

**The European Federation of Insurance Intermediaries   
La Fédération européenne des intermédiaires d’assurances**

**BIPAR Response**

**ESAs Joint Consultation Paper – ESG Disclosures**

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*BIPAR is the European Federation of Insurance Intermediaries. It groups 51 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.*

*Apart from some large multinationals, the insurance intermediation sector consists of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.*

*BIPAR is a member of the World Federation of Insurance Intermediaries (WFII).*

Introductory remarks

BIPAR welcomes the opportunity provided by the ESAs to comment on their Joint Consultation Paper on ESG Disclosures **adopting draft Regulatory Technical Standards (RTS) with regard to the content, methodologies and presentation of disclosures on the adverse impact of investment decisions on sustainability factors as well as on products with environmental or social characteristics and products that have sustainable investment objectives**, following the adoption of the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.

BIPAR encourages the promotion of sustainable investments and the comments on this ESAs consultation are given from the perspective of insurance and financial intermediaries who want to assist retail investors in “orienting capital flows towards sustainable investments”.

**Clear, understandable (in preference energy label style), comparable and reliable information provided by product manufacturers on the principal adverse impacts and on sustainability characteristics/objectives** of the product marketed as such is crucial for the intermediaries/advisors to be able to function well and comply with their legal obligations, including their duty to assist clients in understanding what they invest in.

Manufacturers of the product marketed as targeting sustainability preferences/investments should be the ones who need to provide intermediaries with sustainability-related information and any update. This “labelling of a sustainable product“ by the manufacturer should inform the market whether or not, in the labelling of the product as sustainable they have taken into consideration the adverse sustainability impacts in compliance with the sustainability-related rules and subsequently intermediaries can assist clients in making an informed choice. In this light, insurance and financial intermediaries should not be expected to constantly screen the website of all insurance and investment companies concerned in order to collect such information, but product manufacturers should make sure that they provide the necessary information.

Furthermore, having an overdetailed adverse sustainability impact assessment on the basis of the proposed Annex 1 later in the process (at the advice or intermediation level) may unnecessarily complicate the suitability and advice process in most cases (especially for retail investors), which can be rather confusing for the client. This may become a real barrier to the objective of orienting (as much as possible) capital flows towards sustainable investments in practice.

The regulation leaves in this respect more flexibility than what is proposed in the RTS. Article 4 (5) of the Regulation on sustainability-related disclosures in the financial market sector provides for the following:

“*Financial advisers shall publish and maintain on their websites: (a) information as to whether, taking due account of their size, the nature and scale of their activities and the types of financial products they advise on, they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors*;

OR *(b) information as to why they do not to consider adverse impacts of investment decisions on sustainability factors in their investment advice or insurance advice, and, where relevant, including information as to whether and when they intend to consider such adverse impacts*

Hence, the Regulation (level 1 text) allows for:

* advisors to announce on their website whether they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors;

OR

* advisors to provide information as to why they do not to consider adverse impacts of investment decisions on sustainability factors in their investment advice or insurance advice,

AND,

* where relevant, include information as to whether and when they intend to consider such adverse impacts. (for example, upon request of the investor).

Based upon the “process” that seems to be (provisionally) reflected in the European Commission proposals to amend the Delegated Regulations of IDD on IBIPs and on POG as well as its proposals to amend the Delegated Regulations of MiFID II (in accordance with the EIOPA and ESMA Technical Advice) in relation to the integration of sustainability risks, factors and preferences into the advice for IBIPs and the investment advice, clients would have a clear indication on whether or not sustainability factors are taken into consideration in the advice/suitability test they receive. Clients should also have a choice (according to their preferences / needs/ wishes…).

When reading the proposed draft RTS in combination with the beforementioned draft Commission proposals, **BIPAR understands that, in practice, it would mean that, if the draft Article 12 of the RTS becomes applicable, another choice needs to be made (by the client and the intermediary) on the basis of (a very technical) Annex 1 analysis when carrying out the suitability assessment** of a specific financial product for a certain client. This may not be the legislator’s intention but in practice this would be the result (e.g. in case of litigation).

In order to be practically feasible and cost effective – which will help facilitate the transition towards sustainable investments - **BIPAR proposes that for retail investors the reference should be, not Annex 1, but a summary of Annex 1 (energy-label style disclosure by the manufacturers) in combination with the fact that manufacturers have in any event to publish the detailed information (Annex 1) on their website.** Those investors who would like to have more details can consult the statement online or choose investment advisors who pro-actively offer detailed analysis.

The “summary” information on adverse impact could be **integrated in the KID** of the financial product in the format of an “energy label” style based upon two main factors:

1. climate and other environmental-related indicators,
2. social and employee, respect for human rights, anti-corruption and anti-bribery matters

Moreover, upon request of the client or when the investment amount is important, reference could be made to the detailed information as presented in Annex 1.

**Considering the Article 4 (5) of the sustainability-related disclosures Regulation, BIPAR proposes to amend the draft Article 12 of RTS.**

Article 12 should read as follows:

***“*Financial adviser adverse sustainability impacts statement**

*Financial advisers shall publish the information referred to in Article 4(5)(a) of Regulation (EU) 2019/2088 on their websites in a separate section titled, ‘Adverse sustainability impacts statement’.*

*The statement shall taking due account of their size, the nature and scale of their activities and the types of financial products they advise on, contain information about whether for the financial products they advise on, they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors.*

*When financial advisors consider in the investment advice or insurance advice the principal adverse impacts on sustainability factors they shall explain, taking due account of their size, the nature and scale of their activities and the types of financial products they advise on, the following:*

*(a) how the summary of the (in an energy-label style) information published by financial market participants in accordance with this Regulation is used;*

1. *(b) whether the financial adviser ranks and selects financial products based on the principal adverse impacts referred to in the summary and, if so, a description of the ranking and selection methodology used; and*
2. *(c) if any more detailed criteria or thresholds used to select financial products and advise on them based on those impacts.*

*When they do not consider in the investment advice or insurance advice the principal adverse impacts on sustainability factors they shall provide information as to why they do not do so and include, where relevant, information as to whether and when they intend to consider such adverse impacts.”*

**Article 13 of the proposed RTS can then be deleted.** This way, the text of the draft RTS will be more aligned with the Regulation.

As mentioned above, at the stage of advice, referring to Table 1 of Annex I of the draft RTS would mean double work. Indeed, the regulation already requires the manufacturers or providers to include an adverse impact statement in the product disclosure. It would be only logic that advisors can refer to that statement in their own statement.

Although BIPAR believes that the overall initiative is good for more sophisticated investors and institutional investors, in the case of retail investors, the proposed initiative seems not to be realistic in particular in the coming years.

Standardised disclosure will help to avoid greenwashing. However, too strict and “black and white” requirements may be counterproductive to the overall objective. It is crucial to avoid any potential unwanted side-effects or misunderstandings, giving grounds to liability, jeopardising thereby the trust to the “sustainable investments” and harming the market and economy overall.

BIPAR believes that in the interest of the promotion of sustainable products**, it would be useful to have an explicit on-demand option in the adverse impact statement of advisors (this would not be in contradiction with Art. 4 (5) of the Regulation).**

Furthermore, the current issues with **data availability and data quality** should be taken into account in the framework and standards for ESG disclosures. As the “sustainability” concept (what investment can be considered or not sustainable) will probably undergo changes in the future owing to scientific and technological developments, liability risks arising for advisors and investment firms should be kept in mind. The long-term credibility and understandability of the project in the eyes of the public should also be considered.

**Information overflow** is another concern. While technical disclosures might be useful, if too prescriptive, they can become very complex and rather confusing for customers, particularly retail customers. This, in combination with (lack of) financial illiteracy or sustainability literacy of consumers, create obstacles not only for disclosures but also for the possible “pick up rate “of these products by consumers.

It is important that Europe creates a “simple/ easy to understand” and flexible sustainable finance policy in order to allow for quick awareness and broad “pick-up rates” rather than an administratively burdensome system which creates legal uncertainty or leaves room for litigation because of doubt. As a consequence, information under the sustainability-related disclosures Regulation needs to be understandable and as simple as possible.

**Detailed comments**

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?**

We welcome this approach as an attempt to gradually bring “awareness” of sustainable finance disclosures to the real world.

We refer to our introductory comments: BIPAR supports Europe’s objective to achieve a green transformation and welcomes the ESAs work on ESG disclosures as a further step towards increased transparency in sustainable investment. However, **BIPAR suggests that the various factors should be complied in an energy-label style (5 levels for example) disclosure with the possibility to check the details (Annex 1) for those who want to have more information.** Disclosures regarding sustainability should be brought back to the level of a summarized energy-labelling style disclosures (by manufacturers) in order to ensure a high pick-up rate by “average” investors. More sophisticated investors should have access to more detailed information.

When introducing new ESG disclosure obligations, it is crucial to take into account **the ability of the various financial market participants to have access to ESG-related data and to report** on the underlying activities of the investment. Moreover, consumers/potential investors should have time to get used to the new terminology and concepts. The framework as proposed may be too sophisticated for some smaller investors and an even more gradual and simple approach should be considered.

**Regarding the timing**,asthe Regulation on sustainability-related disclosures will apply from 10 March 2021, it is likely that the Regulation (level 1 text) will start to apply before the related level 2 texts specifying how to comply with the new legal obligations, are adopted. This will create significant compliance challenges and possibly liability risks for market players, as well as confusion for investors. This may jeopardize the long-term trust in the project (cfr “bio” food products). It is necessary to reconsider an optimal sequencing between the relevant legislative initiatives (including the ongoing review of the NFRD).

In order to avoid costs (and confusion) to “rectify errors” in applications, disclosures, systems and public trust, BIPAR is in favour of a testing period. Once the overall framework is ready, there should be a new comprehensive consultation to assess whether all aspects fit with one another. At this moment, it is very difficult to give informed opinions about the proposals, because most of the sustainability-related legal texts which will apply to intermediaries and advisors and bring about sustainability-related obligations (and which are interconnected with this consultation), are still in a draft/preliminary phase.

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?**

According to Article 4 (5) of the Regulation, “financial advisers shall publish and maintain on their websites: (a) information as to whether, taking due account of their size, the nature and scale of their activities and the types of financial products they advise on, they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors”.

It is BIPAR’s understanding that financial advisors providing advice are not considered as financial market participants, thus they are not covered by this question. BIPAR wonders, however, what the reference “their size, the nature and scale of their activities and the types of financial products they advise on” in Article 4(5) of the Regulation means in practice.

The draft RTS proposed by ESAs do not give any interpretation of this point. BIPAR sees it as a reference to the proportionality principle. However, the ESAs proposal does not seem to provide further explanation on how that proportionality principle can be put into practice.

Please refer to our introductory remarks for inspiration for a possible proportionality system. Indeed, **clear, understandable, comparable and reliable information provided by product manufacturers on the sustainability characteristics/objectives** of the product marketed as “green” (and the adverse impact disclosures summary) is crucial for the intermediaries to be able to function well and comply with their legal obligations. We believe that in the interest of the promotion of sustainable products**, it would be useful to have an on-demand option**.

BIPAR further suggests thatArticle 12 of the proposes RTS on “Financial adviser adverse sustainability impacts statement” should incorporate the proportionality approach followed in Article 4(5) (a) of the Regulation on this point and provide for **a simplified disclosure standard for advisors (and not only for the exempted entities with fewer than three persons).** BIPAR believes that the Regulation explicitly suggests this approach but regrettably this is not reflected in the ESAs RTS proposed.

1. **: 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?**

**No answer.**

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

As already mentioned above, information under the sustainability-related disclosures Regulation needs to be clear, understandable and as simple as possible at product/ manufacturing level. Very detailed and technical sustainability indicators might hinder comprehensibility, which may render such disclosures not useful for financial advisers and consumers.

1. **: 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)?**

**No answer.**

1. **: 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?**

**No answer.**

1. **: 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?**

**No answer.**

1. : **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?**

**No answer.**

1. **: 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?**

In the longer term, a **holistic approach** should be followed in the sense that all ESG factors should be taken into account and promoted, as they are implicitly connected.

Having said that, considering that such **data is not currently available and that a taxonomy on socially sustainable economic activities is not yet established to support a holistic approach**, it should be envisaged to postpone requiring data on the adverse impacts for social considerations for the first reporting years or render such reporting voluntary for a transitional period, possibly with the exception of some indicators.

As explained in the introductory comments, the disclosures should be made at manufacturing level or higher up in the chain. Detailed information should be accessible.

1. **: 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?**

**No answer.**

1. **: 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?**

**No answer.**

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

**No answer.**

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

**No answer.**

1. **: 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.**

**No answer.**

1. **: 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?**

There is possibly **a difference between information being available (for those who want to use it) and information that needs to be provided or is useful in the suitability assessment**.

Sophisticated investors will probably want to “fine-tune” their decisions – with or without the assistance of an advisor. Other investors would rather want to have a more general indication of whether a product is sustainable or not. The system should avoid that those who want a more general approach are discouraged by sophisticated information to invest in sustainable products. Different levels of information could also gradually be introduced.

Very detailed and technical sustainability indicators might hinder comprehensibility, which may render such disclosures not useful (or even confusing) for consumers and advisors.

If the legal framework is not consistent, even manufacturers of financial products will be hesitant to use or disclose sustainability-related information. This may hinder products which meet criteria to be labelled as sustainable from being actually labelled as such (in order to avoid the liability or legal uncertainty).

1. **: 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.**

**No Answer.**

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

**No answer.**

1. **: 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?**

**No answer.**

1. **: 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?**

**No answer.**

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

**No Answer.**

1. **: 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?**

**No Answer.**

1. **: 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?**

Under the Taxonomy Regulation, for an economic activity to qualify as environmentally sustainable, the following requirements shall be fulfilled. The economic activity must:

1. contribute substantively to at least one of the six environmental objectives listed above;

2. **not significantly harm** any of the environmental objectives;

3. be carried out in compliance with minimum social safeguards.

The “do not significantly harm” principle stipulated in the Taxonomy appears to be a concept related specifically to the assessment of the sustainability of economic activities.

The concept of “principal adverse impact” of investment decisions on sustainability factors introduced under the Regulation on sustainability-related disclosures appears to be a risk-based concept related to how investments affect sustainability factors.

Despite this distinction, the two concepts may have to be aligned (to a certain extent) and it is necessary to specify how they will interact with each other.

Are the differences between “principal adverse impact” and the concept of “do not significantly harm” clear and understandable for retail investors? The combination of these concepts and related disclosures will create major obstacles for retail investors to understand whether or not a financial product is sustainable. Such disclosures may create confusion and burden in the investment process. Do these disclosures contribute to the main objective of orienting savings into sustainable investments? Please also refer to our introductory comments.

1. **: 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?**

**No Answer.**

1. **: 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?**

**No Answer.**

1. **: 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.**
2. **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);**
3. **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);**
4. **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**
5. **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.**

**No Answer.**

1. **: 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)?**

**No Answer.**

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

The implementation costs of the ESG disclosure system are high. Many of the costs related to compliance with Regulation on sustainability-related disclosures are fixed and do not take into account the size of the financial market participants or financial advisers.

Any impact assessment should take due consideration of the variety of financial market participants and financial advisers who are required to comply with these disclosure requirements. For example, IT costs will be particularly high for micro and small insurance and financial intermediaries.

The risk of overload of pre-contractual information should be duly assessed for thousands of SME intermediaries and their employees and clients in the financial and insurance services sector.

Before introducing mandatory templates, a specific consultation on the basis of an overall framework with the stakeholders as well as a consumer testing would be necessary to assess whether detailed information is really required and assists in making informed decisions in relation to financial products promoting, environmental and social characteristics and products with a sustainable investment objective.

Very detailed and technical sustainability indicators (or adverse impact statements) might hinder comprehensibility, which may render such disclosures not useful for consumers.

Please also refer to our introductory comments.