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| 23 April 2020 |

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| Response form for the Joint Consultation Paper concerning ESG disclosures |
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| Date: 23 April 2020  ESMA 34-45-904 |

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:

contain a clear rationale; and

describe any alternatives the ESAs should consider.

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

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. 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.
3. 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.
4. 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.
5. 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](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 1 September 2020.
6. 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]](#footnote-2). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Italian Banking Association |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Italy |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

**Foreword**

This document is intended to provide ABI's contribution to the Joint Consultation Paper on ESG disclosures providing draft Regulatory Technical standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of Regulation (EU) 2019/2088.

Before responding to the specific questions raised by the Consultation, we think it would be useful to comment on some relevant general aspects in order to better underline that the approach adopted by the ESAs in detailing the new disclosure requirements raises significant issues, which risk compromising the expected benefits of enforcing the sustainability‐related disclosures in the financial services sector.

As further explained later, the most critical issues are:

• the timelines overlap for different pieces of legislation the consultation refers to and the related interpretive uncertainties;

• the unavailability of the necessary data in a standardized and reliable way;

• the excessive complexity of the required information to be published by financial market participants and financial advisers;

• the high costs for the implementation of the new requirements and, therefore, the need for a proportionality approach to be used by market players according to their different characteristics, type of activity and dimensions. We therefore believe that the qualitative impact analysis provided by the final part of the consultation paper should be complemented by a quantitative impact analysis on the basis of the data collected by respondents to the consultation in order to better identify the most appropriate way to detail and implement the new disclosure requirements.

**General remarks**

**1. Regulatory framework**

The current regulatory framework, made up of Level 1 text that was only published in December 2019, while the Level 2 text will not be ready in draft form before the end of January 2021, is very complex and full of unclear provisions with multiple interpretations, as will be illustrated later.

Moreover, some important provisions are linked to other regulations which still need to be implemented or have not been published yet. We refer in particular to:

• Regulation (EU) 2020/852 published on 22 June 2020 (hereinafter the “Taxonomy Regulation”), which in turn requires the adoption of several Regulatory Technical Standards. At the same time, it must be stressed that some provisions of the two Regulations are de facto linked, but not adequately coordinated: we refer, in particular, to: i) Article 2(17) of the Sustainable Finance Disclosure Regulation (SFDR), which defines “sustainable investments” without reference to the Taxonomy Regulation; ii) the strong link between the concept of “do not significantly harm” under SFDR and the same notion under the Taxonomy Regulation applied to environmental activities;

• amendments to the MiFID II provisions aimed at including ESG considerations within the investor protection conduct rules were submitted to public consultation on 6 June 2020, but are far from being published and raise several interpretative doubts. These include, in particular, the approach adopted to identify sustainable financial instruments with various degrees of ambition, which is not consistent with that adopted by the SFDR in this regard. According to the current EC consultation on the Renewed Sustainable Finance Strategy: i) guidance could be adopted to help investment firms identify the type of information to collect from clients about their sustainability preferences; ii) there is still discussion about whether or not retail investors should be systematically offered sustainable investment products as one of the default options, when the provider has them available at a comparable cost and they satisfy the suitability test.

This makes it not just challenging, but really difficult, to identify what market participants and financial advisers are required to do from 10 March 2021.

Moreover, it is still unclear if, and under what conditions, a manufacturer must include clients having sustainability preferences in the positive or negative target market for a bond or structured product (e.g. certificates).

On a general note, we believe it very important to clarify with guidelines how all the regulations (e.g. Regulation 2020/852, the Commission Delegated Regulation and the Directive currently under consultation) apply to manufacturers of financial instruments other than “financial products”, as defined in article 2 (12) of the SFDR (i.e. other than (a) a portfolio managed in accordance with point (6) of that Article; (b) an alternative investment fund (AIF); (c) an IBIP; (d) a pension product; (e) a pension scheme; (f) a UCITS; or (g) a PEPP).

**2. Timeline**

Under the SFDR, financial market participants and financial advisers must comply with additional disclosure requirements from 10 March 2021. The draft RTS, required to help financial market participants and financial advisers comply with these disclosure requirements, do not have to be submitted to the Commission until 31 January 2021.

This means that financial market participants and financial advisers might only have a short time, between finalisation of the RTS and the entry into force of the new disclosure obligations, to implement any necessary changes to their compliance systems. It also means that they will need to assess carefully the systems and procedures put in place for the 10 March 2021 deadline in relation to the initial SFDR requirements, in order to check that they comply with the changes introduced as a result of the Taxonomy Regulation, coming into force only a few months later.

The MiFID II ESG amendments regarding Product Governance and Suitability have only been published in draft form. Following finalisation, we expect these amendments to become effective after further 12 months. In any case, this means that the MiFID II amendments will not become effective before the Disclosure Regulation takes effect (10 March 2021). This could mean that, while no client ESG preferences are registered and accumulated by March 2021, investment firms will need to include descriptions of the following in their pre‐contractual disclosures: (a) the manner in which sustainability risks are integrated into their investment advice/investment decisions; and (b) the result of the assessment of the likely impacts of sustainability risks on the returns of the financial products they advise on/make available.

**3. Complexity**

The draft RTS interprets the disclosure requirement under Article 4 of SFDR as a very complex report about the investing process/selection of investment products recommended/carried out in the previous calendar year, implying the collection of much detailed information that is currently not available and consequently difficult to obtain.

In this regard, we note that the revision of the Non-Financial Reporting Directive (NFRD) is still under consultation and that the reporting of non-financial information is still not compulsory for most companies. If these companies do report, they do so with significant flexibility: they can choose among different standards or Guidelines (i.e. GRI, IIRC, UN Global Compact, OECD guidelines, ISO 26000) that provide very different indications about how to define the materiality of the information reported. SFDR and the Taxonomy Regulation can only fully meet their objectives if relevant, reliable and comparable non-financial information is available from investee companies.

With the requirements of the new SFDR, costs will increase dramatically. Offering cost-efficient products will prove to be more and more difficult, as the costs of obtaining ESG data may well rise significantly. Furthermore, we would like to highlight that financial market participants and financial advisers will have to rely even more on third-party data providers. The Commission is investigating whether it may be useful to ensure open and centralised access not only to company reporting under the NFRD, but also to relevant company information on other available ESG metrics and data points. To this end, a common database would ease transparency and comparability, while avoiding the duplication of data collection efforts. Unfortunately, this initiative would come too late for the initial implementation of SFDR.

<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>

First of all, we have to stress that we expected a greater convergence of approach between the statements referred to in Articles 3 and 4 of the SFDR.

According to the Level 1 text, both communications should cover the "policies" and “processes” adopted in order to take into account, respectively, "sustainability risks" (Art. 3) and the "negative effects of investment decisions" (Art. 4). Instead, according to Article 4 of the draft RTS in consultation, the description of principal adverse sustainability impacts is interpreted to be a quantitative and very detailed report on investments made in the previous year.

We understand that the proposed approach seeks to provide reliable, comparable and qualitative information, but we must underline the need to better balance the amount and type of information required, in order to make the production of this report less complex and expensive.

In view of this, some amendments and clarifications are necessary, as described below.

First of all, we must underline that, according to Article 4 of the SFDR, entitled “ Transparency of adverse sustainability impacts at entity level”, and page 14 of the consultation paper “In order to promote comparable disclosures at entity level, the ESAs have proposed a reporting template containing principal adverse impacts in Table 1”, the adverse sustainability statement of financial market participants should be conceived as a **disclosure at entity level**.

If this is the case, it means that the data in Table 1 should be presented by **participant and not by product.** Consequently, it should report the detailed quantitative information proposed by Annex I to the draft RTS, regarding all financial products manufactured by the same entity, without any ability to take into account the significant differences existing between each product. At entity level a financial market participant can decide to offer financial products promoting inter alia environmental or social characteristics, or a combination of them, financial products having sustainable investment as their objectives, and financial products that are not sustainable.

We wonder about the utility of such quantitative complex disclosure, both for:

* end investors, who not only would not understand the overwhelming amount of aggregated information but, most of all, simply would not be interested in it, as they merely want to understand the specific sustainability of each financial product they invest in (understandably, end investors have little or no interest in strategies they do not invest in);
* financial advisers, as they have to select financial products to advise on with reference to their specific sustainable nature.

We therefore believe that Table 1 should be conceived differently and reduced drastically. Consequently, we also believe that it does not make sense to make Tables 2 and 3 optional and that, instead, they should be deleted.

Secondly, we believe that Table 1 should only focus on scopes 1 and 2 covering the compulsory disclosure requirements on carbon emissions. Scope 3 should be conceived as an optional disclosure as, at this stage:

* data for scope 3 is not available. If available, it could lead to double counting;
* data for scopes 1 and 2 is not always available, and even: i) that for scope 2 could lead to double counting; ii) with the current CO2 data, financial market participants have encountered the necessary caveats. Partly, carbon emission data is estimated, but also analysis by financial market participants over time has found rather large fluctuations in the CO2 data of companies.

Moreover, we note that the wording of Article 53 of the draft RTS is not clear. Specifically, we do not understand what is required by stating: ”In respect of a financial market participant that first considered the principal adverse impacts of its investment decisions before 1 March 2021, from that date until 30 June 2022, by way of derogation from Article 4(1), that financial market participant shall publish the information in Articles 5 to 10 except for the information that relates to a reference period”. In our view, taking into account that Article 4 of the SFDR applies from 10 March 2021 and that the transparency of adverse impacts has been interpreted as ex-post quantitative reporting on investments made in the previous year, all financial market participants should consider the principal adverse impacts of investment decisions on sustainability from 10 March 2021 and publish their first sustainability impact statement by 30 June 2022 with reference to the previous fiscal year, and then subsequently every June.

In addition to being more compliant with the Level 1 text, this interpretation would align the timing of the entry into force of the SFDR better with that of the Taxonomy Regulation and the MiFID II amendments. This would also allow financial market participants to operate with greater clarity, having more useful elements available to comply properly with the new disclosure requirements.

We therefore strongly suggest that the ESAS should evaluate better the objectives and wording of Article 53 of the draft RTS, in order to clarify exactly the timeline for the presentation of adverse sustainability statements by financial market participants.

The same clarity and timeline should be provided with regard to the adverse sustainability statements of financial advisers referred to in Article 12 of the draft RTS.

Regarding Article 12 of the draft RTS, we also believe it important to clarify the scope of the financial products covered by the adverse sustainability statements of financial advisers, as:

* according to Article 2 (12) of the SFDR, ‘financial product’ means: (a) a portfolio managed in accordance with point (6) of this Article; (b) an alternative investment fund (AIF); (c) an IBIP; (d) a pension product; (e) a pension scheme; (f) a UCITS; or (g) a PEPP;
* the catalogue of products under investment advice is much larger, including any type of financial instrument;
* according to Article 6 (2) of the SFDR, financial advisers shall include descriptions in their pre‐contractual disclosures of: (a) the manner in which sustainability risks are integrated into their investment or insurance advice; and (b) the result of the assessment of the likely impacts of sustainability risks on the returns of the financial products they advise on;
* according to the proposed amendments to Article 52 of the MiFID II Delegated Regulation 2017/565, investment firms shall provide a description of: (a) the types of financial instruments considered; (b) the range of financial instruments and providers, analysed per each type of instrument according to the scope of the service; (c) when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis; (d) the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, including risks, costs and complexity of the financial instruments, including any sustainability factors.”;
* all the above-mentioned types of disclosure must be consistent and coordinated.

We also believe that the ESAs should align the metrics in the Annex 1 Table with references to the main relevant international standards and frameworks, including:

* Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)
* Global Reporting Initiative (GRI)
* Objectives of Sustainable Development (SDGs)
* Corporate reporting dialogue
* Climate Disclosure Project (CDP)
* Climate Disclosure Standards Board (CDSB),
* Sustainability Accounting Standards Board (SASB)
* International Integrated Reporting Council (IIRC)
* Eco-management system EMAS
* United Nations Guiding Principles on Business and Human Rights (UNGPs)
* OECD Guidelines for multinational enterprises
* Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)
* ISO 26000 – Social Responsibility.

As regards the reference to the NACE (Nomenclature des Activités Économiques dans la Communauté Européenne), we believe it necessary to provide a table that matches the economic classifications used in practice by the financial world. Generally speaking, these classifications are those used by data providers such as MSCI, Bloomberg, Thomson Reuters and others. At European level, similar work has been done for climate benchmarks (EU) 2019/2089.

This is important because it maintains data consistency and reliability. Annex b to the climate transition benchmark handbook lists these tables. This directly affects the data providers that will have to prepare their systems and align with the NACE classification, on which all sustainable taxonomy is based.

<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>

The proposed table is unique, regardless of the size and nature of market participants and, above all, the type of product.

Therefore, the proposed approach does not sufficiently take into account the elements indicated.

Data is still lacking while the NFRD is under revision. When gathering and providing such granular data sets, the effort required should at least consider proportionality principles that distinguish market participants by size and scope. This would minimise the impact of cost inequalities on smaller players (especially those that just exceed the 500 employee limit), which might be passed on the final client, increasing the costs for the system.

In addition, it would be necessary to differentiate by product type: the data required from an entity that provides individual portfolio management service should be quite different to that required from an asset management company that establishes and manages investment funds.

We also must stress that stocks and shares, a critical component of most portfolios, cannot be considered as financial products pursuant to Article 2 (12) of the SFDR and, therefore, do not qualify as either an art. 8 or art. 9 products.

This leaves financial market participants somewhat in the dark about the ESG characteristics of the underlying securities.

<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>

At present, market participants and financial advisers totally depend on a restricted number of info providers. They provide several indicators that are not sufficiently comparable at this stage.

In our opinion, these further considerations strengthen the need for a major reduction in the indicators included in Table 1, focusing on a few, meaningful indicators that should be able to provide "assurance" and not "limited assurance".

More detailed information can be provided over time in the disclosure at product level.

We reject the idea of having a full list of ESG disclosures and subsequent adverse indicators at this stage. A better solution would be to start with a relatively small set of indicators, for example indicators that connect rather well with those to be set up in accordance with the Taxonomy Regulation. Phasing in other indicators over time would be a more useful approach.

For many taxonomy activities, the data required for the technical screening criteria is lacking because of limited corporate reporting. Both data providers and investors will have to use estimates, based on assumptions that give the end investor no certainty about the disclosed information and which, therefore, could be misleading. The TEG also mentioned this in its latest final report.

Another challenge is that many investors and data rating agencies use a different classification system to the NACE nomenclature of macro-sectors and economic activities used in the Taxonomy Regulation. Company reporting is, therefore, often not aligned with the NACE. Most data providers assess companies, not their economic activities, and so the taxonomy does not align very well with the practical reality of data providers and rating agencies.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

Please see our answers to Q.1 and Q.3.

<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>

Not yet, the current indicators are already a challenge.

<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>

Although some financial market participants might see merit in a relative measure of carbon emissions relative to the EU 2030 climate and energy framework, we believe that – given the objections to Annex I at this point in time – it is premature to ask for relative measures of carbon emissions relative to the EU 2030 framework. Furthermore, we wonder what is meant by “relative to the prevailing carbon price”.

The ESAs should provide more guidance on this issue.

<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>

N.A.

<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>

The integration of remuneration standards linked to the existing metrics might provide a synthetic indicator that could be built as a one-off check, expanded with details about the variable salary percentage.

This kind of indicator is very effective, as it strongly encourages companies to pay increased attention over time. They are the only way to reveal whether or not companies are serious.

<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>

Yes, the caveat is the same as for Q.2.

<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 believe that a period of 10 years is excessive for items that are constantly and rapidly evolving. Moreover, we must bear in mind that market participants should only build a database from March 2021 onwards, with no retrospective calculations required.

<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>

Yes, the ESAs should harmonise the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account, in order to ensure the comparability and reliability of the information provided by Table 1.

<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>

Using standard templates is the only way to avoid greenwashing. Templates also help to provide qualitative and comparable data.

However, it is difficult to agree with reporting templates that are not yet available and which will be the subject of future consultation.

Consistent with our above remarks, we must stress the need to:

• avoid templates that are too complex;

• ensure that the required quantitative data is linked to the taxonomy and the NFRD;

• ensure an adequate timeline for financial market participants and financial advisers.

Moreover, in the case of existing templates, such as PRIIPs KID and UCITS KIID, we would prefer them to be supplemented with ESG information.

<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>

Please see our answers to Q.12

<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>

Please see our answers to Q.12

<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>

The boundaries between the two categories of product referred to Arts. 8 and 9 of the SFDR are unclear and this makes it difficult to understand the relevant disclosure.

We have questions around the definitions of both ‘promoting ESG characteristics’ and ‘Sustainable Investment as its objective’. Is an Art. 9 product per se an Art. 8 product as well? The definition of sustainable investment is also rather vague (and not linked to the taxonomy in the SFDR), what is the precise definition of an Article 9 product?

Art. 8: “where a financial product promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics”. What is the definition of ‘promoting’ an ‘ESG characteristic’?

In our view:

• “promoting ESG characteristics” is the basic activity, while “sustainable investments” is something more, which includes “promoting”;

• the two types of product are alternatives (each relevant product must be included under Article 8 or alternatively under Article 9);

• at entity level, a financial market participant can decide to offer both types of product.

<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>

Please see our answers to Q.15

<ESA\_QUESTION\_ESG\_16>

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

<ESA\_QUESTION\_ESG\_17>

N.A.

<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>

Yes, this could be misleading to consumers as the underlying methodologies, reporting etc. are not standardised.

In our view graphical representation should be tested with (retail) clients in order to find out the answers to the questions: “What do they understand? What is comprehensible for them?”

<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 don't understand why this question is asked. We need more guidance on this, as CO2 communication is already provided.

In any case, it is important to bear in mind that:

• SFDR is related to “sustainable investment”, and, therefore to “an investment in an economic activity that contributes to an environmental objective, (…) or an investment in an economic activity that contributes to a social objective, (…) or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance”;

• Article 8 refers to products promoting “environmental or social characteristics, or a combination of those characteristics”. A product could be defined ESG (and then subject to SFDR) even if it pursues only social objectives. We don’t understand the reason to make an environmental indicator (exposure to solid fossil-fuel sectors) mandatory for any ESG product, even for those potentially pursuing only “S” (social) and/or “G” (governance) objectives.

<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>

The product disclosure rules do not take into consideration the difference between products. More clarity is required on this.

The SFDR should be adjusted to the type of product, for example different disclosures for different products, like funds-of-funds, multi-asset funds, government bond funds.

Moreover, it is necessary to analyse better the specific characteristics of individual portfolio management activities that are considered a “financial product” under the SFDR, but which are de facto an investment service provided to several individual investors, taking into account their specific needs and investment objectives and which therefore pertains to several portfolios that are individually managed. In this case, the coverage of the pre-contractual and web-site product disclosure must be balanced, taking into consideration that no real “product” actually exists.

It could be useful to provide two templates containing a minimum set of indicators, distinct by entity and by product.

<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>

In general, we agree with the proposed articles. Both articles refer to good governance. We think that this captures minimum requirements that should also apply to Art. 8. So, it is good if both have the same definition. Sound management structures, employee relations, remuneration of staff and tax compliance is a workable definition.

Furthermore, we believe the definition of good governance should be aligned with:

• the Taxonomy Regulation;

• other EC initiatives on corporate governance. The European Commission classifies its governance policy activities in broad categories, including directors and board members, shareholder rights, employee share ownership, remuneration policies, transparency, and financial institutions. On this point, please see also the list of guidelines mentioned in our answer to Q1.

It could be useful to provide a “social, supply chains, due diligence" list.

<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>

We believe it is necessary to ensure convergence between the SFDR and the Taxonomy Regulation on “do not significantly harm”.

We currently believe there is inconsistency between the Taxonomy principle of “Do No Significant Harm” (DNSH) and the DNSH integrated in the definition of Level 1 in Art. 2 (17) of the SFDR.

We believe the Taxonomy Regulation is leading in the definition and identification of DNSH criteria. As we cannot expect granular DNSH criteria before 2022, we believe integrating DNSH criteria in article 2(17) of the SFDR, and subsequently in the disclosure requirements for Article 9 products, is premature and could lead to confusion.

We would like to see clarifications regarding the overlap between the Taxonomy’s DNSH-criteria and the Principal Adverse Risk Indicators from the SFDR. The DSNH definition is included in both the Taxonomy and Disclosure regulations, but they differ in scope. This effectively means no alignment. This, in turn, might prove to be very difficult for both regulated entities and regulators, as the DNSH criteria are embedded in the definition of sustainable investment in the SFDR. So, DNSH seems to apply whenever a firm in SFDR scope has to disclose. Basically, a financial market participant has to describe DNSH criteria for E, S and G under the definition of a sustainable investment of the SFDR. For example, in a global equity fund, it might be almost impossible to safeguard social standards throughout the supply chain (and thus adhere to DNSH). The definition of “sustainable investment” introduces a new “do no significant harm” (DNSH) principle that is broader than the DNSH principle in the EU Taxonomy Regulation, in that the scope here goes beyond the six environmental objectives.

Perhaps a specific indicator with a range of harmfulness could be developed.

Moreover, DNSH is now used for Art. 8 and Art. 9 products. We believe that this concept does not fit the purpose of Art. 8 - products that promote ESG characteristics - very well. Strategies like “best in class” and “exclusion” fall under art. 8. Those products do not have sustainable investment as an objective, so it is at least questionable whether or not the DNSH requirement applies.

<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>

These strategies are actually already defined by the Global Alliance Forum Sustainable Finance. They relate to an area that is continuously developing, in which new investment strategies are emerging.

We therefore believe it necessary to adopt a shared definition of the mentioned investment strategies, with great flexibility.

<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 believe that the current practice by investment funds of providing monthly disclosures on the 10 top performing investments (instead of the top 25 proposed by the draft RTS) is sufficient.

<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.

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);

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);

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

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 believe that information with high granularity (that related to letters a, c and d) should be included in the pre-contractual disclosure, while that at a more generic/higher level (related to letter b) could be included in a website disclosure.

<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>

First of all, we believe it would be necessary to clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable (“admitted derivatives”).

Regarding the way to disclose the admitted derivatives that have been used, we believe that separate information would be preferable.

<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>

Please see our paragraph 3. Please refer also to the EBF response which contains specific examples of costs, which we totally agree on.

<ESA\_QUESTION\_ESG\_27>

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. [↑](#footnote-ref-2)