European Securities and Markets Authority

EUROPEAN BANKING AUTHORITY

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

# Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

Date: 23 April 2020
ESMA 34-45-904

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

## Responding to this paper

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

Comments are most helpful if they:

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

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

### Instructions

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

**Q1** Insert your responses to the questions in the Consultation Paper in the present response form.

**Q2** Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.

**Q3** If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

**Q4** When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.

**Q5** The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading 'Your input - Consultations' by **1 September 2020**.

**Q6** Contributions not provided in the template for comments, or after the deadline will not be processed.

## Publication of responses

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

## Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[1]. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

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

## General information about respondent

| | |
|---|---|
| Name of the company / organisation | Austrian Association of Investment Fund Management Companies (VÖIG) |
| Activity | Investment Services |
| Are you representing an association? | ☒ |
| Country/Region | Austria |

## Introduction

***Please make your introductory comments below, if any:***

<ESA_COMMENT_ESG_1>

**Insufficient availability of relevant, comparable, and reliable data on investee companies** remains a key impediment to the realisation of the full potential of sustainable finance and to comply with the obligations proposed on this consultation paper. We hope that changes to NFRD will bring about an improvement in the availability and reliability of ESG data for EU companies in the long-term. However, in the short-to-medium term this will remain a key challenge. Hence, we would strongly advocate for the optionality of the indicators as well as allowing for a qualitative assessment.

While some consistency and comparability are helpful, we need to strike balance between the level of comparability and **providing meaningful disclosures to end-investors**. Hence, we question the usefulness of the proposed template with 32+2 mandatory indicators, both in terms of its relevance and comparability across sectors and strategies, as well as their ability to reflect the materiality of the alleged impacts (i.e. the 'principal' element of PAI). We believe the proposed approach goes against the level 1 mandate and would result in **'one-size-fits-all'** disclosures, failing to reflect the concept of materiality or a notion of "significant harm" and have a great potential to mislead investors. Moreover, existing methodologies to measure and aggregate data at the entity level lack depth and consistency.

Fully optional indicators would be our preferred approach. But as we understand the need to achieve comparability for end-investors, tour counter-proposal is to limit the number of mandatory indicators to a smaller subset of more generic metrics that are meaningful, relevant across the sectors and asset classes and measurable with available data. Meanwhile, asset managers would be invited to use also other indicators from a list / tool-box, based on materiality / appropriateness for a given underlying investee company, asset class and investment strategy.

We **strongly oppose to calculate a weighted average of PAI over the entire reference period with regard to all investments at the entity level**. For fund managers, such continuous aggregation of holdings over all managed portfolios would be entirely disproportionate. Instead, we would suggest to provide for specific reference date(s).

Our most critical concern remains the **extremely tight and practically unrealistic deadline to implement the new rules.** In case the draft RTS are published by end January 2021, market participants will be faced with only five weeks for the legal assessment and the subsequent operational and technical implementation of the new rules. This short deadline is clearly not feasible for the practical application of an entirely new and complex legal framework.

Therefore, we fully back the **ESAs' suggestion in the joint letter to the Commission** to **revisit the application date of SFDR and we call for a postponement of the application date to 1 January 2022.** This would provide market participants with 11 months for implementation which is still a challenging but manageable timeline. Such deadline adjustment would also result in more regulatory coherence and consistency, aligning with first batch of the EU Taxonomy disclosures as well as with the probable application timeline for the imminent new rules on the integration of sustainability risk and consideration of principal adverse impacts in investment decisions, which are likely to be effective as of the end of 2021 (based on the current draft Level 2 texts under UCITS and AIFM Directives, and Solvency II that include a transitional period of 11 respectively 12 months). Such postponement would help to **restore the consistency and coherence of the EU sustainable finance regulatory framework.**

Clarity is needed on the **timeline for periodic reporting** (see our response to Q 12).

**Remove provisions requiring disclosure of a proportion of sustainable investments in case of Art. 8 products** (see our response to Q16).

**Remove the “warning” proposed in Art. 16 (1) of the draft RTS** as potentially misleading (see our response to Q16).

<ESA_COMMENT_ESG_1>

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

<ESA_QUESTION_ESG_1>

We disagree with the approach proposed in Chapter II and Annex I, whereby any positive value for any adverse impact indicator would automatically result in a “principal” adverse impact. For example, in some cases having carbon emissions in one sector can actually offset or reduce emissions in another sector (e.g. the CO2 emissions of a manufacturer of solar panels). It is important for us to highlight that positive metrics on these indicators **do not provide the context regarding the nature of adverse impacts of investments.**

The lack of policies e.g. deforestation policy, workplace security policy, has very different relevance depending on the sector. Indicators are mainly relevant for equities and corporates (not for asset classes like real estate and government bonds).

We find the proposed approach as being **too prescriptive** and **going beyond Level 1 requirements**. The Level 1 text requires:

– Publication of a statement on due diligence policies with respect to adverse impact, taking due account of size, nature and scale of their activities, and

– Disclosure of information on their policies on identification and prioritisation of principal adverse impact and indicators, description of principal adverse impacts and actions.

**A more qualitative, principles-based, risk-based assessment would be more useful to investors.**
<ESA_QUESTION_ESG_1>

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

<ESA_QUESTION_ESG_2>

No, **the proposed approach does not take sufficiently into account aspects** related to size, nature and scale of financial markets participants activities and type of products available.

Not all financial market parties have the capacity and ability to perform a full due diligence on investee companies directly and may have to rely on third party providers only. The suggested approach seems to favour scale (large asset managers) especially due to the insufficient availability of ESG data (and especially in terms of indicators) due to the cost of acquiring impact indicators.

In addition, the **proposed indicators are mostly not relevant for other assets than equities and corporate bonds.**

While **engagement** is proposed as one of the means of assessing and mitigating the adverse impact, it should be noted that the **level of engagement with investee companies varies** according to asset classes, investment strategies (passive versus active) and no engagement is undertaken where there is indirect exposure through derivatives. The adverse impact disclosure requirements should take account of these differences.
<ESA_QUESTION_ESG_2>

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

<ESA_QUESTION_ESG_3>

We strongly believe that **the proposed indicators should be reassessed and the number of the mandatory indicators reduced**.

3 indicators that would be suitable are:

- Carbon-Footprint
- Water usage
- Waste production

Overall, as long as data is not normalized/ formatted as result of the NFRD review, and as long as there is a weak coverage ratio of these indicators, the approach proposed in Chapter II is likely to result in **inaccurate information, with the unintended consequence of misleading end-investors**.
<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>

As mentioned above, **the proposed approach would result in a box-ticking compliance and boilerplate disclosures, not in meaningful information to clients**. Reporting is a dialogue with investors, where the ultimate goal should be to help them understand processes, not a standardised list to disclose against.

We also **disagree with an obligation to use all of the proposed indicators to every direct and indirect holding**.

In our view, entity level disclosure of adverse impact on sustainability factors should focus on the disclosure of FMPs policies and practices in relation to adverse impact, **following a more principle-based approach.**
<ESA_QUESTION_ESG_4>

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

<ESA_QUESTION_ESG_5>

Generally speaking, ”Principal adverse impact” must include: a concept of materiality (“principal”) and a notion of “significant harm”. **Neither of these principals are reflected in the proposed indicators. They also conflict with the concept of “Do No Significant Harm” as defined by the Technical Expert Group under the Taxonomy,** which, as per the Taxonomy amendment, are intended to be linked.

We would also like to highlight the biggest issue is **insufficient availability of ESG disclosures by investee companies that is needed to use those indicators.** Even after the upcoming NFRD review (with the caveat that it will take at least two to three years before any disclosures can be reasonably expected), the challenge will remain regarding non-EU holdings. Moreover, a lot of data is from third party data providers, based on estimates and therefore of limited reliability.

As mentioned above, we do not think that all 32 indicators as included in Annex I Table 1 are equally relevant or useful for disclosure on entity level or investment product level for that matter. **Therefore, we propose to review the suggested indicators and restrict their number, focusing on those which are relevant for all sectors and asset classes, as well as for which ESG data is currently relatively available.**

**At this stage, we would also advise against the inclusion of forward-looking indicators**.
Asset managers are striving to develop and implement these methodologies, but they are still facing the challenges of obtaining meaningful historical data and note that forward-looking indicators would risk being mostly speculative.<ESA_QUESTION_ESG_5>

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

<ESA_QUESTION_ESG_6>

As already mentioned above we believe that the proposed approach, providing for a mandatory reporting table as well as requiring the use of mandatory indicators to assess the adverse impact, is too prescriptive and goes beyond level 1 requirements.

**Such additional information should be voluntary.**

Besides, the formula includes scope 3 emissions. Unfortunately, there is not much data reported by companies on scope 3 emissions. Including scope 3 emission into the formula would result in flaws in the outcome.
Where markets develop, a more tight formula for calculating carbon footprint may evolve.<ESA_QUESTION_ESG_6>

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

<ESA_QUESTION_ESG_7>

**We believe that this proposal would duplicate the metrics on the same factors.** It would make things unnecessary complex and may potentially mislead end investors.

The concept of PAI is new to market participants, including retail investors. A long list of quantitative indicators on specific aspects of investments has a great potential to overwhelm end-investors who are likely to already struggle to understand the implications of the entity-level disclosures for their individual investment in a fund. This problem will be only increased, if two different percentages (with regard to different reference values) are disclosed for one KPI.

With the aim of providing meaningful disclosures for end-investors', we recommend to start with a **small number of indicators relevant across different companies and asset classes**, that are less prone to misinterpretations and to reduce the general complexity of disclosures.
Therefore, we believe that one measurement is sufficient – to be performed, depending on the indicators, either as a percentage of the aggregate investments or the share of the investee companies – the latter to be preferred in cases where the policies in place are to be considered.<ESA_QUESTION_ESG_7>

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

<ESA_QUESTION_ESG_8>

Given the insufficient availability of ESG data on investee companies, which is necessary for disclosures by FMP against the indicators, **it appears premature to mandate the use of more advanced indicators or metrics.** We suggest to start with a few indicators for information that is more widely available (i.e., carbon footprint) and then wait on actual availability of more advanced metrics.
Moreover, indicators capturing activities by investee companies to reduce GHG emissions would actually measure the positive contribution of a company's activities. Hence, such indicators could be used as sustainability indicators especially for Article 9 products under Art. 27 of the draft RTS. However, they seem to go **beyond the scope and general concept of PAI.**<ESA_QUESTION_ESG_8>

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

<ESA_QUESTION_ESG_9>

We suggest that the **indicators proposed by ESAs in table 1 (KPIs 17 to 32) should be made optional** and moved to tables 2 and 3 respectively. It could be envisaged that market participants are to explain their choice of indicators.
This list of mandatory indicators could be subject to a review in couple of years' time, after a review of the NFDR framework and its due implementation.<ESA_QUESTION_ESG_9>

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

<ESA_QUESTION_ESG_10>

We question the usefulness of the proposal and we believe it goes beyond the level 1 text specifications. As this is a significant proposal, it cannot be considered a purely technical specification within the remit of what RTS can prescribe for.

According to recital (13) ESAs chose a 10 year period for the availability of disclosed information in order to align it with those of annual and half-yearly reports under Directive 2004/109/EC and prospectuses under Regulation (EU) 2017/1129. Reference to these provisions however is unclear. Especially for investment funds, this results in historical information which is not available as regards other data.

Furthermore, providing such extensive historical comparison of 10 years contradicts Art 2 para 1 draft RTS. Pursuant this provision financial market participants shall provide the information referred to in the RTS in a manner that is – i.a. simple, concise, comprehensible and clear. However, information overload does not achieve this objective.

Customers will be overwhelmed by information overflow.

When looking at performance of funds so it should be either three (aligning with financial statements), or five years. This would better reflect the ESG profile especially of companies in transition. In a rapidly evolving ESG space, we also note that a ten-years' time span would require to draw a comparison of data that are

not in fact comparable, due to potential differences in the context in which they were gathered or the methodology used to analyse them.
Moreover, absolute historical figures do not provide any information to investors about actual impact of investments. E.g., if the carbon footprint of investments decreases, but overall AUM increases, disclosed impact will increase year over year.<ESA_QUESTION_ESG_10>

- **: Are there any ways to discourage potential "window dressing" techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?**

<ESA_QUESTION_ESG_11>

We are very much **against the approach** suggested by the ESAs **to calculate PAI indicators over the entire reference period with regard to all investments at the entity level**. Such approach prescribing for a continuous calculation of indicators across the aggregated holdings would not only be too onerous and we question its practical feasibility.

Instead, we would suggest to provide for specific reference date(s). We believe that '**the year end'** would be a sensible reference date for the calculations on the composition of holdings, given that investee companies disclose ESG data on annual basis and as the PAI indicators are to be disclosed once a year for the preceding calendar year. Given that the relevant ESG data for calculation of PAI indicators is anyway scarce, outdated and will not be reported more frequently than once a year even following the envisaged NFRD review, annual calculations should be considered sufficient.

In case the ESAs would nevertheless see the necessity for more frequent calculations, we would suggest that they are based on the overall portfolio composition at the end of each quarter (i.e. 31 March, 30 June, 30 September).
**Quarterly aggregation of portfolio holdings should be considered the absolutely maximum requirement for proportionality reasons.** Should the ESAs take up this suggestion, we recommend clarifying that quarterly calculations apply only to determine the portfolios' composition, while the calculation of PAI indicators can be performed once a year on the basis of the weighted average holdings using the most recent data.<ESA_QUESTION_ESG_11>

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

<ESA_QUESTION_ESG_12>

Since the SFDR covers various types of financial products, there is a risk that templates fit well – for example – for investment funds, but not for individual portfolios (as is the case with the obligation to disclose information on the website).

If the ESAs will decide to provide for such templates, they should be **coherent with client disclosures under other EU rules**, like KIID documents, which may have space constraints. We suggest to reflect on how to best fit it in the exiting EU framework for disclosures and provide for a simple and practical solution. In this regard, we would support the **inclusion of the template in the existing documentation** as perhaps this is the easiest approach to meet the requirements (rather than making changes to existing disclosures within the investment objective/policy sections of the fund documentation).

We would also like to highlight that while **mandatory templates can be useful for retail investors, are not required and are likely not to respond to the needs of institutional clients**. Professional clients need tailored information, including in presentation terms, in order to be able to use it for their own purposes, e.g. for regulatory reporting in case of insurance companies and pension funds.

Therefore, **we recommend that the use of mandatory templates for pre-contractual and periodic disclosures be limited to products foreseen for public distribution,** i.e. available to retail investors.

Taking this opportunity, we would also like to highlight the **timeline issues**.

We are particularly concerned with the case of funds with specific year-ends. In case of a fund with a year-end on 31 December, the report issued beginning of 2022 will cover the period from 1 January 2021 to 31 December 2021, covering a period prior to the SFDR implementation. The situation is even more difficult for funds with a year end 30/09 issuing its 30/09/21 annual report beginning of 2022.

Based on the Recital 32 SFDR, we understand that the article 20 (3) has foreseen a different start date for the periodic reporting to ensure that the periodic report requirements will apply to a full year after the SFDR implementation date.
We therefore **suggest to clarify this in the final draft RTS using some commonly used language in accounting directive such as "Articles 36 to 52 shall apply to periodic reports covering reporting periods starting from 1 January 2022".**<ESA_QUESTION_ESG_12>

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

<ESA_QUESTION_ESG_13>

We believe that the templates are suggested as part of the existing funds' documentation, not as new documents. However, the provisions should be practically thought-through and well **aligned with other key client disclosures, such as the UCITS KIID, which has space constraints.**

To ensure that pre-contractual and periodic disclosures provide for comparable information on a wide **range of products and investment strategies**, we would recommend to **avoid a prescriptive list**. Instead, we believe that the pre-contractual and periodic disclosures should:

Ensure enough flexibility to capture investment products' broad range of different strategies, underlying assets, investment horizons, etc.

and
Contain information regarding the strategy adopted to promote ESG characteristics or to pursue sustainable investment objectives.<ESA_QUESTION_ESG_13>

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

<ESA_QUESTION_ESG_14>

As explained in the response to question 12, we agree with harmonised templates for pre-contractual disclosures and periodic reports, with the aim to provide comparability for end-investors, as long as they provide for sufficient flexibility to reflect the funds' characteristics, assets and strategies.
<ESA_QUESTION_ESG_14>

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

<ESA_QUESTION_ESG_15>

We believe that pre-contractual disclosures should provide valuable information to guide investors' choices and initial decisions. Pre-contractual disclosures include information relevant at the time of distribution of the financial product. Website disclosures, on the other hand, can be adapted more easily. Therefore, websites are much better suited to include information that have elements of uncertainty and/or require frequent updates. This would avoid too frequent changes of pre-contractual documents and thus would results in more reliable and up-to-date information on the portfolio composition for end-investors and avoid unnecessary costs.

We **would advise against the requirement to publish a summary document** in the format of maximum two sides of A4-sized paper, **effectively creating an "ESG KID"**.

Article 10(1) SFDR already states that information shall be provided in a clear, succinct and understandable manner. To ensure that the transparency requirements for website disclosures are not overly complex, the ESAs should remove this proposal that would result in a duplication of information in an additional summary. To be useful, disclosures for retail investors should be simple, concise and easily accessible.

We would rather advice to reduce the complexity of the contents of website disclosures, instead of providing for a yet another document to come on top of other disclosures.

However, **in case the ESAs were to keep the obligation to provide a summary we suggest at minimum to:**

- Restrict the obligation to provide the "summary" to products that are sold to **retail** investors only. Professional investors rely on differently tailored information and would not find such a summary valuable.
- Remove the obligation to publish the summary in a **language** customary in the sphere of international finance in case products are distributed only in one country.<ESA_QUESTION_ESG_15>

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

<ESA_QUESTION_ESG_16>

While we acknowledge the limitations of the ESAs mandate, **we strongly believe that more clarity is needed on the delineation between Article 8 and Article 9 products.** Moreover, we fear that the draft delegated regulation on the integration of sustainability considerations under MiFID II and IDD may **further contribute to the ambiguity**.

Current ambiguity around the definitions of Art 8 and Art 9 products creates major operational concerns for fund managers and distributors, and are likely to result in uneven application of the new rules which would run counter to the objective of providing more comparability for end-investors. As a result, it risks **confusing or even misleading end-investors**.

Our understanding is that while the distinct feature of Article 9 products is that they have sustainable investment (defined as designed by SFDR as to have a particular environmental or social impact), SFDR intentionally framed a wide scope for Art 8 to cover capture products with broader environmental and social characteristics and differing level of ambition.

- Art. 15 (2)(a)(i) of draft RTS requires to illustrate the planned proportion of sustainable investments of Article 8 products in the pre-contractual information and to report on the proportion of sustainable investments in periodic reports.

However, level 1 only refers to sustainable investments in case of Article 9 products. Therefore, we do not believe that Art. 8 products can possibly commit to a certain proportion of sustainable investments in the pre-contractual disclosures. Moreover, given there is no requirement that the portfolios of Article 9 products should entirely consist of sustainable investments, the proposal by the ESAs would even further blur the distinction between Art.8 and Art. 9 products. We thus **suggest this provision be removed**. At minimum, it should be **clarified that the proposed graphical representation of sustainable investments for Article 8 products should apply only "where applicable".**

We suggest to adjust Recital 21 by **removing the direct link to the regulatory documents** and instead emphasise the intentionality of the FMP to market the product as a product with ESG characteristics as well as **clarifying that firm-wide ESG characteristics** (meaning (a) simple ESG exclusion(s) or a simple ESG integration) **should not by default qualify the product as an Art. 8 product**.

Recital 18 to the draft RTS acknowledges that that there is a wide variety of ESG investment strategies including "best in class" approaches, exclusions, ESG engagement - that shall not be further restricted by regulation.

Based on the draft RTS all those strategies, which we understand would quality products under Art. 8, must include criteria for selecting investments to attain environmental or social characteristics (Art. 17 (a) of the draft RTS) which shall be measured by sustainability indicators that will be disclosed to investors as part of pre-contractual information (Art. 18 of the draft RTS). Information about the extent to which those characteristics were attained, including the performance of the sustainability indicators used, shall be disclosed to investors each year as part of the periodic reports (Art. 37 (1)(a) of the draft RTS).

We therefore fail to understand why Art. 8 products, following such strict requirements and providing such detailed disclosures, are still suggested to provide any kind of warning. This is something which is likely to be misunderstood by the end-investor that is not familiar with the nuances of the legal definitions.

We **recommend to delete the requirement for the statement according to Art. 16 (1) of the draft RTS** (and the referring provisions).

We also would appreciate clarification on how **sustainability considerations should be integrated for derivatives** and, in particular, FX instruments or Treasury futures which may be used for risk mitigation by Article 8 and 9 products.<ESA_QUESTION_ESG_16>

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

<ESA_QUESTION_ESG_17>

We would support a less detailed graphical representation. It's important that there is enough flexibility to adapt this according to market conditions. Such representations should specify what the fund *intends to* do (e.g. invest in 20% of sustainable assets), not necessarily what the fund *will* do. Graphical representation could be misleading if seen as binding commitment instead of parameters set.

We would suggest that the description should **focus on the strategy and approach taken regarding ESG considerations at the level of the product**. We would also suggest that this is part of **website** disclosures, which are much more easily adaptable.<ESA_QUESTION_ESG_17>

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

<ESA_QUESTION_ESG_18>

The graphics should be **optional as well as individually chosen** by the FMP. **Investors should be able to relate the graphical illustration to the relevant investment strategy**. One kind of graphic cannot capture every specificity of all possible products. This could lead to the result that the graphic is completely useless for some products.
**The graphical representation should be moved to website disclosures**, while providing only a general description in the pre-contractual information.<ESA_QUESTION_ESG_18>

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

<ESA_QUESTION_ESG_19>
We basically agree with that. But it puts a lot of focus on that specific topic and should only apply to investee companies. For assets such as real estate, the information should not be relevant. We also want to point out that it won't be possible to be applied for funds that invest in other assets than equity.<ESA_QUESTION_ESG_19>

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

<ESA_QUESTION_ESG_20>

Superficially, yes. But we see the need to differentiate according to the investor type, as mentioned above. The bespoken disclosures are inappropriate for professional investors. This need is among others driven by their respective regulatory framework (e.g. in case of insurance companies and pension funds).

Therefore, standardized disclosures by using templates should be optional and the provision of a "summary" should be removed for those investors. Furthermore, it should be allowed to provide website disclosures in a separate, password-protected area.

We also see room for improvement concerning individual portfolios. Art. 2 (12)(a) SFDR defines managed portfolios as financial products which creates problems to financial market participants that offer portfolio management services. When **standardised portfolio management solutions**, based on model portfolios that suit clients with different risk tolerance profiles, are **offered to retail clients**, we recommend to provide for e.g. **general website disclosures based on the standardised portfolio solution** instead of references to each individual portfolio managed for a specific client. This could be clarified by means of a recital in the RTS.

For **individual portfolios managed for professional investors**, standardised disclosures developed for retail clients would be inappropriate. Please refer to our comments above requesting further differentiation of the disclosures depending on the investor type.
<ESA_QUESTION_ESG_20>

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

<ESA_QUESTION_ESG_21>

Proposals at EU level for development of sustainable governance standards are expected next year. Meanwhile, currently there is no common reference as regards "good governance practices" and rules regarding governance and company law are largely national. Also, quantifiable data in this area is still largely missing. Furthermore, such approach would amount to "gold-plating" the definition of Art. 8 products and further blur the distinction between Art. 8 and Art. 9 products.<ESA_QUESTION_ESG_21>

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

<ESA_QUESTION_ESG_22>

Overall, we believe it very **important to ensure full consistency between DNSH under SFDR with the DNSH test under the EU Taxonomy**. However, it recommends to **differentiate between the definition of "DNSH" in the EU Taxonomy level 1 text** (Art. 17) – well-reflecting the principle of materiality – and between the proposals provided in the screening criteria. The level 1 definition is appropriate to cater for both activity vs entity level disclosures.

At the same time, we would like to highlight that the **PAI indicators proposed by the ESAs are not aligned with the approach provided for in the EU Taxonomy**. This could result in regulatory incoherence and run counter to the objective of the EU Taxonomy to create a widely-used classification system for defining environmentally sustainable activities.

We understand that the consideration of DNSH based on the indicators for adverse impact, proposed in the draft RTS, should **apply at the investment, meaning the investee company, level**. This is different from the approach taken by the EU Taxonomy Regulation where the consideration is at the level of the economic activity.

In case of products that invest directly in companies, meaning in all of their activities, it could still be understandable that first you need to pass the EU Taxonomy test on specific economic activities, while later on you need to have another test on a investee company level to see whether looking at all its activities it passes the DNSH test under Article 2 (17) SFDR.

However, **we believe such "double" test should not be applied in in case of products directly financing economic activities in line with the EU Taxonomy**, e.g. green bond funds that contribute to the financing of Taxonomy-compliant projects, or real estate funds investing in "green" buildings in line with the EU Taxonomy.

We therefore recommend to clarify that **for direct investments in environmentally sustainable economic activities in line with the EU Taxonomy,** consideration of DNSH is already part of the EU Taxonomy criteria and such investments **are exempted from further testing against the adverse impact indicators.** We strongly recommend that the ESAs pursue the option referring to a high-level policy commitment on assessment of significant harm instead of the singled out approach.<ESA_QUESTION_ESG_22>

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

<ESA_QUESTION_ESG_23>

No, the strategies should be described individually.
<ESA_QUESTION_ESG_23>

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

<ESA_QUESTION_ESG_24>

We do not see any merit in the disclosure of the "top" investments on **average** (not on the balance sheet date). Information on investments in the periodic reports refers to the reporting date. Using another approach might be **confusing for investors**. We would prefer the disclosure to be consistent with the requirements under UCITS and AIFMD.
We also question the choice of 25 top investments as currently the **industry standard practice is to disclose top 10 investments**. We are not convinced that the extra 15 investments would be helpful to investors or whether they would result in information overload.<ESA_QUESTION_ESG_24>

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

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

<ESA_QUESTION_ESG_25>

We generally prefer the presentation of information on the website. Pre-contractual documents should contain a link to this website-section / links to these website sections. By using the **website as primary source of disclosure**, updates - especially concerning information subject to frequent changes - can be made easily and immediately.

Moreover, it has to be made sure that sustainability related information in prospectuses etc. is not so extended as to obscure other important information about the financial product (e.g. risks in general, costs, …).

a) *an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy – in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);*

While website disclosure could be feasible in some cases, this item can also remain in pre-contractual disclosures. We highlight that such requirement should always be voluntary as it depends on the specifications of the product.

b) *a short description of the policy to assess good governance practices of the investee companies – in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);*

This information should be disclosed on the website as this is a complex issue and is likely to be updated to reflect changes in the methodology or any other developments concerning the topic.

c) *a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product – in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k);*

This information should be presented on the website, as basically it's solely relevant for experts and furthermore, this kind of information may change frequently

*and*

d) *a reference to whether data sources are external or internal and in what proportions – not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.*

This item should be disclosed on the website. In addition to the possibility to update the information more frequently, website disclosures offer more space to elaborate on data sources.<ESA_QUESTION_ESG_25>

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

<ESA_QUESTION_ESG_26>

It is completely sufficient to include derivatives in the graphical and narrative presentation of the investments. **Derivates are regular investment products and should not be treated with special restrictions** as they are an essential instruments of portfolio management and contribute heavily to the liquidity of a security and, in turn, its pricing.

The draft RTSs should be amended accordingly with the removal of Articles 14(e), 23(e), 19 and 28, as well as the reference to the use of derivatives in Recital 30.
<ESA_QUESTION_ESG_26>

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

<ESA_QUESTION_ESG_27>

In the consultation paper, the ESAs rightly acknowledge the issue of data availability, and that this may complicate the assessment of the adverse impact of an investment decision against particular indicators. The costs associated with the gathering and processing of data remain high and are expected to increase even further with the application of the provisions under SFDR and the requirements specified in the draft RTSs, also in relation to the proposed frequency of PAI calculation. Meanwhile, we only partially agree with the ESAs' assessment that the situation is improving. As evidenced by the growing share of ESG data issued by data providers, we note that increasing concentration in the market for ESG data, research and ratings is driving costs further up. While the ESG data situation may be improving for data which is currently frequently used by the industry, new regulatory requirements including SFDR and the EU Taxonomy will require the use of very specific indicators which are not available and this situation is not very likely to significantly change before 2-3 years' time, meaning before the review of the NFRD takes place and new provisions become effective.

Moreover, we do not agree with the ESAs' conclusions that the integration of ESG considerations to disclose adverse impacts will not be disproportionately high – and we question the relevance of the results of a previous public consultation where stakeholders indicated that the integration of ESG considerations does not carry substantial additional costs.<ESA_QUESTION_ESG_27>