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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 2020ESMA 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:

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

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

Instructions

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

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

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| --- | --- |
| Name of the company / organisation | Candriam |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

**As an asset manager active since more than 20 years in sustainable investments, Candriam** welcomes the opportunity to provide input to the consultation of the ESAs Joint Consultation Paper on ESG disclosures, 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, as published by the ESAs on 23 April 2020. We really are in favour of a stronger framework for sustainable investing that facilitates the transition to a more sustainable European economy. While we recommend a high level of expectation for SRI in the interest of the end-investors and for the credibility of SRI, we believe:

* ESG products and approaches vary significantly and innovation is fundamental for the SRI development and the financing of the transition to a more Sustainable economy. Therefore, flexibility and principles-based approach in line with the level 1 text are essential.
* A balance has to be find between the level of disclosure and comparability of data provided to the end-investors and the whole community and the meaningful character of those data.

Here are the **key elements highlighted in our answer to the consultation** :

* **The aggregation of principal adverse impact indicators at entity level is not going to be helpful for end-investors and is actually misleading since it does not take into account the variety of impacts that investee companies can create. Aggregating those data would be against providing a clear, exact and not misleading information**. As consequence, we would suggest that a qualitative presentation on how asset managers assess adverse impacts is requested and that standards such as the TCFD which have been adopted on an international basis are used as reference. This kind of framework allows to present the process among 4 pillars : strategy, governance, risk management and indicators and is for instance consistent with the level 1 requirements on “content, methodologies and presentation of information”.
* Given that **today we still lack of relevant, comparable, reliable and publicly available ESG data on investee companies and that this gap is a key impediment to the mandatory reporting against the proposed indicators**. Ideally, a symmetrical approach across the whole framework should allow coherent timelines for disclosure requirements, including, inter alia, the implementation of the Taxonomy and Non-Financial Reporting rules. The revision of the NFRD and the establishment of an EU-wide public ESG database should bring about long-term solutions to narrow down the ESG data gap. In the meantime, however, we would suggest to limit the requirements to a limited number of indicators and accept an optional approach to the proposed indicators based on materiality and completed by narrative disclosures and qualitative data.
* We found that **the distinction between Article 8 and Article 9 products would need more clarity** and that the definition of Art. 8 products should clearly capture a broader range of investments, integrating environmental and social (ESG) characteristics with different approaches and levels of ambition, as originally outlined in the SFDR. This is key to enhance investors’ choice of ESG investment products and avoid misleading disclosures or greenwashing.

Against this background, our number one concern remains **the extremely tight deadline to implement this regulation.** We understand that the ESAs will publish the final draft RTS by the end of 2020 at the earliest. Depending on whether this can be expected by the end of 2020 or by the end of January 2021, as a market participant, we will have only 5 to 9 weeks to carry out a legal assessment and operational and technical implementation of the new rules. This is a very challenging situation for us and also for the other actors (National Competent Authorities (NCAs) that will have to approve new funds prospectus, end-investors that will have to express their ESG preferences). 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 much 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, such as the integration of sustainability considerations in the UCITS/AIFMD and Solvency II frameworks (expected to become effective by the 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\_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>

As an asset manager promoting ESG since more than 20 years now and having develop a strong expertise in the field, we see merits to be transparent and disclose the manner we manage ESG issues at entity and funds level. Despite this, we disagree with the proposed approach whereby any positive value for any adverse impact would automatically result in a “principal adverse impact”. Indeed, the purpose should be to favour meaningful disclosure based on proven materiality. Additionally, providing all those metrics at entity level will clearly not be useful as the aggregation of multiple effects (consolidation of different strategies, sectors exposures) will not really lead to a correct view on the real nature of the adverse impacts of investments and can lead to misinterpretation and even be misleading. We would be more in favour of using the proposed list of indicators as a proposed toolbox with the option to use them if they are adequate for the type of financial products, reflect materiality and are identified as Principal adverse impacts.

We believe this would be in line with what the level 1 text was requiring : *“a statement on due diligence policies with respect to adverse impact, taking due account of size, nature and scale of their activities and the types of financial products they make available”* and to disclose *“information about their policies on the identification and prioritisation of principal adverse sustainability impacts and indicators”.* Our interpretation is that **Art. 4 SFDR takes into account proportionality considerations and leaves flexibility on which indicators to use**. Based on this interpretation, we would rather suggest to assess the principal adverse impacts at entity level in a qualitative manner rather than using an automatic quantitative approach.

 At product level, Regulation (EU) 2019/2088 foresees the objective of comparability for end investors and as such the use of (sufficiently flexible) templates would be more appropriate. At this level, for products complying with art 8 or 9, we do see potential merits in the approach proposed in Chapter II and Annex I and, in order to get closer to the ESAs’ objectives but take into account the fact that ESG data remains not well covered by data providers or by issuers, **we recommend to limit the number of mandatory indicators to a smaller subset of more generic metrics that are meaningful, relevant across different sectors and asset classes, and measurable with available data**. **A reduced number of mandatory indicators would also bring substantial benefits to end-investors**, who could otherwise be overwhelmed by too much information.

We also maintain that any indicators chosen should be aligned with the “Do No Significant Harm” (DNSH) criteria and social safeguards already indicated under the EU Taxonomy Regulation, as well as the information to be reported under the revised NFRD. Only indicators that cumulatively meet those conditions should be prescribed as mandatory.

As a conclusion, for all the reasons mentioned, we would suggest a potential qualitative or quantitative assessment and an optional list of indicators (maximum 6) for quantitative assessment for example: 2 on climate, 1 on environment, 1 social, 1 human rights, 1 governance <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>

T We do *not* believe that the proposed approach is sufficiently proportionate, as performing a full due diligence on investee companies takes time and resources as well as requires to obtain information from third-party providers (who, in turn, rely on publicly available data). Additionally, this assessment will have to be done on hundreds of funds and holdings covering all kind of asset classes. That will say that we will not be able to rely on automation or a *scalable* approach.

We also believe that the “*Description of actions and engagement policies to address principal adverse sustainability impacts”* and the section on *“Engagement policies”* in Arts. 8 and 9 RTS, respectively**, go beyond the principles reflected in Art. 7(2) SFDR and lack proportionality**. The draft RTS require an **explanation of the reduction in principal adverse impacts achieved by the actions taken during the reference period** and there is no corresponding requirement in the Level 1 text. **We would like this requirement to be removed because it lacks proportionality and could prove highly unfeasible**. Indeed, this requirement is based on the assumption that as financial market participant we are able to engage with all investee companies *directly*, before relying on third parties to on the PAI indicators listed. Engagement activities are extremely resources and time –consuming and need to be prioritized. It’s not possible to engage individually with all investee company on each of these PAI indicators and our long experience in active dialogue with investee companies has proven that it’s not so easy to assign specific outcomes to specific engagement activities.

The proposed approach also disregards different types of financial products and different investment strategies. In this regard, we note that the references to money market instruments in the draft RTS – beginning from Recital 20 – tend to exclude the latter as underlying assets for financial products intended to promote environmental or social objectives. We would question this approach, believing that such instruments should not be penalised only due to their shorter maturities. Money market instruments remain a vital source of short-term funding for corporate entities of all types, including those pursuing ambitious environmental or social objectives.

Finally, we also note that many of the proposed indicators are not relevant for assets other than equities and corporate bonds (e.g. infrastructure, real estate).

<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 mentioned in our response to Question 1, in order to ensure sufficiently comparable disclosure against key indicators, the assessment should:

* Be qualitative or quantitative
* There should be no compulsory indicator but only a list of optional indicators, chosen by each financial market participants, depending on their assessment of principal adverse impacts. Within this list of optional indicators, financial market participants could be invited to choose 6 of them to report on. A small number of indicators would ease the comparability by the end-client.

Furthermore, as long as NFRD review is not finalised, it will be very challenging to report on non-normalised, unformatted, non-audited data. It would automatically lead to misleading the end-client.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

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

We also disagree with an obligation to use all of the proposed indicators to every direct and indirect holding and to use it for mandates as well as open-ended funds. In the case of mandates, the Regulation should not be applicable as transparency is between the client and its asset manager. Confidentiality with any other stakeholder is of primary importance.

In our view, entity level disclosure of adverse impact on sustainability factors should focus on the disclosure of FMPs policies and practices in relation to adverse impact, following a more principle-based approach. A more flexible approach would also allow a parent company to issue a **single statement** for all the subsidiaries within the group that apply the same due diligence process

<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>

As already stated, we disagree with the indicators for several reasons:

* This list of indicators (compulsory and optional indicators) is not relevant to assess principal adverse impact at the entity level, especially once aggregated.

Hence, we would rather suggest a qualitative assessment at the entity level. There should be no mandatory PAI at this stage.

The indicators fail to capture that, on certain issues a limited number of sectors account for the vast majority of adverse impact (e.g. biodiversity, ocean, forest preservation where having a relevant policy in these areas is only critical in certain sectors)

The indicators do not integrate any type of materiality or threshold consideration – therefore lacking the ‘principal’ element of PAI. This comes as a great contrast with the ambition of the EU Taxonomy to provide metrics for DNSH.

‘forward looking indicators’ like emission pathways or scope 4 emission, as suggested in the question, do not fit in the definition of principal adverse impact which, per se, precludes to negative environmental impact only

**We would suggest to provide at the entity level a qualitative presentation on how asset managers assess adverse impacts**. Standards such as the TCFD which has been adopted on an international basis allows to present the process among 4 pillars : strategy, governance, risk management and indicators. This framework is for instance consistent with level 1 requirements on “content, methodologies and presentation of information”.

* **At the product level, the assessment could also be made on a qualitative or quantitative basis**. When being done on a quantitative basis, and the choice should be left to the financial market participant, we suggest to define a list of optional indicators, among which the financial market participant will be able to choose a few of them, depending on its own assessment of principal adverse impact. In case of quantitative assessment, we also suggest to have qualitative comments to avoid the risks mentioned due to aggregations.
* **We would also advise against the inclusion of forward-looking indicators**. Although indicators such as emission reduction pathways or scope 4 emissions would help bring a future-oriented perspective to the entity level assessment, they fall out of scope for “principal adverse impact” reporting, which is limited to negative environmental impact. Moreover, credible and meaningful methodologies for a forward-looking analysis are not yet available; the financial community is striving to develop and implement these methodologies, but we are still facing the challenges of obtaining meaningful historical data and at this stage forward-looking indicators would risk being mostly speculative.
* **The main issue remains the lack of ESG disclosures by investee companies**. Even after the review of NFRD will take effect (it will take at least two to three years before enhanced disclosures under NFRD can be expected) the challenge will remain to obtain data on non-EU holdings. To cope with the ESG data gap, and limit the reliance on third-party providers, we would welcome more clarity and flexibility on the use of qualitative information and estimations. As a first step, we would recommend the EC to perform a survey to identify, for each indicator (i) whether it is available, (ii) whether it is based on direct company disclosures or estimates and (iii) what information is considered useful by financial market participants and end-investors. We would suggest prioritising climate-related indicators (i.e., GHG emissions). Other indicators (e.g. on biodiversity) could be phased-in once the EU Taxonomy is finalised and once the corresponding information is publicly available.
* Some of the proposed indicators are useful as a standard (e.g. the existence of social policies) but they would not actually be relevant from an adverse impact assessment perspective. For an asset manager, the relevant consideration is not whether a company has a certain policy in place but to understand the way the policy is implemented and how effective it is. The risks, for instance, of corruption or slavery depend to a large extent on the context in which a company operates, including the geographic location and the type of industry. Therefore, indicators **cannot be applied to all companies in the same manner in the way that the RTS propose.** For instance, the absence of a certain policy may not automatically mean an adverse impact is caused – let alone be sufficient to constitute a “principal” adverse impact. Conversely, even if there is a policy in place, not all possible adverse impacts can be excluded. The outcome of the assessment of some indicators could be misleading and depends on factors which are beyond the investee company’s actual practices. For instance, the indicator “number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws” will also be determined by the robustness of the judiciary system in a country and not necessarily only by the practice of a company.

For information purpose, AFG issued recently a [professional guide](https://www.afg.asso.fr/wp-content/uploads/2020/06/guidepro-esgeng-200825web.pdf) that could be a useful reference for extra-financial indicators.

<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>

While the inclusion of more ambitious carbon emissions indicators than those currently disclosed may encourage enhanced reporting, we would refrain from 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.

The formula includes scope 3 emissions. Unfortunately, there is not much data reported by companies on scope 3 emissions. Including scope 3 emission into the formula would result in flaws in the outcome. Rather than including a too restrictive formula, we strongly suggest to have a formula in place which refers to international market standards on the calculation of carbon footprint<ESA\_QUESTION\_ESG\_6>

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

<ESA\_QUESTION\_ESG\_7>

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

We would suggest to start with a **small number of indicators relevant across different companies and asset classes**, that are less prone to misinterpretations and to reduce the general complexity of disclosures. We are therefore against the double measurement approach as proposed by the ESAs with regard to some PAI indicators. One measurement should be sufficient, depending on the indicator, either as a % of aggregate investments or the share of the investee companies.

<ESA\_QUESTION\_ESG\_7>

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

<ESA\_QUESTION\_ESG\_8>

Given the insufficient availability of ESG data on investee companies which is necessary for disclosures by FMP against the indicators, it appears premature to mandate the use of more advanced indicators or metrics. We suggest to start with a few indicators for information that is more widely available (i.e., carbon footprint) and then wait on actual availability of more advanced metrics and innovation that could be made on such themes In the meantime, qualitative assessment is of utmost importance. Indicators capturing activities by investee companies to reduce GHG emissions would actually measure the positive contribution of a company’s activities and do not fall in the definition of “adverse impact” – such indicators would therefore be irrelevant for the purpose of PAI.

<ESA\_QUESTION\_ESG\_8>

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

<ESA\_QUESTION\_ESG\_9>

We share the view that social and employee matters, respect for human rights, anti-corruption, and anti-bribery are of high importance but today we face a serious lack of information to produce such disclosures and this is even more acute for all social-related issues. As investee companies doesn’t report separately on all those issues, we recommend to start with the following **high-level mandatory KPIs** to report on the relevant aspects of portfolio investments in companies:

• **No signatories to UN Global Compact** (share of investments in investee companies that have not committed to the UNGC principles),

• **Severe controversies/breaches of UN Global Compact** (share of investments in investee companies that have been involved in severe violations of the UNGC principles).

Meanwhile, we suggest that the indicators proposed by ESAs in table 1 (KPIs 17 to 32) should be made optional and moved to tables 2 and 3 respectively

This list of mandatory indicators could be subject to a review in couple of years time, after a review of the NFDR framework and its due implementation.

<ESA\_QUESTION\_ESG\_9>

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

<ESA\_QUESTION\_ESG\_10>

Every year for last ten years requirement goes far beyond the level 1 text and we challenge its usefulness. We are looking at performance of funds so it should be either 1 (aligning with financial statements) and 3 or 5 years. This would better reflect the ESG profile especially of companies in transition. In a rapidly evolving ESG space, we also note that a ten-years’ time span would require to draw a comparison of data that are not in fact comparable, due to potential differences in the context in which they were gathered or the methodology used to analyse them. Furthermore, some principal adverse impacts may not be principal several years later.

<ESA\_QUESTION\_ESG\_10>

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

<ESA\_QUESTION\_ESG\_11>

We are very much against the approach suggested by the ESAs to calculate PAI indicators over the entire reference period with regard to all investments at the entity level. Such approach prescribing for a continuous calculation of indicators across the aggregated holdings would not only be too onerous and we question its practical feasibility. Moreover, the entity-level PAI disclosures will not even provide any meaningful insights on what it means for a specific fund. Given the limited added-value for the investment decisions, it is even more important that the entity-level disclosures minimise the resulting compliance burdens. Given that the relevant ESG data for calculation of PAI indicators is scarce, outdated and will not be reported more frequently than once a year even following the envisaged NFRD review, annual calculations (like other financial indicator) should be considered sufficient.

<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 we do agree in principle with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products. But as they have not been developed yet, we cannot really answer. Having standardised templated would help harmonising information, transparency and it would facilitate the exercise and ease the comparability between products.

While, for retail investors, we see certain merits in having mandatory pre-contractual and periodic templates to enhance the comparability of financial products, we highlight the need for sufficient flexibility to capture ESG considerations in a way that accurately reflects the funds’ characteristics, assets and strategies. Shall the ESAs decide to launch the development of such templates, we believe they should be coherent with the client disclosures under other EU rules, like KIID documents, which may have space constraints.

We would also like to highlight that, while mandatory templates can be useful for retail investors, they are not required and are likely not to respond to the needs of institutional clients. Professional clients need tailored information (including in the way they are presented). This information, in turn, is processed to fulfil their own reporting requirements, such as those of insurance providers and pension funds.

<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>

As explained in question 12, we would agree on such development, in order to facilitate the reporting. Lots of information could be standardised with the use of examples of pre-determined statements. We believe that the pre-contractual and periodic disclosures should:

* Ensure enough flexibility to capture investment products’ broad range of different strategies, underlying assets, investment horizons, etc.
* Contain information on the strategy adopted to promote ESG characteristics or to pursue sustainable investment objectives.
* Refer to the investment process. That is, whether products integrate ESG considerations, make use of exclusions, set investment constraints, adopt best-in-class strategies, etc.

As we indicate in our reply to the previous question, we suggest that the templates are developed as part of the existing funds’ documentation, rather than as new documents. However, the provisions should be well-aligned with other key client disclosures, such as the UCITS KIID and its space constraints. More generally, for information requested in templates for pre-contractual disclosures, more guidance would be useful with respect to whether and to what extent references (links) to websites containing the required information will be accepted. Such templates should rely on existing reporting frameworks, such as TCFD or Eurosif transparency codes in order to bring consistency in the documentation provided to the investor.

<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>

We do agree with harmonised reporting templates for financial products, in order to facilitate the reporting and its associated format operational costs. The templates should **ensure enough flexibility to capture investment products’ broad range of different strategies, underlying assets, investment horizons, etc.** We would also propose a twofold approach**,** whereby **standardised templates are mandatory for products made available to retail investors and optional for products exclusively intended to professional investors**

 <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>

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.

To improve the balance of information between pre-contractual and website information requirements, we recommend to move the graphical representation of the investments of the product, proposed under Art. 15 (2) and Art. 24 (2) of the draft RTS, to website disclosures, while providing only a general description in the pre-contractual information. 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.

With regards to website disclosures, we would advise against the requirement to publish a summary document in the format of maximum two sides of A4-sized paper, effectively creating an “ESG KIID”. Article 10(1) SFDR already states that information shall be provided in a clear, succinct, and understandable manner.

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 requirements. These products are not widely distributed, and disclosures should not be available publicly. Therefore, we believe that disclosures under Article 33 RTS, in the case of products that are not publicly distributed, shall be provided 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>

While we acknowledge the limitations of the ESAs mandate, we strongly believe that more clarity is needed on the definition between Article 8 and Article 9 products. Moreover, we fear that the draft delegated regulation on the integration of sustainability considerations under MiFID II and IDD may further contribute to the ambiguity and undermine the objective to enhance comparability for end-investors. Our understanding is that, while the distinct feature of Art. 9 products is that they have sustainable investment objectives (defined under SFDR as whose with a particular environmental or social impact), SFDR intentionally framed a wider scope for Art. 8 products, to capture investments with broader environmental and social characteristics and differing level of ambition.

The introduction of sustainable investment into Art. 8 products will blur the lines between the two categories and drastically reduce the likelihood that non-impact funds (that do however integrate ESG considerations) will be able to qualify under Art. 8. Ultimately, this will limit investors’ choice for sustainable investments, undermining the objectives of SFDR and, possibly, the action plan’s goal to redirect financial flows into more sustainable activities. For these reasons, we would like to highlight some of the challenges related to the definition of Art. 8 and Art. 9 products that are linked to, or could be remedied by, the draft RTS:

1. Introduce amendments to Recital 21 to ensure clarity and avoid green-washing

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 simple ESG integration are required to be disclosed in the regulatory documents. In parallel, some firms choose to have certain firm-level exclusions and, if all funds of a particular FMP were to be considered Art. 8 or 9 products, this could be misleading to end-investors and risks being perceived as green-washing.

We would therefore recommend amending Recital 21 as follows:

• Remove the direct link to the regulatory documents and, instead, emphasise the concept of “intentionality ”. Art. 8 disclosures should be triggered when a financial product is marketed as featuring the integration of discernible ESG characteristics affecting its strategy and composition;

• Clarify that firm-wide ESG policies or exclusions characteristics (meaning a simple ESG exclusion(s) or a simple ESG integration) should not by default qualify all of the entity’s products as an Art. 8 product.

2. Remove the provisions requiring to disclose the 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. 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 removing this provision or, at least, to clarify that the proposed graphical representation of sustainable investments for Article 8 products should only apply “where relevant”.

Another inconsistency arises from the obligation to disclose the percentage of ‘sustainable investments’ in an Art. 8 product. This is that a portfolio investment must either be disclosed as a sustainable investment or as an investment aligned with the environmental or social characteristic. Specifically, Art. 15(2) RTS states that (a) the planned proportion of investments that are sustainable investments must be provided; and, then (b) the total investments, other than those that are sustainable investments, that contribute to the E/S characteristics must be cited. We think that this is misleading as the sustainable investments within an Art. 8 product may also be aligned with the environmental or social characteristics. The effect is that an investor may consider that an Art. 8 product with a high proportion of sustainable investments is not also well aligned with the environmental or social characteristics that the investor wants to invest in. As drafted, the current approach is binary. Instead, disclosures ought to be able to be made under both categories where the investment fulfils both the environmental or social characteristics and the ‘sustainable investment’ criteria. We thus highly recommend to remove the provisions requiring to disclose the proportion of sustainable investments in case of Art. 8 products.

According to the level 1 text, a sustainable investment is always defined in connection to an objective which needs to be set ex ante, and measured ex post. Mandating Art. 8 products to disclose their share of “sustainable investment” is therefore counter-intuitive, as article 8 product do not have a sustainable investment objective. We would also like to draw the ESAs’ attention to Art. 38 RTS which refers to “No significant harm to sustainable investment objectives” although it relates to article 8 products (which do not have a sustainable investment objective).

3. Remove the potentially misleading warning proposed in Art. 16 (1) of the draft RTS

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

Based on the draft RTS, all those strategies, which we understand would qualify as products under Art. 8, must include criteria for selecting investments to attain environmental or social characteristics (Art. 17a of the draft RTS) which shall be measured by sustainability indicators that will be disclosed to investors as part of pre-contractual information (Art. 18 of the draft RTS). Information about the extent to which those characteristics were attained, including the performance of the sustainability indicators used, shall be disclosed to investors each year as part of the periodic reports (Art. 37(1)a of the draft RTS). 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 do not believe that Art. 8 products, following such strict requirements and providing such detailed disclosures, should not still be subject to provide any kind of warning. We also note that, while it is true that Art. 8 products are not supposed to have as their objective sustainable investment, any such warning is likely to be misunderstood by end-investors not familiar with the nuances of the legal definitions.

4. Remove the requirement to reference EU Climate Benchmarks for Article 9 products that have carbon emissions reduction as their objective

Articles 31, 35 and 48 of the draft RTS suggest that, for Art. 9 products having carbon emissions reduction as their objective, the use of the EU Climate Benchmarks is mandatory as long as they are available. As a limitation to this approach, we note that EU CTBs are only relevant when the portfolio is composed by a diversified pool of assets and companies. In fact, the TEG recognizes that the methodology would only apply to equities and bonds, since there are no widely used benchmarks for most private assets that are likely to be included in Art. 9 products (e.g. infrastructure investment). Moreover, we also note that benchmarks are based on backward-looking data, whereas our focus lies on future carbon emission reduction targets of investee companies. We therefore believe that the RTS should not mandate the use of specific benchmarks. Instead, we suggest that funds which have as their objective carbon reduction objectives should disclose whether they use an EU CTB and, if not, they should explain why they have chosen another benchmark or no benchmark at all.

The draft RTS further state that where EU Climate Benchmarks are not available, financial market participants “shall explain how the financial product complies with the methodological requirements set out in Articles 19a [EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks], 19b [Requirements for EU Climate Transition Benchmarks] and 19c [Exclusions for Paris-aligned Benchmarks] of Regulation (EU) 2016/1011”. Recently adopted Delegated Regulation on minimum standards for EU Climate Transition benchmarks and EU Paris-aligned benchmarks, in Article 12, provide for exclusions for Paris-aligned Benchmarks. We thus understand that products qualifying under Article 9 SFDR having carbon emissions reduction as their objective shall exclude from their investments companies listed in paragraphs 1 and 2 of Article 12 of the Delegated Regulation on Climate Benchmarks.

Apart from being very prescriptive, this would exclude companies in transition which need finance to carry out the necessary transition. Meanwhile, a fund that has the target to reduce carbon emissions by supporting the transition may be invested in companies that do not yet meet the desired standards and therefore are likely to fall under the list of companies mentioned under Article 12 of the Delegated Regulation on minimum standards for EU Climate Transition benchmarks and EU Paris-aligned benchmarks. We think it would be counterproductive to the objectives of the EU Green Deal to exclude such companies. We also fail to see how the EU Climate Benchmark should be used by a fund that has social objectives alongside climate objectives.

<ESA\_QUESTION\_ESG\_16>

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

<ESA\_QUESTION\_ESG\_17>

**The description of investment proportions should specify what the fund *intends* to do** (e.g. invest in 20% of sustainable assets), **not necessarily what the fund *will* do.**Indirect exposures may cause challenges for graphical investment proportions.

That’s why narrative description is very important.

In case of fund of funds, ESAs may specify the possibility to work by transparency, where possible

<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 investment strategies, for other strategies it might be tricky, or even meaningless or misleading. In case of exclusions (negative screening), a % reduction might be a more meaningful representation than a graphic representation. Therefore, further clarification should be provided on how to apply the graphical illustration for products relying on negative screening (exclusions).

It is very challenging to differentiate why an asset manager will invest in an issuer from an Environmental or a Social point of view. It is very often, if not always, a mix of both comparability between two products will be very difficult to get with graphical representations. The narrative description is very useful and will help understanding the graphic of each strategy.

<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>

This requirement should apply only in relation to investee companies as there is no established method to measure such exposure in relation to whole countries or even sub-sovereign issuers. Also for other assets such as real estate, this information should not be relevant.

Even if we are not really in favour of a Brown Taxonomy, we would rather suggest proportion of product with exposure to companies with fossil fuel revenues as an indicator. Moreover, it would be useful to clarify whether the proposals are referring to any turnover (meaning that the threshold is “0”) or about companies that meet a certain level of turnover (% threshold).

<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>

No, the Product disclosure rules should take into account the specificities of separate accounts / portfolio management mandates that are concluded with single client. Such services operate on a bilateral basis (between the provider and its client) and ESG disclosure should not jeopardize the privacy of client personal data. In order to do so, product disclosure could be done for each family of portfolio (model portfolio) – rather than individual contracts.

<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>

We fully agree with an harmonisation of good governance practices between Articles 8 and 9 but proposals at EU level for development of sustainable governance standards are expected next year and currently there is no common reference as regards “good governance practices” and rules regarding governance and company law are largely national.

<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 understand that the consideration of DNSH based on the indicators for adverse impact, proposed in the draft RTS, should apply at the investment, meaning the investee company, level. This is different by the approach taken by the EU Taxonomy Regulation where the consideration is at the level of the economic activity. We would find it very challenging to get different interpretations of the “Do Not Significantly Harm” principle between Taxonomy and Disclosures. ESAs explained they are trying to bring the two together. However, in Regulation (EU) 2019/2088, there is no selectivity threshold regarding principal adverse impact. If the reconciliation of both DNSH and principal adverse impact is made, then the materiality principle should be at the heart of it, ie. a threshold with a significant impact.

<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>

We would welcome more clarity on the relevance of ESG factors for the investment strategy of Article 8 products and what can qualify as an ESG characteristic under SFRD.

To help ensure financial participants communicate in a consistent way what their strategy is and how they take account of sustainability considerations. The work has already been done by many participants. For investments products, we suggest to rely on producers’ definition, hence use EFAMA’s definition

<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 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, we question the choice of 25 top investments as currently the industry standard practice is to disclose top 10 investments. We are not convinced that the extra 15 investments would be helpful to investors or whether they would result in information overload.

Moreover, instead of disclosing an average, which would be burdensome and with questionable merits for end-investors, we would rather suggest reporting on D-day, which is consistent with the requirements under UCITS and AIFMD.

It is hard to imagine asset managers changing composition of funds before the D-day with the aim to improve the disclosures. This would have a negative impact on transaction costs which would drive down the financial performance, running counter to asset managers’ fiduciary duty. <ESA\_QUESTION\_ESG\_24>

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

<ESA\_QUESTION\_ESG\_25>

We agree with the 1st point: “an indication of any commitment of a minimum reduction rate of the invest-ments (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)”, Main reason is that it is consistent with AMF 2020-03 doctrine.

We disagree with the 2nd point: “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)”.

Main reason is that the methodology can evolve. Updating prospectus would be too long. We would prefer this information to be disclosed in the website.

We agree with the 3rd point: “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)”.

Main reason is that these kind of information may evolve. We would prefer this kind of information to be disclosed in the website.

We disagree with the 4th point: “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”.

Main reason is that these kind of information may frequently evolve. We would prefer this kind of infor-mation to be disclosed in the website. On top of that the description of the methodology should be as synthetic as possible in the prospectus as it is subject to frequent evolution.

We object the assumption that any financial product relying on an exclusion strategy should have a minimum reduction commitment. Most products apply exclusion criteria that are based on qualitative considerations of certain environmental or social factors, not on the effect in terms of investable assets. Reduction of the “scope of investments” that is assumed by the ESAs for an explicit commitment is in these cases rather a result rather than an explicit objective of an exclusion strategy. Since such reduction of eligible investments would automatically reduce the risk diversification opportunities, it should be treated with caution from the investor protection perspective.

<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 think that a narrative explanation would be more appropriate to provide information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product. 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.

<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>

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 RTS.

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 2-3 year’ time, meaning before the review of the NFRD takes place and new provisions become effective

<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)