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:

- 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:

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	Assogestioni
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Italy

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
Assogestioni, the Italian asset management association, welcomes the opportunity to contribute to the consultation regarding this key piece of legislation. While we welcome the effort of the ESAs to provide useful standards and rules to enhance transparency and minimise the likelihood of greenwashing, we would like to highlight here are key concerns about provisions that, in our view, would hinder the effectiveness of the Regulation and possibly discourage rather than promote the spreading of sustainable finance:

- Excessive number of mandatory indicators – to ensure effective communication with investor, true comparability among products and reasonable cost/benefit ratio in the collection and provision of data we recommend a subset of mandatory indicators and a more extensive list of optional indicators
- Fuzzy differentiation between so called art. 8 and art. 9 products – we recommend removing the reference to share of “sustainable investment” in art 8 as key element of transparency and clarifying what constitutes an art. 8 product.
- Unclear link between assessment of PAI at entity level and PAI consideration at product level – inconsistency between the provision regarding entity and product level should be ironed out and relationship between the two clarified;
- Timeline – considering that the final version of the RTS will not be available before January we encourage the Commission to delay implementation of the Regulation until January 1st 2022, also to align with UCITS and Mifid unpdates.

For more details please see the reply to the individual questions.
<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>
While we appreciate the overall approach and the effort to identify standardized metrics, there are a number of issues with this approach as we understand it, in particular:

- **excessive emphasis on the quantitative aspect** of the PAI at entity level, possibly going beyond what is prescribed in level 1. In art. 4 of SFDR the focus is on the description of the PAI and the approach towards it: a statement on due diligence policy, description of the PAI, summary of engagement policies and reference to adherence to international standards are listed; only in the paragraph 6 and 7 indicators with regards to environmental and social aspect are mentioned.

- **presumption of principal adverse impact** - The assumption that any adverse impact indicator would automatically result in a "**principal" adverse impact does not leave any room for materiality** considerations: while for some portfolio some indicators may well identify "principle" adverse impact, for others the same indicators may not be relevant;

- **aggregation of indicators at entity level** – requiring the aggregation of indicators for potentially very different portfolios with very different composition and PAI - would not result in a meaningful figure, especially for the retail investor that would normally invest only in one or few of the products of a certain FMP;

- Comparability would not benefit from **a long list of indicators** as the end investors would have a difficult time comparing among entities and products that have - very likely - some of the 34 index lower and some higher;

In view of the above we would recommend ESMA to **reduce drastically the number of indicators** to a handful of mandatory indicators and then give the possibility to choose from the longer list of standard indicators that the FMP considers relevant.
In our view, the mandatory indicators should be selected on the basis of the fact that they are:

- as neutral as possible with respect to the overall size of the investment portfolio and to the market capitalization of the investee companies;
- relevant across sectors and across asset types;
- sufficiently understandable by the investor;
- sufficiently representative of the overall performance on the financial product/entity on ESG criteria;
- based on data that are (relatively) widely available and reliable

<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 approach **does not** take those aspects sufficiently into account;

- The suggested approach **would 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 data directly from companies;**
- Proposed indicators are **mostly not relevant for assets other than equities and corporate bonds;**
- **The level of engagement with investee companies varies** according to asset classes, investment strategies and derivatives exposure. Its effectiveness does also depend on size. The adverse impact disclosure requirements should take account 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>

As described above (see q 1) we recommend reducing the mandatory set of indicators to a list of less than 10 key indicators. Should ESMA consider this option not viable, we recommend to envisage a comply **or explain approach to the indicators at present included in annex 1.**

In addition to the issue of relevance of the various indicators to the specific assets included in the financial product, data availability is an ongoing challenge. We recommend alignment between the indicators included in this regulation and the requirements of NFRD currently under review.

<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 discussed above and in line with the provision of the Regulation, Entity level disclosure of adverse impact on sustainability factors should follow **a more principle-based approach.**
- The list of indicators presented in Annex I should be neither **closed-ended nor mandatory** for every strategy/asset. Either a comply or explain approach or a shorter list would be more meaningful and effective in communicating to investors.(see above)

<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>

Based on the above considerations and with reference to the list of indicators included in annex I, we would suggest the following AII (Adverse Impact Indicators):

<u>**Environmental indicators:**</u>

- **AII 3 (Weighted average carbon intensity for scope 1 and 2 emission**
- **AII 7 (energy consumption intensity):**

Social and employee, respect for human rights, anti-corruption and anti-bribery indicators:

- **Share of signatories to UN Global Compact** (share of investments in investee companies that have committed to the UNGC principles)
- **Share of controversies/breaches of UN Global Compact** (share of investments in investee companies that have been involved in violations of the UNGC principles)
- **AII 18 Gender Pay Gap**
- **AII 19 Excessive CEO Pay Ratio**
- **AII 20 Board Gender Diversity**

All remaining indicators currently included in Annex 1 should be made optional and moved to Annex 2 and 3 respectively.

With regards to some of the indicators proposed:

- Carbon Emission – scope3 – data on scope 3 emission are not sufficiently available for this index to be mandatory at entity level
- Biodiversity - the issue of biodiversity is only relevant for a subset of issuers so the share of investee companies that do not assess, monitor or control pressure on the environment would be greatly affected by the sector in which the portfolio is invested.

<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 we are recommending reduction of the number of indices, for the time being we are not in favour of introducing new indicators. In general, in considering development of new indeces, we would recommend to consider data availability and have formula in place which refers to international market standards, such as e.g. TCFD.
<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>

- This requirement is **duplicating metrics on the same factors** and ends up being not only burdensome but also **misleading**.
- We believe one measurement is sufficient depending on the indicators either as a percentage of the aggregate investments or the share of the investee companies – the latter in particular in cases where the policies in place are to be considered
- Retail investors would be overwhelmed by too many indicators

<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>
- No. 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 starting with **fewer indicators for information that is more widely available** (see above) and then wait on actual availability of more advanced metrics.

<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 but in the medium term. Social matters are key, however, as compliance timeline is extremely short, while data on investee companies is largely unavailable, development of social indicators should be delayed (see also above).

<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>
While Level 1 text does not provide any reference to historical indicators, we see the benefit of showing investors the trend over the years also considering that, as the pace of change might be slow and possibly uneven, a longer time series would help identifying trends.
However, we should bear in mind that comparison over time among absolute historical indicators that are not neutral with regard to the size of the investment portfolio and market capitalization of investee companies does not provide meaningful information to investors and can be misleading. To ensure that disclosed indicators are meaningful when compared year on year, priority should be given to those indicators that are neutral with regard to the size of the portfolio and to the market capitalization of the investee company<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>

In our view, harmonising the methodology for reporting across the reference period would enhance comparability and transparency.
In order to strike a balance between feasibility/cost of collevting/delivering such information and the minimization of the likelihood of “window dressing”, we would recommend the value of the end of the yearly reference period to be calculated as the average of the end of quarter values.
FMP can manage hundreds of funds and mandates with a wide range of investment assets, strategies and geographical or sectoral focuses. At the entity level, such set-up results in many thousands of different holdings, whereby economic exposure to one issuer is often due to investments in a range of instruments (shares, bonds, single title or index derivatives). Calculation of the PIA across all the aggregated holdings cannot be reasonably required on a daily basis, weekly or even monthly basis.
The frequency of the reference dates (one per quarter) should be more than sufficient to address the “window dressing” concerns, as any reallocation of portfolio holdings entails transaction costs and directly reduces the net performance of financial products. Quarterly aggregation of portfolio holdings should be considered the absolutely maximum requirement for proportionality reasons. Given that the relevant ESG data for calculation of PAI indicators is unlikely to be reported or change more frequently than once a year - even following the envisaged NFRD review-, 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>
Yes. In principle having a mandatory template would promote comparability and a level playing field.

Templates should be coherent with client disclosures under other EU rules, like KIID documents, which may have space constraints. 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.

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

While there is a major challenge regarding the overall application timeline due to level 1 application dates, there is another **timeline challenge regard reporting of periodic information.** While we very much **support the approach reflected in Art 51 or the draft RTS**, we have received some mixed signals during the public hearing. Therefore, we would like to see **clarification whether our understanding is correct**.

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".**

Regarding the **general timeline issues**, we understand that the ESAs will publish the final draft RTS by the end of 2020 at the earliest. Depending whether this can be expected by the end of 2020 or by the end of January 2021, market participants will have only 5 to 9 weeks for legal assessment and operational and technical implementation of the new rules.

This is a very challenging situation not only for financial market participants, that are likely not to be able to provide properly adapted pre-contractual disclosures by 10 March 2021, but also for:

- **the National Competent Authorities**, that will need to approve hundreds or even thousands for prospectuses within 2-3 weeks' time, and

- **end-investors** that will be faced with at least three adjustments of pre-contractual information. This is likely to result in information overload and possibly confuse especially retail investors.

The use of mandatory templates – which have not be published even in draft - is likely to add complexity to the process.

For example, to meet the 10 March 2021 deadline, asset managers will need to submit the updated prospectuses to respective authorities by September-November 2020. Meanwhile, our understanding is that the final draft RTS will not be available at that time yet.

In many Member States, amendments to fund prospectuses, and depending on the Member State also marketing materials, need to be submitted to the NCAs for approval before they can be used at the point of sale. Such approval usually takes several weeks. However, as in this case the NCAs are likely to be overloaded with hundreds or even thousands of fund prospectuses, it may take a much longer time.

Moreover, we expect most regulators won't approve a prospectus until the RTS are in force which is not likely to happen before approx. June/July 2021. Meaning that **prospectus approvals are likely to be halted and sale of products interrupted for several months**.

We therefore strongly **support the ESAs recommendation to revise the level 1 application date**. An **extension of the application date to at least 1 January 2022** would give market participants a more manageable timeline and would provide for an alignment with the application date of the first set of the EU Taxonomy-related disclosures. It would also result in more consistency with other sustainable finance rules, as the imminent changes to the UCITS and AIFMD, and Solvency II frameworks, integrating the actual consideration of sustainability risks and principal adverse impact, are likely to become effective by end 2021 (with a transitional period of 11 and 12 months respectively). This way we would ensure that the requirement to provide for the disclosures does not pre-empt the actual requirement to consider sustainability risks and principal adverse impact.

<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>

TYPE YOUR TEXT HERE
<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 reflects 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 focus on key 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 should include information that may need to be updated more frequently and 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.
On this basis, we would like to make the following recommendations, aimed at improving the balance of information between pre-contractual and website information requirements:

- **The graphical representation of the investments of the product,** proposed under Art. 15 (2) and Art. 24 (2) of the draft RTS, **should be moved to website disclosures**, while providing only a general description in the pre-contractual information. Fund managers would find it challenging to determine in advance the exact proportion of investments allocated to specific assets across different sectors and sub-sectors, especially considering changes to portfolio composition over time.
- We would appreciate **a clarification how to deal with sectors and sub-sectors** under Art. 15 (2)(b)(iii) and 24 (2)(b)(iii) and **how to apply it to specific investments**. Apart from the NACE system used for Taxonomy purposes, there is a number of other established classification schemes for economic activities globally. Companies headquartered outside of Europe use different metrics (such as ISIC or regional/national classification systems) and are often difficult to be assessed according to NACE. Classification of multi-industry companies would be particularly challenging. Also, often it is not straight-forward to assign a company to one particular industry.
- Summary - we suggest removing 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.

- We suggest to **allow the disclosures under Article 33 RTS to me made in a password-protected area of the website or made available directly to investors.**

  Article 8 and Article 9 products also include tailor-made private funds and portfolios managed on discretionary basis set up under bilateral agreements protected by confidentiality. These products are not widely-distributed, and disclosures should not to be available publicly. Therefore, we believe that disclosures under Article 33 RTS in the case of products that are not publicly distributed, shall be allowed to be provided in a password-protected area of the website. An even better alternative would be to offer the choice to make this information available directly to investors.

<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>

In our understanding an art. 8 product is a product that is presented to the investors as a product that, while not focusing on sustainable investing, as part of its investment strategy, in addition to traditional considerations, takes into consideration environmental and social aspects. An art. 8 products may or may not include a proportion of "sutainable investments".

Our understanding is that while the distinct feature of Article 9 products is that they pursue sustainable investing (defined 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 different ambitions.

There are several challenges that appeared regarding the definition of Art. 8 and 9 products that are linked or could be remedied in the RTS:

- While on one hand it is useful for Art. 8 to provide for a broader category that could capture various existing industry ESG-related strategies, on the other hand, it would not be helpful, neither to end-investors not the industry, to end-up in a situation where a very simple ESG integration or exclusion, would result in categorising all funds of a particular FMP as Art. 8 products. This could be misleading to end-investors as our understanding is that Art. 9 and 8 aim at differentiating those products which are "pursuing sustainable investment objective", intentionally featuring some ESG characteristics and what could be classified as "mainstream" products, whether they would still feature some firm-wide exclusions or a "firm-wide" ESG integration.

- Moreover, while we appreciate the intention of recital 21 to clarify what triggers Art. 8 disclosure obligations, we question whether linking it to the information on ESG characteristics provided in marketing and regulatory disclosures is the best way forward. Often, even firm-wide exclusions or even very simple ESG integration is required to be disclosed in the regulatory information. Apart from such situation, some firms choose to have certain firm-level exclusions. However, again, that does not mean that all product of this firm are intended as sustainable. It could be possibly misleading or even considered green-washing if all funds of a particular FMP were to be considered Art. 8 or 9 products. This would run counter the objectives of this regulation and has a great potential to prevent the mainstreaming of sustainability considerations.

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 the objective of providing more comparability for end-investors. As a result it risks confusing or even misleading end-investors.

Our recommendation: given the above, we suggest to adjust rec. 21 in a following way:

- **remove 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.
- **clarify 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**.

- **Remove provisions requiring disclosure of a proportion of sustainable investments in case of Art. 8 products**

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, althou of course that would always be possible. 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”.**

- **Remove the “warning proposed in Art. 16 (1) of the draft RTS as potentially misleading**

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 qualify 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 to 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). Furthermore, historical comparisons about the level of attainment of environmental or social characteristics during the lifetime of a product should be provided (Art. 37 (1)(b), (2) 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. And while it true that Art. 8 products are not supposed to have as its objective sustainable investment, 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 therefore **recommend to delete the requirement for the warning.** Should the current approach be maintained and the wording be still require, we would ask also to consider an additional issue.

In our understanding that it is mandatory for each FMP who discloses PAI at entity level to disclose whether and how PAI is considered for each of their products (art 7 SFDR); according to the draft RTS for art. 8 and art. 9 products, the calculation of the PAI at product level is not required but rather an explanation on how PAI is taken into account. For those FMP who do not disclose at entity level, art. 7 mandates to include in the documentation a statement saying that MP does not consider PAI. However, and here we see the potential contradiction, RTS indicates that art. 8 products (when they have a sustainable investment component) and all art.9 products need to disclose how the indicators of PAI are taken into account – which it would contradict the general statement that says that that the FMP does not consider PAI. (or would this rather imply that those FMP who offer art. 8 and art. 9 products are obliged to calculate PAI at entity level as well?)
We fear that the above provisions, if not consistently drafted, may lead to effectively depriving smaller players (i.e. below threshold) who choose to offer so called "art. 8 and art. 9" products of the option - envisaged by the level 1 regulation – to opt out and explain why they do not intend to calculate PAI at entity level.

Also, we find the difference in wording of art. 7 of the SFDR requiring an explanation of whether and how FP "considers PAI" and art. 16 2(a) and art 25 of the RTS requiring to explain how the indicators for PAI are “taken into account” unclear. It should be clarified whether it is the same process or a different one and use the wording consistently: if it is the same process, the same wording should be used otherwise it should be clarified how the two processes differ.

<ESA_QUESTION_ESG_16>

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

<ESA_QUESTION_ESG_17>
TYPE YOUR TEXT HERE
<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>
Graphical representation can be useful to illustrate only some of the possible investment strategies, while for other strategies it might be meaningless or even misleading. If exclusion is applied, a % reduction might be a more meaningful representation than a graphic representation.
If integration or best in class approach are applied than the share of portfolio that promote E& S characteristics could potentially be 100% although this would confuse the investor and would make it difficult to tell an art. 8 from an art. 9 product.

In view of the above, a graphical representation should be therefore optional: the FMP should be free to decide whether to use it and which type to use.

Also it is important to allow 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 disclosure, as it is more easily adaptable.
<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>
In view of the urgency of the climate crisis, we consider the disclosure of the exposure to solid fossil fuel as a relevant element of disclosure.

However, this requirement should apply only in relation to investee companies. Reporting of exposure to solid fossil-fuel sector should not be required for sovereign investments since there is no established method to measure such exposure in relation to whole countries or even sub-sovereign issuers.
<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>
Need to consider individual portfolios

Art. 2 (12)(a) SFDR defines managed portfolios as financial products which creates problems to FMPs that offer portfolio management services. To reduce these challenges and make implementation feasible, we suggest the following:

- 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>

No, we do not agree that the requirements in the RTS for good governance practices for Article 8 products should capture the elements specified in Article 2(17) SFDR. 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 **import to ensure full consistency between DNSH under SFRD with the DNSH test under the EU Taxonomy.** In our view, the provision in Recital (33) is reasonable and allows for the transition to a later phase when the taxonomy will have been completed.
<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>
To facilitate communication with investors, we would suggest adopting the existing already available and widely used definitions of strategies (one such example is the EFAMA report on Responsible Investment of 2016[2] where starting from page 18, different sustainable investment strategies are presented). However the adoption of such definitions should not create a constrain to the adoption of other strategy as this would hinder innovation. The adoption of one of the existing strategy should not be mandatory and different approaches should be permitted so to allow for innovation.
<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>
Yes

We agree in principle with the approach proposed in Articles 39 and 46 of the draft RTS on the disclosure of financial products' top investments in periodic disclosures, and in particular regarding the number of lines to be disclosed.

However, **instead of disclosing an average using daily date**, which would be burdensome and with questionable merits for end-investors, we would rather **suggest reporting on a certain date – such as year end** - , which is consistent with the requirements under UCITS and AIFMD and would avoid creating ambiguity by publishing possibly different information on the same products (on at year end and one as average).
<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);**

[2] https://www.efama.org/Publications/EFAMA_Responsible%20Investment%20Report_September%202016.pdf

- **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>
As explained in our response to Q 15, we have a **general preference for website disclosures**, especially in case of information subject to frequent changes or uncertain in the pre-contractual context (at the time of a product launch). Moreover, to provide investors with succinct pre-contractual information, more lengthy descriptions of internal processes could be moved to the website.
With regard to specific elements, our preferences are as follows:

a) *Minimum reduction rate* - This item can remain in pre-contractual disclosures, although we highlight that such requirement should always be voluntary, as it depends on the specifications of the investment product and its investment strategy. We also caution against putting emphasis on the reduction of investible universe as a particularly desirable objective;

b) *Policy to assess governance* -This item should be disclosed on the website. As the work for the development and harmonisation of sustainable governance standards is still underway at the EU level, website disclosures could be more easily updated to reflect changes in the methodology to assess good governance practices of the investee companies.

c) *Limitation to methodology* - This item should remain on the website, as this information may change frequently.

d) *Internal/External data sources* - This item should be disclosed on the website instead. In addition to the possibility to update the information more frequently, website disclosures offer more space to elaborate on data sources.

In general, we disagree with the mandatory introduction of minimum reduction rate of the investible universe as this would be possibly relevant only in the case of a very specific strategy (exclusion) while meaningless for other strategies. Moreover, in general, that figure is not very meaningful as it does not necessarily indicate neither the level of commitment of the asset manager to sustainability nor, on the other side, an automatic increase in concentration of the investment.
<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>
We strongly believe that derivatives should not be singled out in a separate section, 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.
No specific transparency should be given to end investors on the use of derivatives as it is a complex and very technical aspect of asset management. Transparency on this would detract not add to the understanding of the product.

A narrative explanation would be more appropriate to provide information on how the use of derivatives can contribute to meeting the environmental or social characteristics or sustainable investment objectives promoted by the financial product.

<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, raised repeatedly by EFAMA, 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 also 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 2-3year' time, meaning before the review of the NFRD takes place and new provisions become effective.

<ESA_QUESTION_ESG_27>