion as laid down in Article 4(4) of Regulation 2019/2088 relates to the large group, as referred to in Article 3(7) of Directive 2013/34/EU⁴, in its entirety; the calculation of the headcount takes into account the number of employees of a parent undertaking and of subsidiary undertakings regardless whether they are established inside or outside the Union. Article 4(4) of Regulation 2019/2088 sets out obligations on financial market participants that are parent undertakings which in that capacity, set the group wide policies, including due diligence policies. Therefore, such financial market participants publish and maintain the requested information, adapted to the specific situation of the parent undertaking and not to the group as a whole. The criterion of a group is just relevant for the headcount that triggers the reporting obligations by a financial market participant.

Subsidiary undertakings might still qualify as financial market participants subject to Article 4(3) or might be financial market participants that consider principal adverse impacts of investment decisions on sustainability factors as described in point (a) of Article 4(1) of Regulation 2019/2088.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 14 July 2021)

2. Is it possible for financial market participants that are below the threshold set by Article 4(3) and (4) of Regulation (EU) 2019/2088 and choose not to consider adverse impacts of investment decisions on sustainability factors at entity level (Article 4(1)(b) of Regulation (EU) 2019/2088) to indicate that they do consider principal adverse impacts (PAI) at product level only for a certain subset of financial products? In other words, can a financial market participant not consider PAI at entity level but nevertheless consider PAI under Article 7 of Regulation (EU) 2019/2088 for some of the financial products it manages, and if they do so, can they disclose this under Article 4(1)(b) of Regulation (EU) 2019/2088?

A financial market participant that

- is below the thresholds laid down in Article 4, paragraph 3 or 4, of Regulation (EU) 2019/2088; and
- does not consider adverse impacts of investment decisions on sustainability factors at entity level; and
- publishes and maintains on its website clear reasons for why it does not consider such adverse impacts, in accordance with Article 4(1), point (b), of that Regulation,

may, notwithstanding the criteria set out in Article 7(1), first subparagraph, of Regulation (EU) 2019/2088, manufacture a financial product that pursues a reduction of negative externalities caused by the investments underlying that product.

Financial market participants are responsible for assessing which financial products must comply with the provisions of Regulation (EU) 2019/2088; in consequence, where a financial product falls under Article 8 or Article 9 of Regulation (EU) 2019/2088, they must ensure compliance with the applicable disclosure requirements. Moreover, financial market participants shall include in the pre-

⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

contractual disclosures referred to in Article 6(1) and (3), and in the periodic reports referred to in Article 11(2) of Regulation (EU) 2019/2088 information explaining how it considers or has considered the financial product's principal adverse impacts on sustainability factors.

Financial market participants must, where relevant, include the information referred to in Article 4(1), point (b), of Regulation (EU) 2019/2088 setting out clear reasons as to whether and when they intend to consider such adverse impacts at entity level. A financial product pursuing a reduction of negative externalities caused by the investments underlying that product must not be part of such entity level information.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

3. PAI consideration: What is the meaning of “consider” in Article 7(1), point (a), SFDR? Could “consideration” of principal adverse impacts by a financial product mean that a financial product only discloses the relevant principal adverse impacts of the investments, for example total greenhouse gas emissions, or does “consideration” require the disclosure of the action taken by the financial market participant to address the principal adverse impacts of the product’s investments, such as engagement with investee companies, and are there any minimum criteria for such actions?

Article 7(1), point (a) SFDR imposes a disclosure obligation on financial market participant for those financial products for which a financial market participant applies Article 4(1), point (a), Article 4(3) or Article 4(4)⁵.

That disclosure obligation refers to how a financial product considers principal adverse impacts on sustainability factors. In that respect, recital 18 specifies that “where financial market participants, taking due account of their size, the nature and scale of their activities and the types of financial products they make available, consider principal adverse impacts, whether material or likely to be material, of investment decisions on sustainability factors, they should integrate in their processes, including in their due diligence processes, the procedures for considering the principal adverse impacts alongside the relevant financial risks and relevant sustainability risks. [...] Financial market participants should include on their websites information on those procedures and descriptions of the principal adverse impacts”. Consequently, the description related to the adverse impacts shall include both a description of the adverse impacts and the procedures put in place to mitigate those impacts.

⁵ Article 7 SFDR:

Transparency of adverse sustainability impacts at financial product level

1. By 30 December 2022, for each financial product where a financial market participant applies point (a) of Article 4(1) or Article 4(3) or (4), the disclosures referred to in Article 6(3) shall include the following:

(a) a clear and reasoned explanation of whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors;

(b) a statement that information on principal adverse impacts on sustainability factors is available in the information to be disclosed pursuant to Article 11(2).

Where information in Article 11(2) includes quantifications of principal adverse impacts on sustainability factors, that information may rely on the provisions of the regulatory technical standards adopted pursuant to Article 4(6) and (7).

2. Where a financial market participant applies point (b) of Article 4 (1), the disclosures referred to in Article 6(3) shall include for each financial product a statement that the financial market participant does not consider the adverse impacts of investment decisions on sustainability factors and the reasons therefor.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

4. 500 employee principal adverse impact (PAI) threshold: For the purposes of Articles 4(3)-4(4) SFDR, should “the average number of 500 employees” be understood to include workers who are assigned to the financial market participant even though they are employed by a third party that invoices their services back to the financial market participant, e.g. interim workers or workers that are employed by other organisations within a group for instance as part of shared-service centres? Furthermore, can the exemption in Article 23(5) of the Directive 2013/34/EU of the European Parliament and of the Council (‘Accounting Directive’), which grants Member States the right to exempt parent companies that are themselves the subsidiary of a larger group from drawing up consolidated financial statements and a consolidated management report under that Directive, apply to a “parent undertakings of a large group” as referred to in Article 4(4) SFDR?

As a general rule, and unless specifically defined in an applicable Union legal act, the definition of who constitutes an employee is governed by national law.

Since SFDR does not contain a definition of who constitutes an employee, it must therefore be determined by reference to the definition of employee set-out in the applicable national law.

The exemption in Article 23 of the Accounting Directive has no bearing on the disclosure obligations set out in Article 4(4) SFDR. These disclosures must be published and maintained on the website of the financial market participant. They are not part of the latter’s management report even when the financial market participant falls within the personal scope of the Accounting Directive.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

5. Should financial market participants disclose what share of PAI impacts have been estimated and what have been calculated on the basis of reported information?

For the sake of clarity and to enable investors to assess the robustness of the indicators disclosed in the PAI disclosure, it would be a good practice, but not obligatory, for financial market participants to include, where relevant as part of the disclosures required by Article 7(1)(e) of the Delegated Regulation and for each PAI considered by the financial market participant:

- The proportion of investments for which the financial market participant has relied on data obtained directly from investee companies, in order to calculate the corresponding indicator; and
- The proportion of investments for which the financial market participant has relied on data obtained by carrying out additional research, cooperating with third party data providers or external experts or making reasonable assumptions, in order to calculate the corresponding indicator.

These proportions could be expressed as a percentage of the current value of the investments included in the calculation of the indicator.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

- 6. In Table 1, indicator 16 (*Investee countries subject to social violations*), industry requests guidelines to ensure comparability, as there is a variety of approaches to this and lack of underlying data.**

The [Annex](#) to the recently published [proposal for a Directive on corporate sustainability due diligence COM\(2022\) 71](#) provides helpful examples of typical social violations that investee countries may be in violation of.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

- 7. In Table 3, indicator 7.2 (*Number of incidents of discrimination leading to sanctions*), how should incidents that lead to sanctions be measured? Industry would welcome guidelines on this, such as whether fines or penalties are included in the definition of sanctions.**

Until the application of the CSRD and the adoption of the ESRS by the European Commission, financial market participants may consider the definitions set out in the draft prototypes issued by EFRAG and especially the definition of a discrimination incident in Appendix A and DR S1-18 of ESRS S1 ‘Own workforce – Equal opportunities’.

Disclosure requirement S1-18 of the Exposure Draft ESRS S1 “Own workforce – Equal Opportunities” requires the undertaking to disclose *the total number of incidents of discrimination, including harassment, reported in the reporting period; and the number of incidents of discrimination leading to **financial sanctions**.*

About incidents, Appendix A notes that: “an ‘incident’ refers to a legal action or complaint registered with the undertaking or competent authorities through a formal process, or an instance of non-compliance identified by the undertaking through established procedures. Established procedures to identify instances of non-compliance can include management system audits, formal monitoring programs, or grievance mechanisms.”

As a consequence, when disclosing indicator 7.2 of Table 3 about the number of incidents of discrimination leading to sanctions, financial market participants should consider financial sanctions such as administrative monetary penalties (or fines) as “incidents leading to sanctions”. For sake of clarity, like all other PAI indicators of Annex I, indicator 7 of Table 3 of Annex I includes only the sanctions applied against entities causing the impacts, not the potential sanctions applied against the financial market participant itself, since the PAI disclosures focus exclusively on the adverse impacts of the financial market participant’s investment decisions.

The reported information should be consistent with the public disclosures reported by investee companies in accordance with the Accounting Directive (2013/34/EU).

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

8. It is common that many IORP voluntarily implement the OECD guidelines and therefore do voluntarily consider adverse impacts. Are they required to use the mandatory indicators?

Financial market participants, including IORPs, that choose to consider principal adverse impacts according to Article 4(1)(a) SFDR or fall within the limits prescribed in Article 4(3)-(4) SFDR (and specified by the Commission in Question IV.1) are required to disclose a statement on due diligence policies regarding the principal adverse impacts of investment decisions on sustainability factors, further specified in Chapter II and Annex I of the Delegated Regulation. Such financial market participants would be required to disclose the principal adverse impacts under the indicators provided in Table 1 of Annex I of the Delegated Regulation and at least one indicator from Table 2 and one indicator from Table 3, as prescribed in Article 6 of the Delegated Regulation. If a financial market participant, including IORPs, do not consider the adverse impacts of their investment decisions on sustainability factors under Article 4(1)(b) SFDR, they should from 1 January 2023 publish a statement according to Article 12 of the Delegated Regulation.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

9. A financial market participant manages a fund disclosing according to Article 8 or 9 SFDR. It manages 30% of this fund and delegates the management of the remaining 70%. Should the reported product level PAI be a weighted average of the internally and externally managed portfolios? In the context of Article 4 SFDR disclosures, how should investments made by a delegate be treated?

At the level of the financial product, the ESAs expect disclosure on PAI to cover all investments of the product, irrespective of whether the investment management is delegated or not.

Considering the fact that delegation has no impact on the accountability of the delegator, it is expected from the delegating financial market participant to have the same level of information about the investments it made itself and the investments made by its delegate. In this regard, the ESAs expect all investments to be reported.

At the financial market participant level, for the purpose of including investments by such a fund in a financial market participant's PAI disclosure (under Article 4 SFDR), all investments should be included in the reporting disclosed by the delegator, with the impact in the various indicators in Table 1 of Annex I of the Delegated Regulation weighted according to the value of those investments.

For the purpose of calculating the "current value of all investments" for the Article 4 SFDR disclosures, referred to under points 1 to 4 in the formulas of Annex I of the Delegated Regulation, where part of the investments may be made by a delegate, the financial market participant must ensure that it has information from the delegate to be able to fulfil the PAI disclosure requirements

under Article 4(1)(a), 4(3) and 4(4) SFDR, as specified in Chapter II and Annex I of the Delegated Regulation.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

10. On 21 April 2021 the European Commission proposed legislation to extend the non-financial reporting to enhance sustainability reporting while ensuring consistency with SFDR and the Taxonomy Regulation (CSRD). Until that time financial institutions will be obliged to either estimate the value of PAI indicators under Annex I or ask the investee companies to provide data, on a quarterly basis. We may expect that once the extended reporting obligations are in place, there might be significant discrepancies between the numbers estimated by financial institutions and the numbers actually reported by investee companies under new regulations. Have you considered how to address this issue, how the financial institutions should adjust their reporting to new, actual data reported by investee companies? The new reporting will apply to annual statements and KPIs are to be calculated based on at least quarterly data – this constitutes additional risk of discrepancies between data provided by the financial institutions and by the investee companies.

In addition to aiding any financial product level disclosures where sustainability indicators include information disclosed by investee companies under the CSRD, the reporting provided by the CSRD will be used by financial market participants to satisfy the principal adverse impact disclosures (PAI) under Article 4 SFDR, Chapter II and Annex I of the Delegated Regulation and Article 7 SFDR. The PAI disclosures under Chapter II of the Delegated Regulation are annual disclosures to be published on the financial market participant's website. The annual disclosure should be based on the average of the attributed impacts of all the FMP's investments at the end of each quarter, as laid out in Article 6(3) of the Delegated Regulation.

Such annual disclosures should be based on the average of indicators observed on 31 March, 30 June, 30 September, and 31 December for any reference period. This disclosure should therefore consist in the average of four different data inputs. As set out in Recital 5 of the Delegated Regulation, four is the minimum but additional specific data points during the reference period could be considered. The intention behind the use of at least four data points is to capture the change in the financial market participant's investments across a given financial year, as some investments made by the financial market participant may not be held by the financial market participant from beginning to end of the period in consideration, and their relative weights may change across time.

In practice, where financial market participants are in the preparatory process of its disclosures under Article 4 SFDR, they should calculate all the impacts from the four data points at the same time. This calculation should be based on the latest available information on the impacts of the investee companies. Therefore, the provision of data by undertakings on a quarterly basis is not a pre-requisite to perform at least four quarterly calculations.

Where information about the impacts of the investee companies may not be publicly available, financial market participants should use best efforts to complete the values for each indicator. In that respect, financial market participants should obtain information either directly from investee

companies, or carry out additional research, cooperate with third party data providers or external experts. Financial market participants may also make reasonable assumptions. Finally, financial market participants should disclose how these efforts were made according to Article 7(2) in the appropriate field in the template provided in Annex I of the Delegated Regulation.

For the avoidance of doubt, a theoretical example could be as follows. FMP A held investments in investee companies “B” and “C” during each quarter of the whole reference period 2025. In May of 2026, FMP A prepares its PAI disclosures according to Annex I of the Delegated Regulation to be published before 30 June 2026, so it finds out the latest available information on the principal adverse impacts of investee companies B and C that they have most recently reported on for fiscal year 2025. FMP A then looks back at its quarterly holdings of investee companies B and C for 2025 and calculates the impacts of investee companies B and C at the end of each quarter in 2025 for each indicator based on the latest available information in May 2026 about the investee companies’ adverse impacts.

On the following page, the ESAs have provided a theoretical sample calculation to illustrate the example given above:

Example on how to calculate the value on an Indicator where an FMP has 2 Financial Products (FP) with 2 investments (Inv) each.

Indicator: Emissions to water (Annex I, Table 1, Indicator 8)

Metric: Tonnes of emissions to water generated by investee companies per million EUR invested, expressed as a weighted average

Point in time (end of...)	"Current value of all investments" in EUR million	A=B ¹ +B ² +B ³ +B ⁴				B ¹ B ² B ³ B ⁴				C ¹ C ² C ³ C ⁴				D ¹ D ² D ³ D ⁴				E ¹ =B ¹ /C ¹ E ² =B ² /C ² E ³ =B ³ /C ³ E ⁴ =B ⁴ /C ⁴				F ¹ =D ¹ *E ¹ F ² =D ² *E ² F ³ =D ³ *E ³ F ⁴ =D ⁴ *E ⁴				G=F ¹ +F ² +F ³ +F ⁴				I=G/4		J=I/A	
		Current value of investment in EUR Million				Enterprise value in EUR Million				Investee Indicator Tonnes of emissions to water generated by investee company				Weighted average current value of investment out of enterprise value				Indicator weighted Indicator attribution per investment in Tonnes				Indicator weighted aggregated Indicator for all investments per quarter				Indicator expressed as an annual weighted average		Indicator per million EUR invested expressed as a weighted average					
		FP 1		FP 2		FP 1		FP 2		FP 1		FP 2		FP 1		FP 2		FP 1		FP 2													
		Inv 1	Inv 2	Inv 3	Inv 4	Inv 1	Inv 2	Inv 3	Inv 4	Inv 1	Inv 2	Inv 3	Inv 4	Inv 1	Inv 2	Inv 3	Inv 4	Inv 1	Inv 2	Inv 3	Inv 4												
Q1	12	2	5	5	0	1,268	4,924	5,338	693	50	125	15	0	0.16%	0.10%	0.09%	0.00%	0.08	0.13	0.01	0.00					0.22			0.055	0.005			
Q2	21	9	6	5	1	1,268	4,924	5,338	693	50	125	15	0	0.71%	0.12%	0.09%	0.14%	0.35	0.15	0.01	0.00					0.52			0.130	0.006			
Q3	27	10	10	4	3	1,268	4,924	5,338	693	50	125	15	0	0.79%	0.20%	0.07%	0.43%	0.39	0.25	0.01	0.00					0.66			0.165	0.006			
Q4	28	13	0	7	8	1,268	4,924	5,338	693	50	125	15	0	1.03%	0.00%	0.13%	1.15%	0.51	0.00	0.02	0.00					0.53			0.133	0.005			
Total	88																							0.483			0.022						

For this example, the following assumptions are made:

- Current Value of investment: The current value of the investment represents the valuation of the investments taking as reference the ones included in the calculation of the enterprise value for the same fiscal year. The change in the current value of investment represents a change in the number of investments (e.g. shares) held, not a change in the valuation of that investment (e.g. a share).
- Enterprise Value: The value is fixed at fiscal year-end, annually.
- Investee indicator: The latest available information has been used for each investment.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

11. In the delegated regulation, the timing of the amount of the current investments in an investee company (holding date) and the enterprise value (company's fiscal year end) are not aligned. Given market movement between those dates, the calculation of the percentage owned will be inaccurate. Art 6 (3) states for the PAIs it is an average of the impacts on four dates, so this will lead to problems in some cases and will lead to over/under representation of the emissions of some investee companies.

The ESAs are aware that there is a potential misalignment between the timing of the (at least) quarterly calculations of the adverse impacts under Section II and Annex I of the Delegated Regulation.

The quarterly impacts should be based on the current value of the investment derived from the valuation the individual investment (e.g. share) price valued at fiscal year-end multiplied by the quantity of investments (e.g. shares) held at the end of each quarter. In such manner the composition of the investments at the end of each quarter is taken into account, but the valuation reflects the fiscal-year end point in time.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

12. In Annex I, Table 3, indicator 3 (*Number of workdays lost to injuries, accidents, fatalities or illness of investee companies expressed as a weighted average*) - may this be reported as absolute or relative numbers? Or does the Regulation dictate one or the other? The question is also applicable to Table 3, indicators 7 and 14.

The metrics for indicators 3, 7 and 14 of Table 3 indicate that the value of the impact should be expressed as a weighted average. Financial market participants should refer to the definition of "weighted average" in point 3 of Annex I of the Delegated Regulation.

Furthermore, while the metrics for those indicators do not contain the words that the result should be expressed "per million EUR invested" (unlike indicators 8 and 9 in Table 1 and indicators 1, 2, 3 and 13 in Table 2), to achieve the relative responses desired by the ESAs, these metrics (indicators 3, 7 and 14) in Table 3 should also be expressed in relative terms, i.e. "per million EUR invested".

The annual disclosure should be based on at least four quarterly calculations based on the investments of the financial market participant, as described in Article 6(3) of the Delegated Regulation. The quarterly impacts should be based on the latest available information from investee companies or other entities.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

13. When looking to carbon footprint major indices under the SFDR, we noticed that Enterprise Value Including Cash (EVIC) is expected as the denominator. Typically, Enterprise Value's main components are debt and cash which are not used by financial undertakings (e.g. banks) in the same way they are for non-financial undertakings. Banks are normally evaluated from loans and deposits. We do not believe there is an alternative

EV value for banks. Is the expectation for EVIC that the FMP self-derives "current market cap + book value of debt + minority interests" instead of EVIC for financial undertakings? Or that you exclude financial undertakings in the calculation altogether? It does seem that in the case of financial undertakings, using gross debt rather than net debt creates peculiar results.

The ESAs recognise that the Enterprise Value definition in point 4 of Annex I of the Delegated Regulation was not specifically designed for credit institutions, but that definition is still meaningful and should be used as it provides an appropriate allocation mechanism to allow calculations to be made. Financial market participants should not develop their own definitions for the terms used in that definition.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

14. Calculation of Indicators 1 and 2 table 1 - Enterprise Value Question: For those indicators where Enterprise Value is used, how should we proceed if the Enterprise Value is negative?

The ESAs note that the widely used concept of “enterprise value”, outside the specific reference in Annex I can result in negative enterprise values. In such cases the cash held by the enterprise exceeds all other factors in the equation. However, the ESAs have specified in point 4 of Annex I of the Delegated Regulation that for the purpose of the calculation of certain indicators, “enterprise value” should be used but the definition specifies that cash or cash equivalents should not be deducted from the sum. Therefore, enterprise value calculated according to the definition laid down in Annex I cannot be negative.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

15. Should an FMP still disclose the indicators applicable to investments in “sovereigns and supnationals” and “real estate assets” if the FMP makes no investments in sovereigns, supnationals and real estate assets?

If a financial market participant makes no investment decisions resulting in investments in sovereigns or real estate, then the rows in the template in Table 1 of Annex I corresponding to indicators for sovereigns and real estate should be left empty or with zero values. All the other indicators and fields in the template in Table 1 of Annex 1 should be completed by such a financial market participant.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

16. Annex I, Table I, indicator 13 (board gender diversity). Assume a company has 5 female board members and no male board members. The indicator is defined as follows: Average ratio of female to male board members in investee companies. The use of “ratio .. to”

seems to suggest a simple ratio where ‘number of male board members’ would be in the denominator. In the example, the calculation would be 5/0, which is infinite. In other words, is the denominator the number of male board members (0 here) or the number of all board members (5 here)?

This was clarified by the European Commission when they adopted the Delegated Regulation, because indicator 13 in Table 1 of Annex I was changed to add “expressed as a percentage of all board members” at the end of the metric.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

17. How do you calculate indicator 8 (Emissions to water) from Table 1 (and similar indicators) where the explicit formula is not provided?

See paragraph 21 of the clarifications document and Question IV.10 above.

Paragraph 21 of the clarifications document:

“21. [...] the ESAs are of the view that indicator 8 in Table 1 of Annex I (emissions to water) should be expressed as a weighted average (which is defined in the Annex) of the priority substances referred to in the definition of “emissions to water” in Annex I”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

18. The question relates to the separation of asset class in Annex I, Table 1, indicator 4 (Exposure to companies active in the fossil fuel sector) and 17 (Exposure to fossil fuels through real estate assets), but also applicable to other indicators. In the case of a multi-asset portfolio or product, how should the share of investments in real estate (REA) involved in fossil fuels be calculated (considering all investments or only investments in Equities/REA)?

See paragraph 26 of the clarifications document:

“26. In relation to multi-asset investments in real estate and investee companies, specifically for the respective GHG emissions of real estate and investee companies, the ESAs consider that principal adverse impacts should be disclosed by type of exposure aggregated at the entity level. In other words, if the financial market participant makes investments through a multi-asset product in real estate, the impacts of that real estate exposure should be added to the relevant indicators for real estate in the template provided in Table 1 of Annex I. Exposures to investee companies should be added in Table 1 of Annex I to the relevant indicators. The disclosure is not an aggregation of the entire adverse impact of the entity, but the aggregation of the impacts caused by exposures to different types of asset classes in the relevant indicators in Table 1 of Annex I. The ESAs are of the view that for the purpose of the calculation of indicator 17 of Table 1 of Annex I, the financial market participant should only include in the denominator all its investment in real estate assets”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

19. In Annex I, Table 2, indicator 18 (GHG emissions), do we take the % of ownership into account when calculating the total GHG emissions (i.e. should GHG emissions be calculated as sum of all GHG emissions, or should we also include % ownership to make it a weighted average)?

Annex I, Table 2, indicator 6 (water usage and recycling). How should one calculate the PAI in table 2 for indicators 6.1 (Average amount of water consumed and reclaimed by the investee companies (in cubic meters) per million EUR of revenue of investee companies) and 6.2 (Weighted average percentage of water recycled and reused by investee companies) considering that the first refers to ‘average’ and the latter refers to ‘weighted average’?

See paragraph 25 of the clarifications document:

“25. Regarding the GHG emissions of real estate in indicator 18 of Table 2 of Annex I, the ESAs consider that the disclosure of the adverse impact for GHG emissions generated by real estate assets should reflect the share of ownership of the assets by the financial market participant, as detailed in the GHG emissions calculation formula in Annex I”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

20. Annex I, Table 2, indicator 6 (water usage and recycling). How should one calculate the PAI in table 2 for indicators 6.1 (Average amount of water consumed and reclaimed by the investee companies (in cubic meters) per million EUR of revenue of investee companies) and 6.2 (Weighted average percentage of water recycled and reused by investee companies) considering that the first refers to ‘average’ and the latter refers to ‘weighted average’?

See paragraph 24 of the clarifications document:

“24. The ESAs consider that the “average” amount under indicator 6 part 1 of Table 2 of Annex I (water usage and recycling) should be considered as weighted average amount of water consumed by the investee companies (in cubic meters) per million EUR of revenue of investee companies”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

21. CO2 emissions for Company A are 5000 tonnes. If a financial market participant holds 10% of the company the first 6 months of the reference period for reporting and 0% the remaining 6 months of the period, which formula should be used for the calculations,

following the Article 6(3) RTS provision that calculations should be made through quarterly and end of year reporting?

See paragraphs 9-11 of the clarifications document:

“9. With regard to the calculation of indicators on GHG emissions, it is worth noting that in some cases an investee company’s emissions may change throughout a reference period and the size of the investment in that company may evolve too. For instance, the CO₂e emissions for Company A could be 5000 tonnes and a financial market participant could hold 10% of the company the first 6 months of the reference period for reporting and 0% the remaining 6 months of the period.

10. In such a case, the ESAs note that for the purposes of the disclosures of principal adverse impacts of investment decisions on sustainability factors, the assessment of the impact should be based on, at least, the average of four calculations made on 31 March, 30 June, 30 September, and 31 December of a calendar year reference period (year N)⁴.

Reference date of the calculation	Annual CO ₂ e emissions of Company A	% holding
31 March N	5000	10
30 June N		10
30 September N		0
31 December N		0

Therefore, in the example referred to in paragraph 9:

- a) a financial market participant reports in year N+1 on the reference period N;
- b) annual company A’s emissions for year N are 5000 Tco₂e and there is no further information regarding its distribution throughout the year. Therefore, it will be assumed they are distributed equally over the 12 months;
- c) the 5000 tonnes of GHG emissions of Company A should be weighted by 10% in the first two calculations (31 March and 30 June) towards the overall GHG emissions of the financial market participant under the relevant indicators in the disclosures
- d) these emissions should not count towards the overall GHG emissions in the last two calculations in the calendar year (30 September and 31 December);
- e) so the contribution of the emissions of Company A to the financial market participant’s GHG emissions indicators during the reference period would be 250 tonnes:

$$\frac{0,1 * 5000 + 0,1 * 5000 + 0 + 0}{4} = 250tCO_2e$$

*5000 tCO₂e are assumed to have been emitted between 1 April of Year N-1 and 31 March of Year N, and 5000 tCO₂e are assumed to have been emitted between 1 July of Year N-1 and 30 June of Year N.”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

22. Can the PAI indicators listed in the Annex 1, Table 1 Delegated Regulation be used as indicators to measure the attainment of environmental or social characteristics?

See paragraphs 5-7 of the clarifications document:

5. “The reference to sustainability indicators in the disclosures for financial products is to be understood with reference to the “sustainability indicators used to measure the environmental or social characteristics or the overall sustainable impact of the financial product” in Articles 10(1)(b), 11(1)(a) and 11(1)(b) SFDR. Therefore, the ESAs consider that the “sustainability indicators” and the indicators for principal adverse impact referred to in Article 4 SFDR, and Chapter II and Annex I of the draft RTS in the ESAs’ final reports refer to different disclosures under the SFDR.
6. However, it is possible to use the indicators for principal adverse impact to measure the environmental or social characteristics or the overall sustainable impact of the financial product, e.g. by showing improvements of the investments against those indicators over time.
7. For the sake of clarity, the ESAs consider the following table with regards to three possible uses of the adverse impact indicators at financial product level:

	Use of the PAI indicators	Related main disclosure sections
a)	<p>Disclosure of DNSH for sustainable investments under Article 2(17) SFDR: the use of PAI indicators is mandatory to demonstrate that an investment qualifies as a sustainable investment. The PAI indicators to be used are the ones in Table 1 of Annex 1 and any relevant indicators in Tables 2 and 3 of Annex I</p> <p>The ESAs consider that using PAI indicators to fulfil the DNSH of SFDR does not require any PAI consideration</p>	<p>Annex II/IV: “how do/did the sustainable investments that the financial product partially intends to make/made, not cause significant harm to any environmental or social sustainable investment objective?”</p> <p>Annex III/V: “how do/did sustainable investments not cause significant harm to any environmental or social sustainable investment objective?”</p>

	at entity level pursuant to Article 4(1)(a), 4(3) or 4(4) SFDR.	
b)	Disclosure of PAI consideration under Article 7 SFDR: the disclosure of PAI consideration at product level is set out in Article 7 SFDR and is not further specified except for fields in the templates to provide the information required by that Article.	Annex II and III: “does this financial product consider PAI on sustainability factors?” Annex IV and V: “how did the financial product consider PAI on sustainability factors?”
c)	Measurement of the attainment of environmental or social characteristics and the sustainability-related impact (Articles 10(1)(b), 11(1)(a) and 11(1)(b) SFDR): sustainability indicators used to measure the attainment of the environmental or social characteristics (for Article 8 SFDR financial products) or sustainable investment objective (e.g. the impact of the financial product for Article 9 SFDR products) may include PAI indicators. There is no direct link between sustainability indicators and PAI indicators. The ESAs clarify that the use of PAI indicators as sustainability indicators to measure the attainment of environmental or social characteristics or impact of the sustainable investments does not require any prior PAI consideration at entity level pursuant to Article 4 SFDR or PAI consideration at product level pursuant to Article 7 SFDR.	Annex II: “what sustainability indicators are used to measure the attainment of each of the environmental or social characteristics promoted by this financial product?” // “What are (...) and how does the sustainable investment contribute to such objectives?” Annex III: “what sustainability indicators are used to measure the attainment of each of the sustainable investment objective of this financial product?” Annex IV: “How did sustainability indicators perform?” // “What were (...) and how did the sustainable investment contribute to such objectives?” Annex V: “How did sustainability indicators perform?”

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

23. If a financial market participant with more than 500 employees does not market or make available any financial products as defined in Article 2(12) SFDR, does the financial market participant still have to comply with the requirement to publish a statement on consideration of principal adverse impacts under Article 4(1)(a) SFDR?

The scope of the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR is limited by the definitions of “financial market participant” in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account). Within this scope, financial market participants have to consider all investment decisions for the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR, irrespective of whether the financial market participant’s investment decisions are made through financial products or in any other way.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

24. Should the “information about the policies on the integration of sustainability risks in the investment decision-making process” of the financial market participant be restricted to investments affected by other Articles of SFDR (such as Article 6 SFDR) or should this be understood in a wider sense covering all investment decisions?

The scope of the disclosures is limited by the definitions of “financial market participant” in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account). Within this scope, FMPs have to consider all investment decisions for the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

25. When it comes to entity-level disclosures in Article 4 should those disclosures relate only to financial products in scope of SFDR, or should those disclosures also relate to other types of instruments invested in by the financial market participant (e.g. structured bonds)? Should those disclosures also deal with own investments made on financial market participant’s own account?

The scope of the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR is limited by the definitions of “financial market participant” in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account). Within this scope, FMPs have to consider all investment decisions for the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

V. Financial product disclosures

- 1. Must a product to which Article 9(1), (2) or (3) of Regulation (EU) 2019/2088 applies only invest in sustainable investments as defined in Article 2(17) SFDR? If not, is a minimum share of sustainable investments required (or would there be a maximum limit to the share of “other” investments)?**

Where an EU Climate Transition Benchmark (EU CTB) or EU Paris-aligned Benchmark (EU PAB) exists, is it necessary for a product to track an EU PAB or an EU CTB on a passive basis for Article 9(3) of Regulation (EU) 2019/2088 to apply to it?

If the questions above are answered in the affirmative and if the minimum standards of an EU PAB or an EU CTB do not require the index components to be sustainable investments, can the product fall within the scope of Article 9(3) of Regulation (EU) 2019/2088?

Recital 21 of Regulation (EU) 2019/2088 of the European Parliament and of the Council⁶ (‘SFDR’) makes it clear that sustainable financial products with various degrees of ambition as to “sustainability” have been developed to date. Accordingly, where such financial products do not have ‘sustainable investment’ as their objective, as referred to in Article 9 SFDR, they are considered to fall under Article 8 of that Regulation.

Article 8 and Article 9 SFDR are two distinct product categories: financial products that promote environmental or social characteristics or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices, and financial products which have sustainable investment as their objective respectively.

The two distinct product categories are key to determine the access of end investors to financial products that are ambitious enough to meet their sustainability preferences.

Design of financial products subject to Article 9

A financial product to which Article 9(1), (2) or (3) SFDR applies may invest in a wide range of underlying assets, provided these underlying assets qualify as ‘sustainable investments’, as defined in Article 2, point (17), SFDR. The Commission’s replies to Q1 of Q&As of March 2023 clarify that the SFDR does not prescribe a single methodology to account for sustainable investments. Article 5 and recital 19 to Regulation (EU) 2020/852 of the European Parliament and of the Council² also clarify that ‘sustainable investments’ include investments into ‘environmentally sustainable economic activities’ within the meaning of that Regulation.

A financial product, in order to meet requirements in accordance with prudential, product-related sector specific rules may next to ‘sustainable investments’, also include investments for certain specific purposes such as hedging or liquidity which, in order to fit the overall financial product’s ‘sustainable investments’ objective, have to meet minimum environmental or social safeguards, i.e. investments or techniques for specific purposes must be in line with the sustainable investment

⁶ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

objective. Since Article 9 SFDR remains neutral in terms of the product design, or investing styles, investment tools, strategies or methodologies to be employed or other elements, the product documentation must include information how the given mix complies with the ‘sustainable investment’ objective of the financial product in order to comply with the “no significant harm principle” of Article 2, point (17), SFDR.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 14 July 2021 and amended on 6 April 2023⁷)

2. In terms of Article 8 of Regulation (EU) 2019/2088, can the name of a product, which may include words like “sustainable”, “sustainability”, or “ESG” be considered to qualify a product to be promoting an environmental or social characteristic or to be having sustainable investment as its objective?

While a financial product to which Article 8 of Regulation (EU) 2019/2088 applies does not need to explicitly promote itself as targeting sustainable investments (within the meaning of Article 2(17) of Regulation (EU) 2019/2088), would a reference to taking into account a sustainability factor or sustainability risk in the investment decision be sufficient for Article 8 of Regulation (EU) 2019/2088 to apply? If the answer is yes, how can financial market participants that disclose mandatory information according to Article 6(1) or Article 7(1) of Regulation (EU) 2019/2088 ensure that this is not automatically considered as “promoting environmental or social characteristics”.

Must a product to which Article 8 of Regulation (EU) 2019/2088 applies invest a minimum share of its investments to attain its designated environmental or social characteristic in order to be considered to be promoting environmental or social characteristics?

In the absence of active advertising of an environmental or social characteristic of the product, would an intrinsic characteristic of the product, such as a sectoral exclusion (e.g. tobacco) which is not advertised, also qualify as “promotion”?

In addition, would complying with a national legal obligation, which applies to the financial market participant, such as a ban on investment in cluster munitions, also bring the product into the scope of Article 8 of Regulation (EU) 2019/2088?

Recital 21 to Regulation (EU) 2019/2088 makes it clear that sustainable financial products with various degrees of ambition as to “sustainability” have been developed to date. Accordingly, where such financial products do not have ‘sustainable investment’ as their objective, as referred to in Article 9, they are considered to fall under Article 8 of Regulation (EU) 2019/2088.

Article 8 and Article 9 of Regulation (EU) 2019/2088 are two distinct product categories: financial products that promote environmental or social characteristics or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices (hereinafter ‘financial products that promote environmental or social

⁷ Original version published on 14 July 2021 can be found here:
https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_ga_1313978.pdf

characteristics'), and financial products which have sustainable investment as their objective respectively.

The two distinct product categories are key to determine the access of end investors to financial products that are ambitious enough to meet their sustainability preferences.

Article 8 of Regulation (EU) 2019/2088 lays down transparency rules for financial products that have a sustainability-related ambition lower than the ambition of financial products subject to Article 9. Where a product has an environmental objective and does not meet the do not significant harm as referred to in Article 2(17) of Regulation (EU) 2019/2088, qualifies as Article 8 product.

Like Article 9 of Regulation (EU) 2019/2088, Article 8 of that Regulation addresses a potential issue of greenwashing by financial products, i.e. conveying a false impression, or providing misleading information about how a financial product is performing in terms of ESG sustainability.

Environmental or social characteristics

Article 8 of Regulation (EU) 2019/2088 remains neutral in terms of design of financial products. It does not prescribe certain elements such as the composition of investments or minimum investment thresholds, the eligible investment targets, and neither does it determine eligible investing styles, investment tools, strategies or methodologies to be employed.

Therefore, nothing prevents financial products subject to Article 8 of Regulation (EU) 2019/2088 not to continue applying various current market practises, tools and strategies and a combination thereof such as screening, exclusion strategies, best-in-class/universe, thematic investing, certain redistribution of profits or fees. Certainly, many of those market practises, tools and strategies are also available to financial products subject to Article 9 of Regulation (EU) 2019/2088, provided the investments qualify as 'sustainable investments', as defined in point 17 of Article 2 of Regulation (EU) 2019/2088.

Financial products that fall under Article 8 may pursue reduction of negative externalities caused by the underlying investments, such as principal adverse impacts on sustainability factors referred to in point (a) of Article 7(1) of Regulation (EU) 2019/2088. In addition, as confirmed by Article 6 of Regulation 2020/852, nothing prohibits financial products that fall under Article 8 to be, in part, invested in 'sustainable investments' as defined in point 17 Article 2 of Regulation (EU) 2019/2088. On the other hand, integration per se of sustainability risks, as defined by point 22 of Article 2 of Regulation (EU) 2019/2088, is not sufficient for Article 8 to apply.

Promotion of environmental or social characteristics

Article 8 means that where a financial product complies with certain environmental, social or sustainability requirements or restrictions laid down by law, including international conventions, or voluntary codes, and these characteristics are "promoted" in the investment policy the financial product is subject to Article 8 of Regulation (EU) 2019/2088.

The term 'promotion' within the meaning of Article 8 of Regulation (EU) 2019/2088 encompasses, by way of example, direct or indirect claims, information, reporting, disclosures as well as an impression that investments pursued by the given financial product also consider environmental or

social characteristics in terms of investment policies, goals, targets or objectives or a general ambition in, but not limited to, pre-contractual and periodic documents or marketing communications, advertisements, product categorisation, description of investment strategies or asset allocation, information on the adherence to sustainability-related financial product standards and labels, use of product names or designations, memoranda or issuing documents, factsheets, specifications about conditions for automatic enrolment or compliance with sectoral exclusions or statutory requirements regardless of the form used, such as on paper, durable media, by means of websites, or electronic data rooms.

Moreover, financial products in their pre-contractual disclosures must refer to those elements which relate to their environmental and/or social characteristics binding during the whole holding period and which are used for the description of the extent to which environmental or social characteristics are met, as referred to in point (a) of Article 11(1) of Regulation (EU) 2019/2088.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 14 July 2021)

3. Regulation (EU) 2019/2088 applies to financial market participants and financial advisers. In particular, in respect of investment firms as defined in point (l) of Article 4(1) of Directive 2014/65/EU, Article 2(1)(b) of Regulation (EU) 2019/2088 defines ‘an investment firm which provides portfolio management’ as one of the financial market participants to which it applies and Article 2(11)(d) of Regulation (EU) 2019/2088 defines ‘an investment firm which provides investment advice’ as one of the financial advisers to which it applies.

For portfolios, or other types of tailored financial products managed in accordance with mandates given by clients on a discretionary client-by-client basis, do the disclosure requirements in SFDR apply at the level of the portfolio only or can they apply at the level of standardised portfolio solutions?

If the disclosure requirements of Regulation (EU) 2019/2088 apply at the portfolio level, how is it possible to maintain confidentiality obligations to the client in view of the disclosures required, especially the website disclosures required by Article 10 of Regulation (EU) 2019/2088?

The definition of ‘financial product’ in point 12 of Article 2 of Regulation (EU) 2019/2088 makes no distinction whether the products are tailored to specific preferences or requirements of end investors, or not.

Transparency of the promotion of environmental or social characteristics and of sustainable investments on websites in accordance with Article 10 of Regulation (EU) 2019/2088 must ensure compliance with Union and national law governing the data protection, and where relevant, also ensure confidentiality owed to clients. Where a financial market participant makes use of standardised product solutions, transparency of those solutions might be a way for complying with requirements on website disclosures laid down by Regulation (EU) 2019/2088.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 14 July 2021)

4. Do Articles 6 and 7 of Regulation (EU) 2019/2088 apply only for new financial products or also for existing financial products on the date of application, 10 March 2021 (even for those financial products that are no longer made available to investors)? Specifically, do Articles 6 and 7 of Regulation (EU) 2019/2088 apply for existing portfolio management financial products?

Do financial products that are no longer made available to new investors have to:

- a) update and deliver the pre-contractual disclosures under Article 6 and 7 of Regulation (EU) 2019/2088 to existing investors; and**
- b) provide website and periodic disclosures under Articles 7, 10 and 11 of Regulation (EU) 2019/2088 to existing investors?**

Regulation (EU) 2019/2088 does not provide for any specific transitional legal regime concerning financial products made available to end investors before 10 March 2021 that continue to be made available to end investors after that date. It therefore applies to those financial products.

As regards situations of existing investors and where a financial product is no longer made available to end investors as of 10 March 2021 and a financial market participant draws up for such product a periodic report referred to in Article 11(2) of Regulation (EU) 2019/2088 after that date, the periodic report must comply with the requirements laid down in Article 11(1) of that Regulation. Such financial products must also comply with the rules on transparency of the promotion of environmental or social characteristics and of sustainable investment objectives on websites enshrined in Article 10(1) and (2) of Regulation (EU) 2019/2088.

Article 2, point (12), of Regulation (EU) 2019/2088 includes a definition of financial products. A portfolio managed in accordance with Article 2, point (6), of Regulation (EU) 2019/2088 is a financial product for the purposes of that Regulation.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

5. If a financial product referred to in Article 8, paragraphs 1, 2 and 2a, or Article 9, paragraphs 1 to 4a, of Regulation (EU) 2019/2088 does not invest in companies with good governance, is that product able to continue disclosing under Article 8, 9 and 11 of Regulation (EU) 2019/2088?

Where a financial product referred to in Article 8, paragraphs 1, 2 and 2a, of Regulation (EU) 2019/2088 pursues investment in companies, the companies must follow good governance practices. Failing that, the financial product is in breach of Article 8 of Regulation (EU) 2019/2088.

Underlying assets of a financial product referred to in Article 9, paragraphs 1 to 4a, of Regulation (EU) 2019/2088 must qualify as 'sustainable investments', as defined in Article 2, point (17), of that Regulation. Article 2, point (17), of Regulation (EU) 2019/2088 requires that the investee companies

follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance. Failing that, the financial product is in breach of Article 9 of Regulation (EU) 2019/2088⁸.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

6. Considering that the reference to good governance in Article 8 of Regulation (EU) 2019/2088 only relates to 'companies', and that Article 9 of Regulation (EU) 2019/2088, via the definition of 'sustainable investment' in Article 2(17) of Regulation (EU) 2019/2088, specifically relates to 'investee companies', can a financial product investing solely in government bonds while applying an ESG investment strategy be considered to fall under either Article 8 or Article 9 of Regulation (EU) 2019/2088?

The good governance practices referred to in Article 2, point (17), and Article 8(1), first subparagraph, of Regulation (EU) 2019/2088 relate to investee companies and companies respectively and do not apply to government bonds. Therefore, a financial product referred to in Article 8, paragraphs 1, 2 and 2a, of Regulation (EU) 2019/2088 investing only in government bonds does not need to apply the requirements related to good governance practices referred to in the previous sentence.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

7. Article 9(3) SFDR, carbon emissions reductions and other benchmark questions: From Article 9(3) SFDR and the Commissions Q&A answer regarding that Article in July 2021 (which outlined the principle that SFDR is neutral in terms of product design), is it correct to consider that financial products that have an Article 9(3) objective of reduction in carbon emissions can be either products with a passive or active investment strategy? If financial products with an active investment strategy can be financial products that have reduction in carbon emissions as their objective under Article 9(3) SFDR, are there any specific requirements they should meet when they have designated an index as a reference benchmark?

The first subparagraph of Article 9, paragraph (3), is neutral in terms of product design. Financial products that have an objective of reduction in carbon emissions can therefore fall within the scope of Article 9(3) SFDR whether they use a passive or active investment strategy.

The SFDR is a transparency regulation, it does not prescribe the use of Paris-Aligned Benchmarks ('PAB') or Climate Transition Benchmarks ('CTB') nor the use of any other specific type of index. Where no PAB/CTB is passively tracked, the SFDR requires a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement. This is also reflected in Delegated Regulation (EU) 2022/1288 that requires financial market participants to clearly explain

⁸ Please note additional clarifications on Articles 8 and 9 of Regulation (EU) 2019/2088 are provided in Q&As V.1 and V.2 above.

the extent to which a financial product complies with the methodological requirements set out in Commission Delegated Regulation (EU) 2020/1818⁹.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

8. Can a financial product “promote” carbon emissions reduction as an “environmental characteristic”, as opposed to having it as an “objective”? In other words, can a financial product disclose carbon emissions reduction as an environmental characteristic under Article 8 SFDR, or should any financial product which targets carbon emissions reduction as a feature always be considered to be having “carbon emissions reduction” as an “objective” and therefore be required to disclose the information required by Article 9(3) SFDR? In this example, if the financial product is considered an Article 8 SFDR product, what would be the criteria to differentiate it from an Article 9 SFDR product?

Article 8 of the SFDR does not limit the types of characteristics that can be promoted by financial products. The SFDR does not prevent a product from promoting carbon emissions reductions as part of its investment strategy if the product does not have sustainable investment as its objective.

However, information disclosed in pre-contractual, website and periodic disclosures as regards the carbon emissions reduction characteristics of the product should not mislead investors into thinking that this aspect is part of the product’s objective and therefore that the product has sustainable investment as its objective as per Article 9(3). Moreover, Article 13 SFDR requires that marketing communications do not contradict the content of disclosures made pursuant to the SFDR: this implies that marketing documents should not lead investors into believing that the product pursues sustainable investment, where the promotion of carbon emissions reductions is only a mere characteristic of the product’s investment strategy.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

9. Can financial products with a passive investment strategy which designate as a reference benchmark either a Paris Aligned Benchmark or (from 1 January 2023) a Climate Transition Benchmark automatically be deemed to fulfil the conditions of Article 9(3) SFDR in conjunction with Article 2(17) SFDR?

Likewise, can financial products with an active investment strategy focused on carbon emissions reduction be deemed to satisfy the conditions of Article 9(3) SFDR in conjunction with Article 2(17) SFDR where they apply the same requirements (regarding selection criteria, etc.) as those applied by PAB and CTB pursuant to the BMR framework and in particular Commission Delegated Regulation (EU) 2020/1818?

⁹ Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

According to Article 9(3) SFDR, where a financial product has a reduction in carbon emissions as its objective, the information to be disclosed pursuant to Article 6(1) and (3) SFDR shall include the objective of low carbon emission exposure in view of achieving the long-term global warming objectives of the Paris Agreement. According to Article 9(3) second subparagraph, where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council is available, the information referred to in Article 6 shall include a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement. Accordingly, where financial products are passively tracking Paris Aligned Benchmarks (PABs) and Climate Transition Benchmarks (CTBs), it can be considered they do not fall under Article 9(3) second subparagraph. Consequently, financial market participants do not have to provide a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement, as these products are deemed to have sustainable investments as defined in Article 2, point (17) SFDR as their objective.

Financial market participants must explain why they consider that products focused on carbon emissions reduction that are actively managed, i.e. that do not strictly track a PAB or CTB, have sustainable investment as their objective.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

10. Periodic disclosure frequency for portfolio management services: The frequency of periodic reports in case of portfolio management services is determined by Article 11(2), point (i) SFDR, which refers to Article 25(6) of Directive 2014/65/EU of the European Parliament and of the Council . Article 60 of Commission Delegated Regulation (EU) 2017/565 provides the details of the periodic reporting requirements for portfolio management services, including their frequency. Based on that text, this reporting should be provided quarterly, with certain exceptions. However, recital 21 of SFDR states that “...Those disclosures by means of periodic reports should be carried out annually”. Considering all the above, should financial market participants in scope provide a quarterly (with exceptions according to Article 60 of Delegated Regulation (EU) 2017/565) periodic report based on the SFDR templates for portfolio management, or can the financial market participants use one of the quarterly reports to present a yearly report based on the SFDR templates for portfolio management?

The legal drafting of Article 11(2), points (h) and (i), SFDR combined with recital 21 of the SFDR, clearly indicates the intention of the co-legislators that only one annual report is required. Recital 21 of the SFDR clarifies this explicitly, stating that “Those disclosures by means of periodic reports should be carried out annually”. Co-legislators refer in singular to one of the quarterly reports required by Article 25(6) of Directive 2014/65/EU and Article 60 of Delegated Regulation (EU) 2017/565, by requiring that the periodic disclosures are included “for investment firms / credit institutions which provide portfolio management, in a periodic report as referred to in Article 25(6) of Directive 2014/65/EU”. Therefore, financial market participants would need to include these disclosures annually in every fourth report.

The report to be included in the template for portfolio management services of the fourth quarterly report required by Article 25(6) of Directive 2014/65/EU and Article 60 of Delegated Regulation (EU) 2017/565 should be based on the periodic report templates of the SFDR Commission Delegated Regulation (EU) 2022/1288.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 6 April 2023)

11. Can FMPs remove sections in the precontractual and periodic disclosure templates provided in Annex II to Annex V of the Delegated Regulation that are not deemed relevant for their financial product?

FMPs can remove the sections that are deemed not relevant for their financial product in the disclosure templates only if those sections are accompanied by a red text instruction that explicitly limits the scope of application of the section.

For illustration purposes, without being exhaustive, the following instructions as reproduced from Annex II of the Delegated Regulation, which show the limitation of the scope of application of the sections and hence would allow the removal of the section as deemed appropriate by the FMP for its financial product: “[include a description for the financial product that partially intends to make sustainable investments]”, “[for financial products that use derivatives as defined in Article 2(1), point 29), of Regulation (EU) No 600/2014 to attain the environmental or social characteristics they promote, describe how the use of those derivatives meets those characteristics]”, or “[include section only where the financial product includes sustainable investments with a social objective].”

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

12. For the purposes of completing its disclosures in the Delegated Regulation, is there a difference in how a financial product tracking a Climate Transition Benchmark (CTB) index according to the BMR should fill in the section regarding sustainable investment before and after 31 December 2022 (when the new requirements in Article 10(2) of Regulation (EU) 2020/1818 for CTBs apply)?

The financial product should bear in mind in filling out the section in the template on sustainable investment that the BMR requirements for CTBs before 31 December 2022 are not strict enough to satisfy the requirements for a sustainable investment according to Article 2(17) SFDR. The European Commission’s response to Question V.7 provides guidance about whether designating Paris-aligned benchmarks (PABs) or CTBs as reference benchmarks after 31 December 2022 satisfy the requirements for sustainable investments pursuant to Article 2(17) SFDR.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

13. How can a financial product disclosing under Article 8 SFDR assess that good governance is effectively considered? Is a reference to the UN Global compact sufficient or should there be an alignment with OECD or ILO principles?

SFDR is a disclosure regulation. The Delegated Regulation provides details for how financial market participants should disclose that a financial product falling under Article 8 SFDR invests in companies respect the requirement to follow good governance practices. Articles 28(b) and 41(b) of the Delegated Regulation requires the website disclosure of “the description of the policy to assess good governance practices of the investee companies [...], including with respect to sound management structures, employee relations, remuneration of staff and tax compliance”. The use of reference metrics, such as UN Global Compact, OECD or ILO principles is not prescribed, but could form part of the “policy to assess” the management structures, employee relations, remuneration of staff and tax compliance.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

14. Is it possible to comply with Article 6 SFDR by just saying that sustainability risks are not being integrated and not taken into account yet, or does Article 6 SFDR mean that sustainability risks should be integrated by financial market participants by 10 March 2021?

Article 6(1) SFDR is clear enough on this point not to require any further interpretation or clarification: “Where financial market participants deem sustainability risks not to be relevant, the descriptions referred to in the first subparagraph shall include a clear and concise explanation of the reasons therefor”. Even in the unlikely situation they do not consider it relevant, they have to explain the reasons for not considering these risks relevant.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

15. Would a discretionary mandate that invests according to Investment Guidelines stipulated by the client be regarded as a financial product falling under Article 8 or Article 9 SFDR?

Whether a financial product is invested according to a discretionary mandate or client guidelines does not affect the potential application of Articles 8-11 SFDR to it.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

16. Are financial market participants allowed to define their own substantial contribution criteria for socially sustainable investments? Can a single financial market participant apply different interpretations of “sustainable investments” to different financial products that it offers?

It is possible for financial market participants to create their own framework for their financial products as long as they adhere to the letter of Article 2(17) SFDR. Financial market participant should not, however, interpret Article 2(17) SFDR differently for different financial products that it makes available.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

17. Article 9(3) SFDR sets out disclosure requirements for “a financial product, [which] has a reduction of carbon emissions as its objective”. Does this also apply if a financial product has “reduction of greenhouse gas (GHG) emissions” as its objective (as one of the seven greenhouse gases listed in Appendix A to the Kyoto Protocol is carbon dioxide (CO₂))?

Article 9(3) SFDR applies when a financial product has a reduction of greenhouse gas (GHG) emissions as its objective as the SFDR intention is to cover all greenhouse gases and carbon emissions.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

18. Can the objective-aligned index designated as a reference benchmark under Article 9(1) SFDR, i.e. the “designated index” referred to in 9(1)(a) or 9(1)(b), be a broad market index?

No, the requirement in Article 9(1)(b) SFDR to explain “how” the designated index differs from a broad market index suggests that the designated index cannot itself be a broad market index, notwithstanding the accompanying “why” question.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

19. If a financial market participant has to report on the consideration of ESG factors due to legally required information duties, such as under Directive (EU) 2016/2341, does this already qualify as “promoting environmental or social characteristics” within the meaning of Article 8 SFDR?

Whether disclosures under other EU legislation triggers the disclosures of SFDR depends on those disclosures. If the disclosures of an ESG nature consist of “promotion” of environmental or social characteristics, within the meaning of the European Commission’s SFDR Q&A from July 2021 (page 8), then such disclosures would trigger the Article 8 SFDR disclosures.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

VI. Multi-option products

- 1. For their own products and - if offered - in case of MOPs, for products of other financial market participants, the application date of SFDR Delegated Regulation is 1 January 2023. How should a financial market participant offering a MOP collect the disclosure templates from other financial market participants before or just in time for 1 January 2023? Would it be possible to work with hyperlinks per default (e.g. as well in the periodic reporting)?**

Hyperlinks are allowed only for pre-contractual disclosures under Article 20(5) and 21(5) of the Delegated Regulation. They are not allowed for periodic disclosures. For pre-contractual disclosures they are only allowed when the Multi-Option Product (MOP) has such a high quantity of underlying options that it would make the provision of the respective disclosures for each underlying investment option in a clear and concise manner difficult due to the number of documents required. Ahead of the 1 January 2023 application date, insurance undertakings providing MOPs should request the underlying option disclosures from the financial market participant providing them.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

- 2. Hybrid products and Article 22 Delegated Regulation: Can EIOPA provide more clarity on the use of Article 22 of the Delegated Regulation? Can this article be used for the guaranteed part of a hybrid product, that cannot be subscribed to as a stand-alone product?**

In a MOP, Article 22 Delegated Regulation can be used for a profit participation fund that is not a stand-alone product and has a sustainable investment objective, but cannot be used for a profit participation fund that promotes environmental or social characteristics.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

- 3. According to Article 65.2 of the Delegated Regulation, financial market participants shall provide the template set out in Annex IV or V for each investment option invested in that qualifies as a financial product referred to in inter alia Article 8 and Article 9 SFDR. Where customers are allowed to buy and sell investment options continuously, meaning that the investment options invested in may change over time, does this requirement include only the investment options invested in at the point of reporting (i.e. 31 December) or does it include every investment option invested in during the whole reference period?**

Periodic disclosures should be given with regard to any investment options invested in during the reference period, even if the investment options were not invested in during the whole reference period.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

4. Do you consider the provisions regarding "underlying investment options" e.g., Article 21 Delegated Regulation to be relevant for portfolio management products?

The provisions regarding "underlying investment options" were drafted to only apply to Insurance-Based Investment Products that include underlying investment options, i.e. multi-option products according to the PRIIPs Regulation and to PEPPs that offer to the consumer a choice of different underlying options according to the PEPP Regulation.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

5. Product disclosures as presented in art. 10 SFDR and art.31 to 57 Delegated Regulation: Can EIOPA provides more clarity on the fact, as it wasn't specified in the Delegated Regulation, that website disclosures for MOPs have to be done at the underlying option level, and not at product level?

6. Can EIOPA confirm how product information for MOPs should be disclosed? Per funds or do we have to aggregate all the funds information proposed in a product?

See paragraphs 51-55 of the clarifications document:

51. The ESAs would like to provide clarification on the Final Reports' disclosures for products with investment options. For multi-option products and other financial products with underlying investment options, pre-contractual and periodic disclosure requirements provide clear instructions to disclose at the financial product level a list of the investment options that qualify as a financial product referred to in Article 8(1) or 9(1), (2) and (3) of SFDR, or that have sustainable investment as their objective and are not a financial product referred to in Article 2(12) SFDR.

52. The ESAs clarify that website disclosures for multi-option financial products referred to in Article 8(1) or 9(1), (2) and (3) SFDR should include disclosure of the following items:

- a list of the investment options that qualify as a financial product referred to in Article 8(1) or 9(1), (2) and (3) SFDR; and
- a summary for each underlying investment option that qualifies as a financial product referred to in Article 8(1) or 9(1), (2) and (3) SFDR, or that have a sustainable investment as its objective and are not a financial product referred to in Article 2(12) SFDR.

53. Remaining disclosure requirements should be disclosed at the underlying investment option level.

54. The ESAs consider that within the financial product, the sustainability-related information to be provided in the annexes should be included for each investment option that is offered by the financial market participant or another financial market participant as a financial product that has a sustainable investment as its objective or that promotes environmental or social characteristics.

55. The ESAs further clarify that the financial market participant should group the information related to underlying investment options from letter (a) to (l) so that an investor can easily find and read the disclosures related to a specific underlying investment option of the financial product.”

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

7. How is the envisaged product classification in case of a multi-option product (MOP) that comprises only one investment option that (partially) invests in line with the Taxonomy Regulation? Would the entire MOP classify as a financial product falling under Article 5-6 TR?

A MOP falls under Article 5 of the TR when all of the underlying options offered have sustainable investment as their objective and at least one investment option invests in an economic activity that contributes to an environmental objective within the meaning of Article 2 (17) SFDR. In that case, the product templates included in Annex III and V of the Delegated Regulation (EU) 2022/1288 need to be completed with the related Taxonomy disclosures only for those underlying options that make investments in environmentally sustainable economic activities. A MOP falls under Article 6 of the Taxonomy Regulation when at least one underlying option offered promotes environmental characteristics.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

VII. Taxonomy-aligned investment disclosures

- 1. In case a financial product referred to in Article 8 of Regulation (EU) 2019/2088 which promotes environmental characteristics does not commit in the pre-contractual disclosures to invest in any economic activities that contribute to an environmental objective within the meaning of point (17) of Article 2 of Regulation (EU) 2019/2088, is the financial market participant obliged to disclose the information required by Article 6 of Regulation (EU) 2020/852? If it is determined later that the same financial product in fact invested in such economic activities, is the financial market participant obliged to make that disclosure?**

Similarly, in case a financial product referred to in Article 9 of Regulation (EU) 2019/2088 only committed in the pre-contractual disclosures to invest in economic activities contributing to social objectives and if it is determined later that the financial product in fact invested in economic activities contributing to an environmental objective, would the financial market participant be obliged to disclose the information required by Article 5 of Regulation (EU) 2020/852?

Application of Articles 5 and 6 of Regulation (EU) 2020/852

Articles 5 and 6 of Regulation (EU) 2020/852 of the European Parliament and of the Council¹⁰ apply in respect of the environmental objectives referred to in Article 9, points (a) and (b), of that Regulation from 1 January 2022 and in respect of the remaining environmental objectives referred to in Article 9, points (c) to (f), of that Regulation from 1 January 2023.

Neither Regulation (EU) 2019/2088 nor Regulation (EU) 2020/852 oblige financial market participants that make available financial products referred to in Articles 5, first subparagraph, or Article 6, first subparagraph, of Regulation (EU) 2020/852 as well as Article 8, paragraphs 1, 2 and 2a, or Article 9, paragraphs 1 to 4a, of Regulation (EU) 2019/2088, to invest in economic activities that qualify as environmentally sustainable under Article 3 of Regulation (EU) 2020/852. In view of recital 18 to Regulation (EU) 2020/852, disclosure rules enshrined in Articles 5 and 6 of that Regulation aim to avoid harming end investor interest and the circumvention of the disclosure obligation and to enable end investors to understand the degree of environmental sustainability of the investment. The purpose of Articles 5 and 6 of Regulation (EU) 2020/852 is to incentivise a behavioural change in the whole value chain, including delivery of sound information on sustainability performance on underlying investments.

Data use

Financial market participants may only disclose such information for the purposes of disclosures under Articles 5 and 6 of Regulation (EU) 2020/852 for which they have reliable data, otherwise they would risk, where relevant, infringing Regulations (EU) 2019/2088 and (EU) 2020/852, sector specific rules, incurring liability, or avoidance of contracts under national law.

Financial products invest in a myriad of underlying financial instruments, including those issued by:

¹⁰ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

- large non-financial and financial undertakings subject to an obligation to publish non-financial information pursuant to Article 19a or 29a of Directive 2013/34/EU of the European Parliament and of the Council¹¹,
- SMEs;
- sovereigns;
- third country entities,

Information on the proportion of environmentally sustainable economic activities provided by certain issuers in accordance with Commission Delegated Regulation (EU) 2021/2178¹² or in management reports or the information in non-financial statements in accordance with Directive 2013/34/EU¹³, is therefore not a prerequisite information source for the application of Articles 5 and 6 of Regulation (EU) 2020/852.

Therefore, where a financial market participant fails to collect data on the environmental objective or objectives set out in Article 9 of Regulation (EU) 2020/852 and on how and to what extent the investments underlying the financial product are in economic activities that qualify as environmentally sustainable under Article 3 of that Regulation by a given financial product, the pre-contractual and periodic product related disclosures must indicate zero. Should financial market participants decide to use narrative explanations on lack of reliable data, such narratives risk contradicting the purpose of Articles 5 and 6 of Regulation (EU) 2020/852. In addition, clarifications should neither leave room for ambiguity about the alignment of the investments of the financial product with Regulation (EU) 2020/852, nor should they include negative justifications, such as explaining a lack of the alignment by a lack of data.

However, recital 21 of Regulation (EU) 2020/852 refers to exceptional cases regarding economic activities carried out by undertakings that are not required to disclose information under that Regulation, where financial market participants cannot reasonably obtain the relevant information to reliably determine the alignment with the technical screening criteria established pursuant to that Regulation. That refers both to undertakings that do not fall under the scope of that Regulation, and undertakings that are not yet required to disclose information under that Regulation at a given point in time. In such exceptional cases and only for those economic activities for which complete, reliable and timely information could not be obtained, financial market participants are allowed to make complementary assessments and estimates on the basis of information from other sources. Such assessments and estimates should only compensate for limited and specific parts of the desired data elements and produce a prudent outcome. Financial market participants should clearly explain the basis for their conclusions as well as the reasons for having to make such complementary assessments and estimates for the purposes of disclosure to end investors¹⁴.

¹¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

¹² Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

¹³ See in that respect Article 9(3), of Regulation (EU) 2019/2088.

¹⁴ Financial market participants making disclosures in accordance with Article 8 of Regulation (EU) 2020/852/Commission Delegated Regulation of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the

Financial products referred to in Article 6, first subparagraph, of Regulation (EU) 2020/852

The scope of Article 6 of Regulation (EU) 2020/852 is restricted to financial products referred to in Article 8(1) SFDR that promote environmental characteristics. It follows from Article 6 of Regulation (EU) 2020/852 that such financial products must disclose the information in accordance with that Article, including by way of the reference to mutatis mutandis the information in accordance with Article 5 of Regulation (EU) 2020/852.

Therefore, to trigger the application of Article 6 of Regulation (EU) 2020/852, it is irrelevant if a financial product commits to invest in economic activities that contribute to an environmental objective within the meaning of Article 2, point (17) SFDR. A financial product as referred to in Article 8(1) SFDR that promotes environmental characteristics must include in the pre-contractual disclosures, based on an assessment of reliable data with regard to whether investments will be in economic activities that contribute to an environmental objective, information according to Article 6 of Regulation (EU) 2020/852 if that is the case.

Periodic disclosures as referred to in Article 11(2) SFDR must also include the information referred to in Article 6 of Regulation (EU) 2020/852 if the investments made during the reference period, based on an assessment of reliable data, were in economic activities contributing to an environmental objective, irrespective of commitments made in the pre-contractual disclosure. Where a financial product's investments change over time during the financial product's lifetime and also include investments in economic activities that contribute to an environmental objective, that change should be reflected in the pre-contractual documentation, subject to the sectoral rules applicable for financial products referred to in Article 6(3) SFDR (see also Q&A no 6 of this Q&A batch).

Financial products referred to in Article 5, first subparagraph, of Regulation (EU) 2020/852

The scope of Article 5 of Regulation (EU) 2020/852 is restricted to financial products as referred to in Article 9, paragraph 1, 2 or 3 SFDR that invest in an economic activity that contributes to an environmental objective within the meaning of Article 2(17) of that Regulation.

Since Article 5 of Regulation (EU) 2020/852 provides for no further requirements for such investment, its application is also triggered if the financial product with social objective referred to in the question invests in economic activities contributing to an environmental objective.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022, amended on 6 April 2023¹⁵)

2. For the purpose of the Taxonomy-alignment disclosures, which metric should be used for financial undertakings, such as financial conglomerates, that have several activities (asset management, insurance, and banking activities)?

For the purpose of the disclosure of investments in environmentally sustainable economic activities under SFDR and the Delegated Regulation, where investee companies are financial conglomerates, the requirements for such individual entities to present KPIs pursuant to Article 8 TR and Commission

methodology to comply with that disclosure obligation (OJ 443, 10.12.2021, p. 9) may under certain circumstances and for voluntary purposes use estimates in 2022, see Q&A no 12 in the FAQs about the Article 8 Disclosures Delegated Act.

¹⁵ Original version published on 22 May 2022 can be found here:

https://www.esma.europa.eu/sites/default/files/library/c_2022_3051_f1_annex_en_v3_p1_1930070.pdf

Delegated Regulation (EU) 2021/2178 are linked to the requirements for these same entities to prepare a non-financial statement in accordance with Article 19a and 29a of Directive 2013/34/EU. For investments in financial conglomerates where a credit institution is the top parent, the scope should therefore take into account the prudential scope of consolidation. For investments in any other financial undertaking, the accounting scope of consolidation would normally apply.

Question 4 in the European Commission's 21 December 2021 [FAQs](#) on Article 8 TR disclosures provide some additional detail:

"In the case of credit institutions, the information should be disclosed in accordance with the requirements relating to prudential consolidation [...]."

Consolidated non-financial statement disclosures should be based on the same consolidation principles that apply to the group's financial reporting under the applicable accounting principles [...]."

Where the investment focuses on a subsidiary of a group disclosing under Article 8 TR, whether financial or non-financial, financial market participants should ensure they use the KPIs providing the most relevant and representative view of their investee companies' activities. This may lead them to use KPIs specific to subsidiaries.

For investments in non-conglomerate financial undertakings, the allocation of those financial undertakings' contribution to taxonomy-aligned investments is set out in Article 17(4) of the Delegated Regulation, i.e. KPIs from Section 1.1 points (b) to (e) of Annex III to Delegated Regulation (EU) 2021/2178 should be used.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

3. Can taxonomy-aligned activities or PAI impacts from green bonds (or other specific project financing instruments like social bonds) be calculated for the projects they finance rather than taxonomy-aligned activities of or impacts arising from the issuer as a whole?

Taxonomy-alignment

For the purpose of calculating the proportion of taxonomy-aligned assets contributing to taxonomy-aligned economic activities, only the projects financed by green bonds under the future EU Green Bond Standard and other green bonds (the proportion of their value that corresponds to the share of the proceeds of those bonds used for environmentally sustainable economic activities) should be considered.

As stated in Article 17(1)(b) of the Delegated Regulation, for its taxonomy-alignment KPI, a financial market participant can count an investment in a green bond up to the level of taxonomy-aligned activities the use of proceeds goes towards. The financial market participant should not take into account the issuer of such instruments for the purpose of the taxonomy-alignment KPI of the financial product.

PAI disclosure

Furthermore, with regard to the disclosure of principal adverse impacts under Article 4 SFDR, Section II and Annex I of the Delegated Regulation (and where financial products use the indicators provided in Annex I for the purpose of their Article 7 SFDR disclosures) and to demonstrate that a project meets the DNSH condition of the definition of sustainable investment set out in Article 2(17) SFDR, financial market participants could adjust the metrics to reflect the fact that project financing bonds finance only specific activities and not the entire undertaking.

Some PAI indicators in Table 1 of Annex I of the Delegated Regulation could be applied at “project” level and not company level where the investment is in a security that finances a specific project rather than the issuer issuing the security, for instance GHG emissions (Table 1, Indicator 1), land artificialisation (Table 2, Indicator 18) or rate of accidents (Table 3, Indicator 2), while some other PAI indicators could still be applied at company level such as the unadjusted gender pay gap (table 1, indicator 12).

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

4. For Art. 9 products that are partly taxonomy-aligned, should the disclosures refer to the technical screening criteria as indicators for the taxonomy-aligned part?

Please refer to the European Commission’s response to Question V.1 with regard to the interpretation for products falling under Article 9 SFDR. The technical screening criteria in Delegated Acts for the Taxonomy Regulation provide the conditions under which economic activities can be considered Taxonomy-aligned. The do not significantly harm (DNSH) related requirements referred to in Article 2(17) SFDR are to be applied to all sustainable investments including investments in taxonomy-aligned activities. Therefore, Article 9 SFDR financial products that are partly taxonomy-aligned should disclose how taxonomy-aligned investments do not significantly harm environmental or social objectives by taking into account the indicators on principal adverse impacts, in addition to complying with the technical screening criteria in the Delegated Acts for the Taxonomy Regulation.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

5. An Article 9 SFDR product with 100% non-Taxonomy compliant climate objectives, would still fill the Taxonomy sections with 0% and the social sustainable investment section with 0%?

Please refer to the European Commission’s response to Question V.1 with regard to the interpretation for financial products falling under Article 9 SFDR. With regard to the type of financial product falling under Article 9 SFDR that invested in economic activities contributing to environmental objectives complying with Article 2(17) SFDR but not the criteria listed in Article 3 TR, the disclosure in the templates provided in Annex III and V of the Delegated Regulation contains clear identification of the share of sustainable investments with an environmental objective in the section “What is the minimum share of sustainable investments with an environmental objective that are not aligned with the EU Taxonomy?”. Such a financial product should indicate

0% in the graphical representation in the section “To what minimum extent are sustainable investments with an environmental objective aligned with the EU Taxonomy?”. In addition, it should disclose a 100% share under the heading “What is the minimum share of sustainable investments with an environmental objective that are not aligned with the EU Taxonomy”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

6. Lack of data is a major challenge for FMPs. Although this hurdle seems less pressing when it comes to investments in undertakings that fall under the scope of the future CSRD, how could FMPs overcome this lack of data?

The ESG information chain is developing and both financial market participants and regulators may have to rely on the available data during the period before the application of the CSRD.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

7. What is to be reviewed by the third party? The internal process used to assess the Taxonomy-alignment or the data as such?

Article 15(1)(b) of the Delegated Regulation requires the inclusion of a description of the investments underlying the financial product that are in Taxonomy-aligned economic activities, including whether the compliance of those investments with the requirements laid down in Article 3 of TR will be subject to an assurance provided by one or more auditors or a review by one or more third parties, and if so the names of the auditor or third party.

The review – which is an optional choice – does not necessarily have to include the internal process of the financial market participant as it should primarily address the investments made by the financial product in Taxonomy-aligned economic activities, specifically the compliance of those investments with the criteria for environmentally sustainable economic activities laid down in Article 3 TR.

This review could focus on investments whose Taxonomy-alignment is not proven by disclosures made by undertakings under Article 8 TR. Where the Taxonomy-alignment of an investment is demonstrated by disclosures required by Article 8 TR, the review could choose not to carry out further verification with regard to the compliance of this investment with the criteria laid down in Article 3 TR, however the review could check that the financial product adequately reflects the Taxonomy-alignment in accordance with Articles 3, 5 and 6 TR, consistently with Article 8 TR disclosures.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

8. Once you have reported on your Article 5-6 TR financial product, should your pre-contractual information still be a minimum ambition or the actual achieved level of

taxonomy aligned investments?

Subject to the sectoral rules governing pre-contractual disclosures in Article 6(3) SFDR and any relevant contractual commitments, the disclosure of the minimum extent of Taxonomy-alignment of investments of the financial product is a commitment which should be met at all times (this also applies to (1) the disclosure of the minimum proportion of the investments of the financial product used to meet the environmental or social characteristics or sustainable investment objective(s) of the financial product and (2) to sustainable investments). Therefore, the pre-contractual disclosure should not include “targets” for Taxonomy-alignment, nor the actual achieved level of Taxonomy-aligned investments, but only the minimum proportion which the financial product commits to meet. The periodic disclosures are intended to appropriately reflect the Taxonomy-aligned investments achieved by the product, including where the actual Taxonomy-alignment is higher than the minimum proportion.

Furthermore, for new financial products the reference in Article 17 of the Delegated Regulation of the calculation of the Taxonomy-alignment of the aggregated investments should be understood as “expected investments” in the context of the disclosure of the binding commitment to the investor about the financial product’s Taxonomy-alignment of investments.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

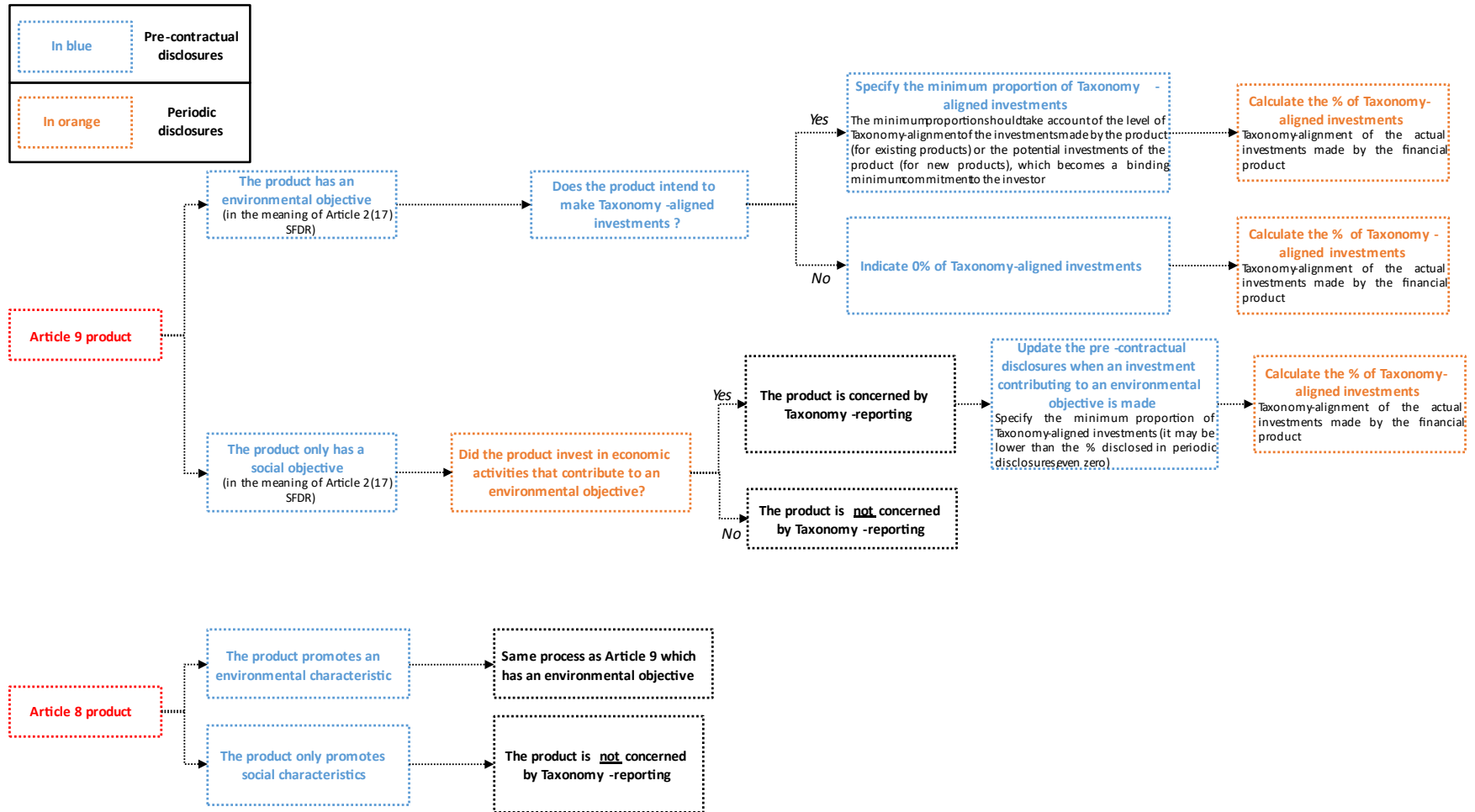
9. Does the disclosure of the “minimum extent sustainable investments with an environmental objective aligned with the EU Taxonomy” have to be based on actual data or can it consist of a forecast calculation of the product’s ambition for taxonomy alignment? How should a new financial product comply with the requirement to publish the minimum proportion of investments when it has not made any investments?

Subject to sectoral rules governing pre-contractual disclosures in Article 6(3) SFDR and any relevant contractual commitments, the pre-contractual disclosure on the minimum share of sustainable investments, including the extent to which the investments are in environmentally sustainable economic activities, is a commitment that should be met at all times. The information about the degree to which investments are in environmentally sustainable environmental activities, as referred to in Article 15(1)(a) and 19(1)(a) of the Delegated Regulation, should be based on the actual investments the financial product makes in order to satisfy the requirement to disclose “how and to what extent” the investments are in environmentally sustainable economic activities. For new financial products (or financial products that want to change their investment strategy) those references for the calculation of the Taxonomy-alignment of the aggregated investments should be understood as “expected investments”. “Expected investments” can be considered the investable universe, which is analysed, and on the basis of this analysis, a decision about Taxonomy-alignment commitment is made.

Please note that while the European Commission in Question VII.1 states that “periodic disclosures must include the information referred to in Article 6 TR if the investments made during the reference period were in economic activities that contribute to an environmental objective, irrespective of commitments made in the pre-contractual disclosure”, this does not apply for Article 8 SFDR products’ sustainable investments (that are not Taxonomy-aligned investments). Under Article

51(d) and the periodic disclosure templates in Annex IV of the Delegated Regulation, Article 8 SFDR financial products that do not commit to making sustainable investments can leave out disclosure of sustainable investments during the reference period.

The following decision tree is intended as guidance from the ESAs on the situations under which pre-contractual and periodic Taxonomy-alignment disclosures apply:



In order to assist preparers of financial product disclosures under Article 8 SFDR regarding the minimum extent to which sustainable investments with an environmental objective are aligned to the EU Taxonomy, the ESAs are also providing below a non-exhaustive table with additional guidance¹⁶:

Type of Article 8 SFDR product affected by Article 6 TR	Pre-contractual Taxonomy-alignment disclosure	Periodic Taxonomy-alignment disclosure
Product launched after 1 January 2023 promoting environmental characteristics but with no intention to make Taxonomy-aligned investments	The product should fill in the section “To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy” with zero disclosures (i.e. the pie chart shows zero Taxonomy-aligned investments).	The product should complete the section “To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy” based on the actual investments during the reference period.
Product launched after 1 January 2023 promoting environmental characteristics intending to make Taxonomy-aligned investments	The product should fill in the section “To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy” based on the expected investments of the product, which will become a binding commitment towards the investor.	The product should complete the section “To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy” based on the actual investments during the reference period.
Existing product ¹⁷ promoting environmental characteristics that is already making taxonomy-aligned investments	The product should fill in the section “To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy” based on the investments of the product which could, for example, be measured as an average over a period of time	The product should complete the section “To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy” based on the actual investments during the reference

¹⁶ Please note that this table is not a comprehensive guide to the full SFDR disclosures, only to one specific part of them: the disclosure of how and to what extent investments are Taxonomy-aligned. Other obligations in the Delegated Regulation or the Level 1 texts apply separately (such as the statement from Article 6 TR). Furthermore, the cases concern ambitions with regard to Taxonomy-aligned investments specifically.

¹⁷ For the purposes of this table, “existing product” is intended to mean that the product was launched before 1 January 2023.

	prior to when the disclosure is first made, which will become a binding minimum commitment towards the investor.	period.
Existing product promoting environmental characteristics that predicts it will change strategy to make taxonomy-aligned investments from 1 January 2023 onwards	The product should complete the pre-contractual disclosure on 1 January 2023 (or change it according to sectoral rules referred to in Article 6(3) SFDR, if it has previously completed the disclosure before it changed strategy) and complete the section “To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy” based on the expected future investments on 1 January 2023, which will become a binding minimum commitment towards the investor.	The product should complete the section “To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy” based on the actual investments during the reference period.
Existing product promoting environmental characteristics with no intention of making taxonomy-aligned investments	The product should complete the section on 1 January 2023 “To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy” based on existing investments, which may be zero (i.e. the pie chart shows zero Taxonomy-aligned investments).	The product should complete the section “To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy” based on the actual investments during the reference period.
Article 8 SFDR product not affected by Article 6 TR		
Existing product promoting exclusively social characteristics with no intention to change strategy	The product should not complete the section “To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy” because the product is not an Article 6 TR product.	The product should not complete the section “To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy” because the product is not an Article 6 TR product

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

10. As of 1 January 2022, financial market participants that make available certain Article 8/9 products shall include information about the proportion of Taxonomy-aligned investments as a percentage of all investments in the pre-contractual, website information and periodic reporting (Article 5 and 6 TR). At the same time, the full reporting requirement under CSRD will not be applicable for non-financial companies until 1 January 2023. This means that before 2023, there will be no reliable data or calculation model available. Moreover, initial evidence shows that estimated data from data suppliers on Taxonomy-alignment of investment portfolios differ greatly between different suppliers, making it inappropriate/dubious to present such data to consumers. How are FMP supposed to fulfil the Taxonomy-alignment reporting requirements under the SFDR and the Delegated Regulation, respectively, given the lack of data? From a consumer’s perspective, the least misleading alternative would be to report ‘data not available’ coupled with a brief explanatory text.

Furthermore, in case a financial market participant makes available a product that is considered Article 8 SFDR and Article 6 TR, the disclosure about the percentage of Taxonomy-alignment needs to be made by end of year in the periodic information. How should this be possible if companies are only required to disclose their Taxonomy-aligned activities at a later stage?

As stated in Article 17(2)(b) and Recital (35) of the Delegated Regulation, when Taxonomy-alignment of investments is not available from the public disclosures of investee companies, then the use of ‘equivalent information’ from investee companies or third-party providers is permitted. As clarified by the Commission in the answers provided in May 2022, Recital 21 to Regulation (EU) 2020/852 refers to exceptional cases where financial market participants cannot reasonably obtain the relevant information to reliably determine the alignment with the technical screening criteria established pursuant to that Regulation as far as economic activities carried out by undertakings that are not subject to that Regulation are concerned. In such exceptional cases and only for those economic activities for which complete, reliable and timely information could not be obtained, financial market participants are allowed to make complementary assessments and estimates on the basis of information from other sources. Assessments and estimates should only compensate for limited and specific parts of the desired data elements and produce a prudent outcome. Financial market participants should clearly explain the basis for their conclusions as well as the reasons for having to make such complementary assessments and estimates for the purposes of disclosure to end investors.

Once the reporting prescribed by Regulation (EU) 2021/2178 on the Taxonomy-aligned activities of non-financial undertakings (from January 2023) and financial undertakings (from January 2024) starts, the disclosure of Taxonomy-aligned investments is expected to become more straightforward.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

11. How is it possible to practically apply the requirement to use “equivalent information” as referred to in Article 17(2)(b)?

The starting point for the evaluation of equivalent information, as referred to in Article 17(2)(b) of

the Delegated Regulation, should be considered information that provides the same content and level of granularity as that provided by the reporting of undertakings of their Taxonomy-aligned activities in [Regulation \(EU\) 2021/2178](#). In this respect, equivalent information should meet these following basic principles:

- Equivalent information should only apply to economic activities listed in the Delegated Acts of Regulation (EC) 2020/852;
- The assessment of the substantial contribution of an economic activity should rely on actual information, subject to the limited circumstances described by the European Commission in Question VII.1; and
- While it should be possible to use estimates to assess the DNSH based on equivalent information, controversy-based approaches should be discouraged and considered insufficient (as outlined in Q&A 32 below).

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

12. Are environmental controversies a suitable proxy for “Do No Significant Harm” (DNSH) for the purpose of “equivalent information” referred to in Article 17(2)(b) of the Delegated Regulation?

Data sets referred to as media-based “environmental controversies” are typically entity-level assessments of a company to a common environmental baseline. Whilst a useful input for investors when engaging with companies to dealing with reputational risk management, they are not suitable as a proxy to activity-based DNSH. Important metric-based thresholds and process-based requirements within the Climate Delegated Act are not considered in environmental controversies. Similarly, using only compliance with local environmental laws would not equal DNSH compliance. If a company operates in a jurisdiction with lower environmental standards or no environmental laws, then the company should not automatically pass DNSH tests.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

13. Can the Taxonomy-alignment of assets owned by a fund, such as green bonds, be included in the calculation of the Taxonomy-alignment of the product where these assets are exchanged through derivatives, for instance by using total return swaps?’

The Delegated Regulation states that derivatives should not be included in the numerator to calculate the Taxonomy-alignment of a financial product (Recital 33).

In the case of total return swaps (TRS), it appears that:

- The actual performance of Taxonomy-aligned assets is swapped through the use of a derivative. Consequently, the investors of the product do not benefit from it. It is true for both financial and extra-financial performance.
- These assets are offset by the counterpart of the TRS (short position for hedging). In this regard, it is unclear whether there is an actual investment in these assets.

Therefore, in order to include investments (that are not derivatives) in the numerator of the Taxonomy-alignment of a product, the financial product should meet the two following conditions: (i) the financial product should own the investment, (ii) the financial product should not swap the performance of this investment.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

14. Considering the provisions of the Delegated Regulation, a fund investing in real estate or infrastructure funds would be required to report on its Taxonomy-alignment in the same way than a non-financial undertaking, analysing the Taxonomy-alignment of its own economic activities. For instance, in the case of a real estate fund, it would report its own turnover, CapEx and Opex based on the criteria set out for activity 7.7 “Acquisition and ownership of buildings” set out in Delegated Regulation 2021/1239 supplementing TR.

Yet, funds are not non-financial undertakings. In that regard, would it be possible for financial products to base their Taxonomy-alignment reporting in its pre-contractual disclosures on the market value of these real assets, and report alongside the other KPIs in the periodic disclosures?

Where a financial product reports on the Taxonomy-alignment of its investments in real estate or infrastructure assets, and not financial instruments, the financial product should be able to refer to the market value of these assets. All other rules to calculate the Taxonomy-alignment in Article 17 of the Delegated Regulation of an investment apply identically.

Such reporting based on market values should only concern the real estate and infrastructure assets of the financial market participants, and not be extended to other kind of investments. It should be possible for a financial product to report on market values both in pre-contractual and periodic disclosures.

For reasons of comparability, other KPIs, based on turnover, CapEx and OpEx should still be part of the periodic disclosures. So, despite the fact that the financial product investing in infrastructure / real assets may need a specific KPI, an investor should have the possibility to compare two financial products with each other.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

15. Article 17 of the Delegated Regulation lays down the rules to compute the Taxonomy-alignment of a financial product. How should a financial product report on debt instruments which are not debt securities, such as the loans it originated, bearing in mind that:

- **when it comes to investments in investee companies, the Delegated Regulation refers to “debt securities and equities” only; and**

- **when it comes to investments in real estate assets and infrastructures, the Delegated Regulation refers to “investments”?**

While the Delegated Regulation does not specify the potential contribution of loans and advances as defined in Annex II to the ECB BSI Regulation to the numerator of the calculation of the degree to which investments are in environmentally sustainable economic activities, investments in such instruments should be considered analogous to “debt securities”.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

16. How should activities be counted that qualify as Taxonomy-aligned while at the same time contribute to another environmental and/or social objective?

While an activity can contribute to several environmental and/or social objectives, double counting should be avoided for the sake of clarity. In this regard:

- when reporting on an activity aligned with the EU Taxonomy, financial market participants should only consider the objectives laid down in Article 9 TR. One activity can only contribute to one of these objectives. For the avoidance of doubt, if the activity contributes to more than one objective, the financial market participant should choose the objective to which the activity contributes most or that is better aligned with the environmental objective of the fund or investment; and
- when reporting on an activity non-aligned with the EU Taxonomy but that contributes to a sustainable investment in the meaning of Article 2(17) SFDR, FMPs should only consider one single environmental or social objective.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

17. How should FMPs measure the positive contribution for sustainable investments and can they use the KPIs for taxonomy-alignment (Turnover, CapEx, OpEx)?

There are many ways to measure the sustainable investments of a portfolio. Neither SFDR nor the Delegated Regulation provide for a specific methodology. However, for Taxonomy-aligned investments the KPIs available to measure sustainable investments are turnover, CapEx and OpEx. While turnover gives a backward-looking view on the activities of a company that are already Taxonomy-aligned; CapEx provides a forward-looking view of companies’ plans to transform or expand their business activities and the efforts they are making to green their activities and/or assets. Furthermore, CapEx investments can include those that expand an already aligned activity or asset, or that render them Taxonomy-aligned. These metrics used for calculating the Taxonomy-aligned share of the portfolio could be equally applicable to measuring the proportion of sustainable investments.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

18. An economic activity qualifies as environmentally sustainable where it contributes substantially to one or more of the six environmental objectives listed under Article 9 TR. During the period 1 January 2022-31 December 2022 should the DNSH criteria be aligned to all six objectives or only to the first two (climate change mitigation and climate change adaptation)?

To be aligned to the EU Taxonomy, and therefore qualify as environmentally sustainable, an economic activity must meet all the criteria that have been defined for it and laid down in Annex I or Annex II of the Delegated Regulation 2021/2139, including all DNSH criteria. Furthermore, it must also fulfil the minimum safeguards set out in Article 18 of the Taxonomy Regulation.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

19. Would it be possible to have a financial product disclosing under Article 8 SFDR that makes sustainable investments with environmental objectives which are not (yet) taxonomy aligned?

A financial product falling under Article 8 SFDR is allowed to partly make and to disclose on sustainable investments with environmental and/or social objectives. In this respect, as long as the sustainable investment with environmental objectives complies with Article 2(17) SFDR, it does not have to be Taxonomy-aligned.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

VIII. Financial advisers and execution-only FMPs

- 1. Do financial advisers, when providing MiFID II investment advice, have to comply with disclosure obligations in Article 6(2) of Regulation (EU) 2019/2088 in good time before the client is bound by any agreement for the provision of investment advice "as a whole" (i.e. not only limited to financial products as defined by Regulation (EU) 2019/2088, but also any financial instrument as defined by MiFID II), or for each single recommendation concerning a "financial product" as defined by Article 2(12) of Regulation (EU) 2019/2088?**

Where investment firms and credit institutions provide investment advice, Article 6(3), points (h) and (i), of Regulation (EU) 2019/2088 requires them to include information referred to in Article 6(2), of that Regulation in accordance with Article 24(4) of Directive 2014/65/EU¹⁸.

The definition of investment advice in Article 2, point (16), of Regulation (EU) 2019/2088 refers to investment advice as defined in Article 4(1), point (4), of Directive 2014/65/EU, namely 'the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments'. In consequence, investment advice is not restricted to investment advice about financial products as defined in Article 2, point (12), of Regulation (EU) 2019/2088.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

- 2. For the purpose of the disclosure of principal adverse impacts under Article 4(5)(a) of Regulation (EU) 2019/2088, when a financial adviser recommends financial products or instruments that are not collective or individual portfolios managed by a financial market participant, should it also collect information from non-financial companies for those products and instruments in order to take those into account for the principal adverse impact disclosure?**

Article 4(5) of Regulation (EU) 2019/2088 (SFDR) requires financial advisers to disclose whether they consider in their investment or insurance advice the principal adverse impacts on sustainability factors, and, if not, why not and, where relevant, whether and when they intend to do so. The underlying objective of that provision is to encourage financial advisers to provide financial advice that addresses reduction of negative externalities on sustainability caused by investments of end investors. This should, in turn, result in more investments in activities that do not harm environment or social justice, curb greenhouse gas emissions, stimulate investee companies to transition away from unsustainable activities and reduce their negative environmental impacts, or even induce portfolio adjustments and divestment from activities that are harmful to sustainability.

¹⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

The disclosure requirements set-out in Article 4(5) of Regulation 2019/2088 distinguish between, on the one hand, investment advice or insurance advice on financial products and, on the other hand, investment advice or insurance advice in general:

- the disclosure requirement enshrined in Article 4(5), point (a), SFDR is restricted to financial products as defined in Article 2, point (12), of the Regulation, and
- the disclosure requirement enshrined in Article 4(5), point (b), SFDR is not restricted to financial products as defined in Article 2, point (12), of the Regulation. Therefore, where an investment firm or a credit institution provides investment advice on financial instruments (other than financial products) within the meaning of Article 2, point (15), of Directive 2014/65/EU the information provided under Article 4(5), point (b), SFDR must relate to all financial instruments.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

3. If a financial adviser only considers in its advisory process products which are not in scope of Regulation (EU) 2019/2088 (i.e. shares of listed companies, corporate bonds, etc.), should the financial adviser still comply with the obligations laid down in Articles 3, 4, 5, 6 and 13 of Regulation (EU) 2019/2088?

The definition of financial advisers in Article 2, point (11)(c) and (d), of Regulation (EU) 2019/2088 includes a credit institution or an investment firm which provides investment advice as defined in Article 2, point (16), of that Regulation. This definition refers to investment advice as defined in Article 4(1), point (4), of Directive 2014/65/EU, namely ‘the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments’. In consequence, investment advice is not restricted to investment advice about financial products as defined in Article 2, point (12), of Regulation (EU) 2019/2088 (see also question 2)¹⁹. This is why obligations laid down in Article 3(2), Article 4(5), point (b), Article 5, Article 6(2), first subparagraph, point (a), including potential effects of the second subparagraph of that Article 6(2), Article 12(2), Article 13(1), as well as Article 14(1) of Regulation (EU) 2019/2088 are not restricted to ‘financial products’.

(Answer provided by the European Commission on the interpretation of the SFDR, published on 17 May 2022)

4. Do the rules for financial advisers also apply to financial advisers carrying non-advised sales (execution only)?

For insurance advisers and intermediaries, it is clear from the definition of “financial adviser” in Article 2(11) SFDR that only intermediaries/advisers providing advice have to abide by the SFDR rules. For instance only insurance intermediaries that provides insurance advice with regard to IBIPs fall under the scope of the SFDR, not insurance intermediaries that sell IBIPs in a non-advised sale. The same applies for other advisers: the obligations are limited to the context of the provision of advice. Article 2(11) SFDR covers both tailored and non-tailored advice.

¹⁹ Please note the question referred to in the parentheses (“question 2”) is [Q&A VIII.1](#) in this document

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)

- 5. Article 10 SFDR expressly mentions 'financial market participants' as the recipients of the obligations concerning the transparency of disclosures for financial products under Article 8 and 9 SFDR on the websites. Does this mean that execution-only investment firms will not be obliged to fulfil these obligations even when they are distributing the above-mentioned financial products?**

The SFDR text states that execution only investment firms are not obliged to fulfil the obligations.

(Answer provided by the ESAs on the application of the SFDR Delegated Regulation, published on 17 November 2022)