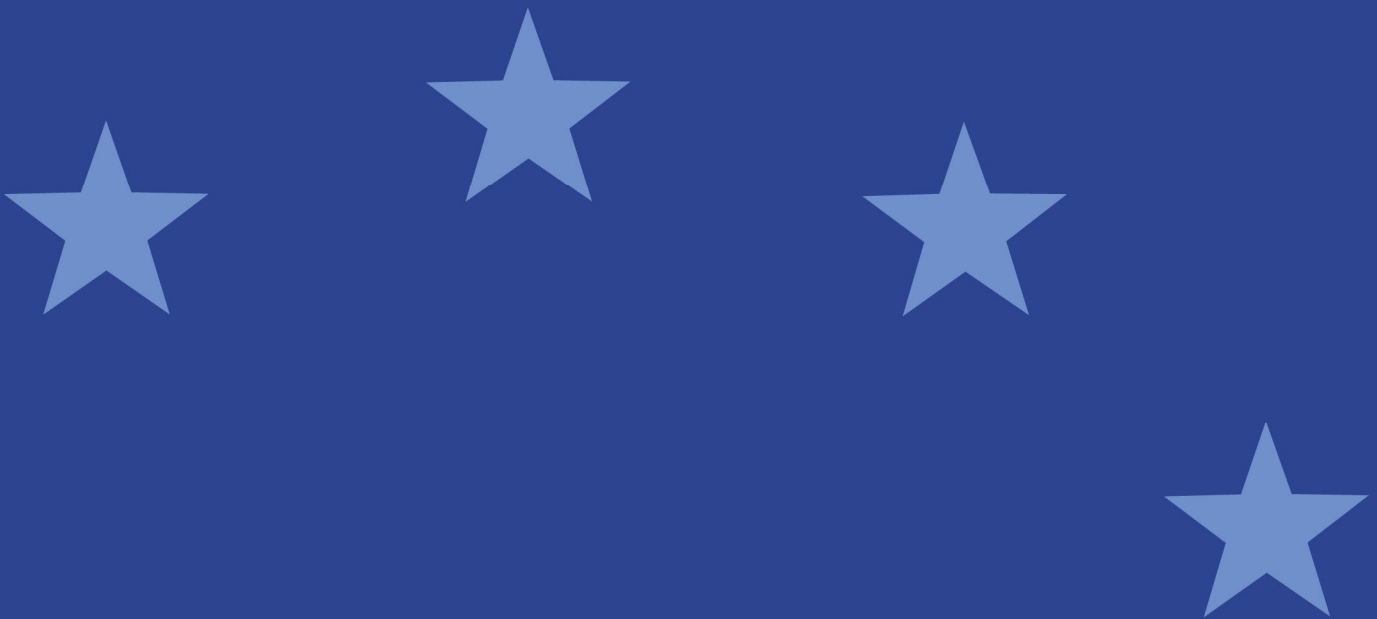


Response form for the Joint Consultation Paper concerning ESG disclosures





Responding to this paper

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

Comments are most helpful if they:

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

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

Instructions

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

- Q1** Insert your responses to the questions in the Consultation Paper in the present response form.
- Q2** Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- Q3** If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- Q4** When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.
- Q5** The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](#) under the heading ‘Your input - Consultations’ by **1 September 2020**.
- Q6** Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

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

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725¹. 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	Danish Institute for Human Rights
Activity	Non-financial counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Denmark

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

The Danish Institute for Human Rights (the DIHR) welcomes this opportunity to contribute to the ESA consultation on the ESG Disclosures paper and specifically on the draft Regulatory Technical Standards (RTS) as well as the proposed Annex 1 Template for Principal Adverse Impact Statements (annex 1).

The DIHR is an independent National Human Rights Institution (NHRI) established by the Danish Parliament in accordance with the UN Paris Principles. Under its legal mandate, the DIHR's main functions are to monitor human rights in Denmark and promote human rights internationally, including through engagement with non-state actors. The DIHR's Business and Human Rights Department has been working in the area since 1999 and is an internationally-recognised centre of expertise on the application of human rights norms and standards to business actors, across all world regions and industry sectors. The DIHR also works actively on human rights in and with the financial sector and based on this expertise shares perspectives on the consultation paper here.

The DIHR's response consists of three parts: (1) this response form (selected questions answered only); (2) comments and suggested edits to the RTS text (included as annex A at the end of this document) and (3) comments and suggested edits to Annex I (included as annex B at the end of this document). Please note that annexes A and B are developed in partnership with Global Witness and the Business and Human Rights Resource Centre and in consultation with the Responsible Business Conduct Centre of the OECD Secretariat.

Introductory comments:

The DIHR welcomes the ESAs efforts to include human rights as well as build on international standards on business and human rights and responsible business conduct in the draft RTS and in Annex 1. Despite these efforts, the DIHR is however concerned that the draft RTS and Annex 1 in their current form fails to sufficiently align with these key standards and thereby risks unintendedly undermining key standards and diluting the international consensus around the centrality and content of these standards.

Comments made by the DIHR in this response form as well as directly in the included annexes thus aim to bring both documents closer to internationally recognised standards in the context of business and human rights as well as responsible business conduct, i.e. the UN Guiding Principles on Business and Human Rights (UNGPs) as well as the OECD Guidelines for Multinational Enterprises (OECD Guidelines) while keeping in mind the aim of the SFDR of reorienting capital flows towards sustainable investment and thereby sustainable development. In this context, the DIHR wishes to highlight the centrality of respect for human rights by investors and business to achieving sustainable development. Select resources developed by the DIHR on this topic include: [The Human Rights Guide to the SDGs](#) and [Responsible Business Conduct as a cornerstone of the 2030 Agenda](#).

The DIHR generally supports the introduction of a standardised reporting template as demonstrated in Annex 1. We know from experience that large scale quantitative analysis of sustainability information is significantly challenged by variation in reporting including use of tables or text boxes in picture format which are challenging to convert into a machine readable format. Standardisation of sustainability reporting by

Financial Market Participants (FMPs) would greatly assist this big data analysis, enabling current efforts to analyse company reporting to be scaled up. Ensuring that statements are made **accessible and digitised in a machine readable format** is essential not only for big data analysis projects, but for all stakeholders wishing to assess and compare the human rights performance of reporting companies. An **official EU repository**, where businesses are required to deposit up-to-date statements, is important for a range of stakeholders including ESG investors and civil society actors focused on corporate accountability.

While we welcome the introduction of Annex 1, we have several **concerns and suggestions related to the design and content of it (please refer to annex B, included below)**. Importantly we suggest that:

- (1) the Annex is reordered, to enable more emphasis on the FMP's narrative description of its principal adverse impacts beyond reporting on principle adverse impact (PAI) indicators, along with their descriptions of policies and actions. According to international standards on RBC and business and human rights, business entities includes FMPs are required to identify and assess their adverse impacts taking into consideration the full range of human rights and be able to demonstrate efforts taken to address them. It is therefore essential that the Annex stays aligned with this principle and includes mandatory and additional PAI indicators, as metrics to support FMPs reporting on their main risks and impacts on sustainability factors as well as their due diligence efforts;
- (2) a reordering of table 1 in annex 1. The table currently includes a section on 'Social and employee, respect for human rights, anti-corruption and anti-bribery matters'. We recognise that this grouping of issues flows from Level 1 text on "sustainability factors." However, we suggest that these could be more logically reorganised to reflect how they are treated under international law by grouping "social and employee matters and respect for human rights" under "human rights" and separating out "anti-corruption and anti-bribery matters". This will reduce potential confusion associated with current grouping and align the annex with other frameworks that use human rights as the overarching standard including when assessing social and employee impacts;
- (3) The indicators included on 'social and employee matters, respect for human rights' are significantly revised. We recognise the challenges associated with developing indicators on human rights, as compared for example to environment or climate change. We however have significant concerns around several of the indicators currently included. Please consult included annex B for a suggestion of alternative indicators that could bring the Annex significantly closer to internationally recognised human rights standards. In recognition of the intention to keep the number of mandatory indicators at a reasonable level, we are suggesting to prioritise indicators that demonstrate investment in companies without adequate implementation of the UNGPs as well as select indicators on core labour rights as well as a few additional human rights commonly understood to be at high risk of impacts by business. The rights included in the mandatory suggestion all cover impacts on workers, in recognition that this is an impact area shared by all investment companies. In addition to the mandatory indicators, we suggest that the Commission includes a range of additional indicators to reflect that investment companies potentially and actually negatively impact the human rights of a range of other stakeholders including communities and consumers; and
- (4) The ESAs in their finalisation of the Annex and indicators considers how best to drive transparency and accountability through proactive building in of that dimension including in design of indicators. Relatedly, we have highlighted in our drafting of indicators the need for information to be derived from publicly available disclosure, which will allow public scrutiny.

We further recommend some important changes to the **draft RTS**, that will align the RTS more closely with aforementioned internationally recognised standards in the area (please refer to separate annex A, included below). Our suggestions include:

- Reflecting key concepts from responsible business conduct standards and their importance for this regulation in the recitals;
- Defining 'principal adverse impacts' and 'due diligence' in manners that align with international standards (our suggestions included in annex A);
- Making important clarification in article 6 of the need for FMPs and FAs to identify and describe the main principle adverse impacts of relevance to their activities and that these may well differ from the ones represented through mandatory indicators. Specifically as it relates to human

rights, it is further recommended that the RTS in article 6 acknowledges the difficulty in developing exhaustive PAI indicators on human rights that are meaningful across all businesses, sectors and geographies and as a result require FMPs to report on context specific indicators of relevance to their main risks and impacts, as identified through their due diligence.

•

Our final introductory note relates to the issue of **regulatory alignment**. On its own, ESG disclosure is likely insufficient to adequately compel responsible and sustainable businesses conduct by FMPs. The disclosure regulation must work in concert with other regulation to effectively encourage or mandate responsible business conduct and respect for human rights by investors and by business. For example. It is recommended that synergy with e.g. the revision of the non-financial reporting directive (NFRD) is sought. The NFRD requires companies to disclose “nonfinancial key performance indicators relevant to the particular business.” It is recommended that synergy between indicators included in the ESG disclosure regulation and the revised NFRD is actively pursued. Alignment of future efforts from the Commission in relation to mandatory human rights due diligence legislation, revised corporate governance regulation as well as efforts by the future Platform on Sustainable Finance on other sustainability objectives as they relate to the taxonomy, including social objectives, will similarly be critical in enabling policy coherence and scaling up responsible business conduct, respect for human rights and sustainable development most effectively.

<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>

The DIHR acknowledges the efforts of the ESAs to introduce a measure that would standardise reporting and promote harmonised assessment of adverse societal impacts of investment decisions. The DIHR also shares the ESAs ambition to take an approach that underpins the aim of reorienting capital flows towards sustainable investment and thereby sustainable development. As it relates to human rights, introducing indicators in table 1 that are predetermined to constitute principal adverse take a different approach to that of the main standard on business and human rights; the UN Guiding Principles on Business and Human Rights (UNGPs), which importantly require businesses including investors to identify through due diligence their potential and actual human rights impacts and take action to prevent and mitigate such impacts. When doing so business entities are asked to consider all human rights, to be able to identify those of most at risk of adverse impacts related to business activities. By including some human rights and not others in the list of indicators in Table 1, aside from not being fully aligned with the UNGPs, the regulator risks driving due diligence attention and efforts of investors towards some human rights only at the expense of consideration of all impacts and prioritisation of those most severe. To mitigate these risks it is important that the regulator 1) requires FMPs to describe their own identification of main human rights risks and impacts as something independent from reporting on indicators, including by prompting this more directly in table 1 and 2) that the regulator includes indicators on implementation or lack thereof of investment companies of the UNGPs and that table 2 includes a broader range of indicators to support FMPs in including those of most relevance to their activities.

<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>

We believe that the ESAs in suggesting a harmonised reporting framework including via a template will enable cost efficient approaches to providing and collecting data, including for smaller FMPs.

<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>

Please consult suggested revised indicators on human rights in included annex B.

<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>

Yes. We recommend reversing the order of table 1 as well as introducing new and revised mandatory and additional indicators on social and employee matters and respect for human rights to ensure meaningful indicators and align as closely as possible with authoritative standards. Please see annex B included below.

<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>

The DIHR does not agree with several of the indicators suggested in table 1 of annex 1 and has introduced new and revised indicators on social and employee matters and respect for human rights to ensure meaningful indicators and align as closely as possible with authoritative standards. Please see included annex B.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

The DIHR commends the efforts of the ESAs in delivering indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators, including to avoid continuing an environmental bias of the sustainability agenda. However, the DIHR has significant concern around several of the indicators included and therefore suggests that the ESAs incorporate suggestions made by the DIHR and others in annex B, included below. If the ESAs would not find it possible to align with the recommended revisions within the timeline associated with the environmental indicators, the DIHR recommends that the ESAs allows for more time and further consultation on the indicators associated with social and employee matters, respect for human rights, anti-corruption and anti-bribery matters to ensure introduction of meaningful measures and allow for further policy coherence with other regulatory measures underway from the EU in relation to human rights.

<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>

Yes. No comments on time span.

<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>

Harmonisation of methodologies where possible, including to promote comparable data. As related to the human rights indicators, further methodology descriptions could be introduced in annex 1 to ensure meaningful data and insight into underlying methodologies.

Further, we recommend that the indicators are based on publicly disclosed information rather than privately owned information e.g. through private service providers and associated use of closed questionnaires. By basing indicators on information available in the public domain the regulator will be driving communication and transparency at the investment company level, which will allow for external stakeholder scrutiny and dialogue.

Finally, we urge the Commission to ensure sufficient emphasis on the monitoring of the measures introduced. Including by ensuring capacity of designated national ‘competent authorities’ in meeting their monitoring duties.

<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, please see our remarks on data comparability and the value of harmonizing reporting templates in the introductory remarks.

<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
With reference to the human rights impacts of climate change and the associated connection to fossil fuel, we agree with the proposition to always disclose exposure to fossil fuel sectors. We recommend that the definition of fossil fuel sectors is reconsidered, and that the restriction to 'solid fossil-fuel' is avoided. However, this is not the expertise area of the DIHR and we advise that the input of NGOs with expertise in this area is sought.
<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>
TYPE YOUR TEXT HERE
<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 supporting the introduction of requirements for good governance practices, including to emphasise the importance of good governance in avoiding short termism and ensuring responsible business conduct.
<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 note that some conceptual confusion and overlap exists around the concepts of Do Not Significantly Harm and Principle Adverse Impacts. We would urge the Commission to provide clarity, including by clearly defining both concepts and their interrelation, including in the context of the RTS. <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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_27>

**Annex A. Consolidated Comments of Global Witness,
Danish Institute for Human Rights
Business and Human Rights Resource Centre
In consultation with the Responsible Business Conduct Centre of the OECD Secretariat
01.09.2020**

**COMMISSION DELEGATED REGULATION (EU) No .../..
of **XXX**
supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council on
sustainability-related disclosures in the financial services sector with regard to the content,
methodologies and presentation of information in relation to sustainability indicators and the
promotion of environmental or social characteristics and sustainable investment objectives in
pre-contractual documents, websites and periodic reports**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector [5], and in particular Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) thereof,

Whereas:

- (1) Regulation (EU) 2019/2088 establishes harmonised rules for the disclosure of sustainability-related risks by financial market participants and financial advisers. The content, methodologies and presentation of entity level principal adverse impacts are laid down in this Regulation. The content and presentation of financial products' pre-contractual, website and periodic disclosure are also laid down in this Regulation.
- (2) In order to ensure sufficient comparability of entity level principal adverse impact disclosures, the information should be disclosed annually in relation to common reference points in the form laid down in Annex I of this Regulation. The statement should be updated each year to show progress made towards reducing the principal adverse impacts of investment decisions on environmental and societal factors.
- (3) For the purposes of the assessment of principal adverse impacts by financial market participants, an investment in an investee company or an entity includes direct holdings of capital instruments issued by those entities and any other exposure to those entities through derivatives or otherwise.
- (4) Union objectives of the European Green deal, in particular carbon neutrality, increasing the share of renewable energy and energy efficiency and the protection of biodiversity, mean that it is essential that any adverse impacts in these areas are identified as principal adverse impacts. Equally, adverse impacts relating to core principles of the Union, in particular certain social and employee matters, respect for human rights, anti-corruption and anti-bribery matters should be identified as principal adverse impacts. The 2011 Communication on Corporate Social

Responsibility of the Commission recalls the importance of working towards the

⁵ OJ L 317, 9.12.2019, p. 1-16.

implementation of internationally recognised standards on responsible business conduct and due diligence, and in particular the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises because of their contribution to Union objectives in relation to specific human rights issues, ~~such as child labour and forced prison labour~~, as well as ILO core labour standards, including ~~freedom from child labour and forced labour, gender equality, non-discrimination, freedom of association and the right to collective bargaining.~~

Commented [A1]: Add a cross-reference to Art. 4(2)(d) to draw the link. If that is not possible, it is important to name these as the “internationally recognised standards” on responsible business conduct and due diligence. Or see proposed recital below. ?

Commented [A2]: Child labour and forced labour are part of the ILO core labour standards. Forced labour goes well-beyond prison labour so the reference to “prison” should be dropped.

Commented [A3]: Gender equality is covered but only by the more general commitment to non-discrimination

Commented [A4]: It is useful to have recital that identifies the international standards and links it to the processes that investors must carry out.

(5) ~~These internationally recognised standards on responsible business conduct and due diligence, as referenced in Article 4(2)(d) of Regulation (EU) 2019/2088, set out important guidance for financial market participants on developing due diligence policies and carrying out due diligence to identify and address adverse impacts of investment decisions on sustainability factors. The due diligence referenced in Article 4 of Regulation (EU) 2019/2088 involves steps to identify and assess adverse impacts of investment decisions, and then to prevent and mitigate those adverse impacts. This is different from the type of due diligence investors/financial market participants undertake to look at sustainability risks – i.e. risks to their own financial returns. -The internationally recognised standards on responsible business conduct and due diligence referenced in Article 4(2)(d) of Regulation (EU) 2019/2088 further clarify that adverse impacts include both potential and actual adverse impacts and that a business entity can cause, contribute to and be directly linked to those impacts. -~~

(6) ~~It is appropriate to standardise indicators for common adverse impacts to provide a uniform reference point for those impacts. Annex I Table 1 identifies a set of mandatory indicators related to select principal adverse impacts and Table 2 sets out a wider set of additional indicators selected through the financial market participant’s due diligence process. Some of the indicators are proxy or indirect indicators of impact. These indicators serve as an important but not exclusive component of reporting on principle adverse impacts, as financial market participants must report on any adverse impacts on a sustainability factor that qualifies as principle, including, but not limited to those in Tables 1 and 2. It is through the due diligence processes set out in Article 7 that those principal adverse impacts (potential and actual) are identified, assessed and prioritised by financial market participants. The reporting should include information about the principal adverse impacts, any relevant contextual information and why they were prioritised so that the information is understandable to prospective investors. In this respect, standards such as the Global Reporting Initiative have been developed for companies (that include financial market participants and financial advisers) to report on their policies and due diligence processes for responsible business conduct and the outcomes of those processes and thus provide relevant guidance.~~

Commented [A5]: Suggested replacement for the duplicate recital.

~~(5)(7) Article 7 Under a due diligence process requires, financial market participants are encouraged to should also undertake their own due diligence processes an identification process to identify, assess and then report on the principle adverse impacts in their portfolios which. The will reporting on the specific indicators included in Annex I to providing descriptions of areas of significant risk, the risks or impacts that have been prioritised by the investors. the reporting required by Article 4 to report additional adverse impacts. —Where financial market participants have extensive portfolios or are assessing a wide range of companies for investment and must prioritise their identification and assessment of adverse impacts, In order to prioritise adverse impacts and identify other principal adverse impacts, it is key that financial market participants understand their focus on areas / investment companies for investment based on the scope, severity (including their scope, scale and potential irremediable character), and probability of occurrence and potentially irremediable~~

Commented [A6]: This concept of “severity” comes from the UNGPs and the OECD Guidelines on Multinational Enterprises (see [OECD Due Diligence Guidance for Responsible Business Conduct](#) pp. 42-45) which have just been referenced in the recital above. Therefore, it is important to be consistent in the way the concepts are used to avoid confusion. This has been redrafted to align with those two standards.

~~character of adverse impacts~~ on sustainability factors. Scope concerns the reach of the effects of the potential or actual impact, for example the number of individuals that could be affected or the extent of environmental damage such as the volume of water polluted or melting glaciers that could lead to floods, loss of water power capacity, decrease of revenues from tourism and agriculture and thus higher unemployment and non-performing loans. Scale refers to the gravity or seriousness of the potential or actual impact. Irremediability refers to whether the potential or actual impact can be reversed and the persons and/or environment can be restored to a situation equivalent to the situation before the adverse impact. Probability of occurrence refers to the likelihood of adverse impacts to materialise. In the case of impacts on human rights, if prioritisation is necessary, then severity is more important than probability of occurrence in considering prioritisation. The concepts of principal adverse impacts, probability of occurrence and due diligence all reinforce that the key point of these measures is for financial market participants to identify, assess and respond (through actions with investee companies) to potential adverse impacts before they have occurred and before they mature into actual adverse impacts. Where adverse impacts cannot be prevented or avoided, then measures to mitigate and remediate should be taken.

~~It is appropriate to standardise certain common adverse impacts which are considered to be measurable to provide a common reference point for the purposes of identifying which of those impacts are principal.~~

~~In order to identify and prioritise other principal adverse impacts it is important that financial market participants understand their scope, severity, probability of occurrence and potentially irremediable character on sustainability factors. Scope concerns the reach of the effects of the impact, for example the number of individuals that could be affected or the extent of environmental damage such as the volume of water polluted or melting glaciers that could lead to floods, loss of water power capacity, decrease of revenues from tourism and agriculture and thus higher unemployment and non-performing loans. Probability of occurrence refers to the likelihood of adverse impacts to materialise. It is appropriate to standardise certain common principal adverse impacts which are considered to provide a common reference point for the purposes of identifying which of those impacts are principal.~~

Commented [A7]: Duplicate so we have suggested a recital in its place that should come first.

~~(6)(8)~~ Financial market participants may identify principal adverse impacts on sustainability factors through various means, as part of their due diligence processes. For example, they may employ external market research providers, internal financial analysts and specialists in the area of sustainable investments, undertake specifically commissioned studies, use publicly available information or shared information from peer networks or collaborative initiatives. Financial market participants may also engage directly with the management and affected stakeholders (and their representatives) of investee companies, including workers, trade unions, communities, indigenous peoples, human rights defenders, civil society organisations, women's organisations, to better understand the risk of adverse impacts on sustainability factors. The SFDR is intended to drive transparency in sustainability reporting from investee companies through to financial market participants and financial advisers and thus Annex I requires public disclosure of relevant information by investee companies.

Commented [A8]: Important to link this to the due diligence processes as identifying PAI is the first step in due diligence.

~~(7)(9)~~ Financial advisers are being provided with information on principal adverse sustainability impacts by financial market participants. Information provided by financial advisers on whether and how they take into account adverse sustainability impacts within their investment or insurance advice should clearly spell out how the information provided by financial market participants is processed and integrated in

their investment or insurance advice. In particular, should the financial adviser rely on adverse sustainability impacts criteria for integration of financial products or financial market participants within the advisory portfolio, such criteria should be stated.

~~(8)~~(10) The disclosure requirements in this Regulation are designed to impose fundamental regulatory requirements which are appropriate for all financial market participants and were regarded as necessary to meet the objective of Regulation (EU) 2019/2088. Depending on their size and nature, a significant number of financial market participants fall under the scope of Regulation (EU) 2019/2088. Financial market participants exceeding the number of 500 employees on their own balance sheet or, where they are parent undertakings, on their group balance sheet are subject to the disclosure obligations on principal adverse impacts at entity level set out in this Regulation. Financial market participants below the threshold of 500 employees should at least explain where they do not consider adverse impacts of investment decisions on sustainability factors the reasons to not consider them. Similarly, financial advisers that consider principal adverse impacts on sustainability factors in their advice are subject to the disclosure obligations set out in this Regulation.

~~(9)~~(11) Financial market participants should present the pre-contractual and periodic information in the manner set out in the relevant sectoral legislation. In addition to these sectoral requirements, for the purposes of the disclosures, it is necessary to specify further principles for the presentation of information.

~~(10)~~(12) The assessment of principal adverse impacts included in this Regulation relates only to the activities of the financial market participants and financial advisers within the scope of Regulation (EU) 2019/2088 but applies to investments both inside and outside the EU that fall within that scope.

Commented [A9]: Add here clarification on the geographic scope – i.e. that it applies to investment activities both inside and outside the EU

~~(11)~~(13) With respect to the content of the periodic disclosure obligations under Article 11 of Regulation (EU) 2019/2088, financial market participants should disclose a minimum set of standardised and comparable relevant quantitative and qualitative indicators to show how their product meets its characteristics or objectives. These indicators should be relevant to the design and investment strategy of the financial product as described in the financial product's pre-contractual information.

~~(12)~~(14) To ensure that end-investors have access to reliable data that can be used and analysed in a timely and efficient matter, certain disclosed information, such as the international securities identification numbers (ISINs) identifying the securities, and the legal entity identifiers (LEIs) identifying the entities, should be mentioned where available. Disclosed information should remain publicly available for at least 10 years after its publication, to ensure that their period of public availability is aligned with those of annual and half-yearly financial reports under Directive 2004/109/EC and of prospectuses under Regulation (EU) 2017/1129.

~~(13)~~(15) Bearing in mind the limitations of current carbon footprinting metrics, where financial market participants make reference to the degree of their alignment with the objectives of the Paris Agreement under Article 4(2)(d) of Regulation (EU) 2019/2088, this disclosure should be carried out on the basis of forward looking climate scenarios, for example as outlined in the Financial Stability Board Task Force on Climate-related Financial Disclosure's Technical Supplement on The Use of Scenario Analysis in Disclosure of Climate-related Risks and Opportunities⁶.

~~(14)~~(16) Action by financial market participants in relation to principal adverse sustainability

impacts according to Article 4(2)(b) of Regulation 2019/2088 and Article 7 of this Regulation may include but are not limited to setting clear expectations in their policies (including investment policies and policies to identify and prioritise seek to prevent and/or mitigate principal adverse impacts), exercising voting rights as a shareholder, sending letters to or attending meetings with the management of investee companies concerning the investee companies' management of principal adverse impacts, setting up documented and time-bound engagement in actions or shareholder dialogue with specific sustainability objectives that address the principal adverse impacts, planning escalation measures in case those objectives are not achieved, including reductions of investments or exclusion decisions.

⁶ <https://www.fsb-tcfd.org/publications/final-technical-supplement/>

Commented [A10]: It would be useful to add a Recital that addresses the linkage with the Taxonomy Regulation and in particular the link between PAI – DNSH – Minimum Safeguards

~~(15)~~(17) In their website product disclosure, financial market participants should disclose additional details regarding the product's investment strategy ~~provided while ensuring~~ that such information is consistent with the pre-contractual information.

~~(16)~~(18) Financial market participants should include on their website a clear, succinct and understandable summary of the information provided as part of the periodic reporting. When doing so, financial market participants should comply at all time with national and Union law governing the protection of confidentiality of information, including the protection of undisclosed know-how and business information and the processing of personal data.

~~(17)~~(19) Financial products with various degrees of ambition with regard to the taking into consideration of sustainability factors are being developed. Among such financial products, a difference is to be made between financial products offered to end-investors as specifically targeting sustainable investments, and all other financial products which claim to take into account sustainability factors in investment decisions. Financial products promoting environmental or social characteristics can cover various investment approaches and strategies, from best-in-class to specific sectoral exclusions. The disclosures required from financial market participants making available such financial products should attempt to reflect such diversity and to cover the widest possible range of approaches.

Commented [A11]: Would be clearer if referred to and distinguished between Art. 8 & 9 here

Commented [A12]: Not clear whether this is considered in the group of "specifically targeting sustainable investments" or "all others" and important to clarify.

Commented [A13]: Not clear

~~(18)~~(20) Financial market participants that market financial products promoting environmental or social characteristics, or a combination of those characteristics, should make disclosures on those characteristics without misleading end-investors. This implies that financial market participants should not disclose excessively on sustainability, including through product categorisation, if that is not commensurate with the way in which sustainability is given effect in their investment policy. Therefore, disclosure of criteria for the selection of underlying assets should be limited to those criteria that financial market participants actually bind themselves with as part of their investment decision-making process. As a consequence, financial market participants should not mislead investors by disclosing selection criteria which they may disapply or override at their discretion.

~~(19)~~(21) Financial products with environmental or social characteristics can invest in a wide range of underlying assets, whether such assets qualify as sustainable investments, or contribute to the specific environmental or social characteristics promoted by the product. Underlying investments can also consist of assets that are not relevant to the environmental or social characteristics promoted by the product, such as hedging instruments, unscreened investments for diversification purposes or investments for which data is lacking, or money market instruments. Financial market participants marketing such products should be fully transparent as regards the allocation of the underlying investments to those categories of investments.

~~(20)~~(22) Financial products with environmental or social characteristics should be considered to be promoting, among other characteristics, environmental or social characteristics, or a combination thereof, when information provided to clients, in marketing communications or in mandatory investor disclosures or as part of a process of automatic enrolment in an IORP, references sustainability factors that are taken in consideration when allocating the capital invested of the product.

~~(21)~~(23) As regards investments that do not qualify as sustainable or as contributing to the environmental or social characteristics promoted by the financial product, financial market participants may decide to apply some baseline environmental or social safeguards. If that is the case, financial market participants should explain those safeguards.

~~(22)~~(24) Where products under Article 8 of Regulation (EU) 2019/2088 pursue environmental or social investment strategies, financial market participants should be transparent about the strategy and clearly indicate it to allow easy identification by end-investors.

~~(23)~~(25) In particular, considering that many financial products currently rely on exclusion strategies based on environmental or social criteria, end-investors should be provided with the necessary information to assess the materiality of such criteria on investment decisions, and the impact of that strategy on the composition of resulting portfolio. Current market practice demonstrate that some exclusion strategies are showcased as material, while actually consisting in exclusions based on criteria that lead to the exclusion of a limited number of investments or are based on exclusions required by law. Consequently, disclosing on any commitment with regard to a minimum reduction of the set of potential investments as a result of the application of the exclusion strategy is necessary in order to give end-investors better visibility over the materiality of the offered strategy.

~~(24)~~(26) Regulation (EU) 2019/2088 aims to reduce information asymmetries in principal-agent relationships with regard to the promotion of environmental or social characteristics and sustainable investment objectives by requiring financial market participants to make pre-contractual and website disclosures to end investors when they act as agents of those end investors. In order for such measure to be fully effective, it is expected that financial market participants monitor, throughout a financial product's lifecycle how the financial product complies with the disclosed environmental or social characteristics, or sustainable investment objective. Consequently, financial market participants should mention, as part of their website disclosures, the control mechanisms, internal or external, put in place to monitor such compliance on a continuous basis.

Commented [A14]: And update information accordingly on the application of those control mechanisms

~~(25)~~(27) Regulation (EU) 2019/2088 specifies that assessment of good governance practices forms an integral part of financial products falling under Article 8 or Article 9 of that Regulation and should be considered as a prerequisite for promoting environmental or social characteristics, or for pursuing a sustainable investment objective. Therefore, financial products with environmental or social characteristics or with a sustainable investment objective should also include information on the financial market participant's policy to assess good governance practices of investee companies.

~~(26)~~(28) Regulation (EU) 2019/2088 recognises that financial products that promote environmental or social characteristics, or a combination of those characteristics, may set up investment portfolios that match an index. In such cases, financial products should make available information on whether and if so how that index is consistent with the characteristics or their combinations.

~~(27)~~(29) Regulation (EU) 2019/2088 also recognises that financial products that have sustainable investments as their objective might be setting up portfolios that match a sustainability-related index in order to deliver such an objective. In such cases, the information on how the designated sustainability-related index is aligned with the objective of sustainable investments and the explanation of the reasons and content

of differences between the designated sustainability-related index and a broad market index should be made available. Such financial products should clearly demonstrate that the design of the designated index is appropriate to deliver the stated sustainable investment objective, and that the financial product's strategy ensures that the financial product is continuously aligned with that index. This is also why, for such financial products, core methodological disclosures should be made at index level. Conversely, where a financial product does not resort to an index to ensure the delivery of the sustainable investment objective, disclosures should explain the strategy developed by the financial market participant to attain such objective.

~~(29)~~(30) Financial products should not pursue low-carbon investment objectives without using new Union climate-related benchmarks. If such benchmarks are not available, financial market participants should demonstrate how the financial product complies with the relevant standards applicable to EU Paris-aligned benchmarks or EU Climate Transition benchmarks as set out in the Regulation (EU) 2019/2089.

~~(29)~~(31) Financial market participants can resort to various investment methods to justify the attainment of the environmental or social characteristics, or the delivery of the sustainable investment objective of the financial product. Financial market participants can directly invest in securities issued by investee companies, or resort to other methods such as investment via funds of funds or exposure via the use of derivatives. Financial market participants should be transparent as to the share of their investments that will be carried out via direct holdings, and that carried out via alternative methods. In particular, financial market participants should explain how the use of derivatives is compatible with the environmental or social characteristics being promoted, or with the sustainable investment objective pursued.

~~(30)~~(32) In order to ensure clarity to end-investors, pre-contractual information relating to financial products under Article 8 of Regulation (EU) 2019/2088 should make clear, by way of a statement, that such products do not have sustainable investment as an objective. For the same purpose, and in order to ensure a level-playing field with products under Article 9 of Regulation (EU) 2019/2088, pre-contractual, website and periodic information relating to products under Article 8 of Regulation (EU) 2019/2088 should also mention the proportions that such investments are planned to take – or actually taking – within the related investment portfolio.

~~(31)~~(33) As regards financial products under Article 9 of Regulation (EU) 2019/2088, considering that sustainable investments form the investment objective of such products, financial market participants should disclose how the share of investments that do not qualify as sustainable investments does not jeopardise the achievement of the sustainable investment objective.

~~(32)~~(34) Regulation (EU) 2019/2088 requires that investments need to comply with the 'do not significantly harm' principle in order to qualify as sustainable investment. This principle is particularly important for financial products under Article 9 of Regulation (EU) 2019/2088, as it is a necessary criterion to justify that an investment contributes to the delivery of the sustainable investment objective. However, this principle is also relevant to financial products under Article 8 of Regulation (EU) 2019/2088, as disclosures relating to the proportion of sustainable investments comprised in such products is also expected. As a result, financial market participants making available both types of financial products should provide information relating to the 'do not significantly harm' principle. It is also necessary to specify that this principle, as regards harms to environmental objectives, is closely linked to the criteria to be developed in the context

of the Regulation on the establishment of a framework to facilitate sustainable investment in order to assess the 'do not significantly harm' criterion in that Regulation. Nonetheless, in the absence of a yet fully functional framework to define environmentally sustainable investment, financial market participants should be transparent with regard to the criteria used, including any potential thresholds set, in order to assess that the investments qualifying as sustainable do not significantly harm environmental nor social objectives.

~~(33)~~(35) The scope of application of the Regulation (EU) 2019/2088 includes financial products, especially insurance-based investment products that can offer a range of investment underlying options to end-investors. Some of these investment options may qualify that financial product as a financial product referred to in Article 8(1) of Regulation (EU) 2019/2088. In that case, end-investors should be provided with the summary list of those investment options and the information provided by those investment options in accordance with this Regulation with clear indications to which investment options the information relates.

~~(34)~~(36) For a financial product offering a range of investment options to qualify as a financial product referred to in Article 9(1), (2) or (3) of Regulation (EU) 2019/2088, all its investment options should qualify as financial products. In that case, end-investors should be provided with the summary list of those investment options and the information provided by those investment options in accordance with this Regulation with clear indications to which investment options the information relates.

~~(35)~~(37) The disclosures applicable to insurance-based investment products offering a range of investment options and qualifying as a financial product may be lengthy. According to the demands and needs of the end-investors and, as the case may be, the result of their appropriateness or suitability assessments performed in accordance with Article 30 (1) and (2) of Directive (EU) 2016/97 on insurance distribution⁷, insurance distributors should draw the attention of the end-investors to the disclosures related to the investment options that the end-investors actually consider investing in in accordance with Article 29(1) of that Directive.

~~(36)~~(38) Financial market participants should use website disclosures to disclose on specific items, to expand on topics disclosed in a concise way in pre-contractual documents, and to provide further information they deem relevant which will help end-investors better understand the investment strategies offered. Before a contract is closed, financial market participants should inform end-investors about the fact that more product-specific, detailed information can be found on the website and provide them with a link to that information.

~~(37)~~(39) In order to ensure consistency between pre-contractual disclosures and periodic disclosures, financial market participants should report on the specific sustainability indicators mentioned as part of the pre-contractual information used to measure the attainment of the environmental or social characteristics, or the delivery of the sustainable investment objective. Should a financial market participant choose to report, as part of the required periodic disclosure, on new sustainability indicators, the financial market participant should explain those choices and provide a historic comparison of the performance for those new indicators in subsequent reports.

⁷ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26 2.2.2016 p.19)

~~(38)~~(40) Financial market participants making available financial products resorting to a reference benchmark to justify the attainment of environmental or social characteristics, or the delivery of the sustainable investment objective, should be transparent on how the financial product delivers a sustainable performance that is as close as possible to that of the designated reference benchmark. As a result, and in order to foster consistency with ESG disclosures required at benchmark level as set out in Regulation (EU) 2019/2089⁸, financial market participants should include, as part of the periodic reporting disclosures, a comparison between the performance of the financial product with that of the designated reference benchmark, for all sustainability indicators deemed relevant to justify that the designated benchmark is aligned with the financial product's characteristics or sustainable investment objective. This comparison should also allow end-investors to clearly identify the sustainable performance of the financial product compared to that of a mainstream product: this is why the comparison mentioned above should also include a comparison with the sustainable performance of a broad market index.

~~(39)~~(41) The provisions of this Regulation should be considered as a whole, since they deal with the information that must be provided by financial market participants and financial advisers in relation to sustainability-related disclosures in the financial services sector required under Regulation (EU) 2019/2088. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view by those persons of their obligations under that Regulation, it is efficient to include the regulatory technical standards in a single Regulation.

~~(40)~~(42) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (European Supervisory Authorities).

~~(41)~~(43) The European Supervisory Authorities have consulted the European Environment Agency, the Joint Research Center of the European Commission and conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾, the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽²⁾, and the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾.

⁸ Regulation (EU) 2019/2089 of The European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p.17)

^[1] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

^[2] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

^[3] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

~~(42)~~(44) For reasons of consistency and in order to ensure the smooth functioning of the financial services sector, it is necessary that this Regulation and the provisions laid down in Regulation (EU) 2019/2088 apply from the same date,

HAS ADOPTED THIS REGULATION:

CHAPTER I
DEFINITIONS AND GENERAL PROVISIONS

Article 1
Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'fossil fuel sectors' means investment related to production, processing, distribution, storage or combustion of solid fossil fuels, with the exception of investment related to clean vehicles⁹ as defined in Article 4 of Directive 2009/33/EC of the European Parliament and of the Council¹⁰; and
- (2) 'reference period' means, for the purposes of Articles 5 to 10, the period from 1 January to 31 December of the preceding year and, for the purposes of Articles 36 to 52, the period covered by the periodic report referred to in Article 11(2) of Regulation (EU) 2019/2088.
- ~~(2)~~(3) "principal adverse impacts" means those potential and actual adverse impacts on sustainability factors that a financial market participant identifies through its due diligence processes as the most severe based on their scale, scope and irremediability.
- (4) "due diligence" means the processes and methodologies to identify, assess and prevent, mitigate and account for how actual and potential adverse impacts are addressed as outlined by international standards on responsible business conduct.

Article 2
General principles for the presentation of information

1. Financial market participants shall provide the information referred to in this Regulation in a manner that is easily accessible, non-discriminatory, free of charge, simple, concise, comprehensible, fair, clear and not misleading. The information shall be presented and laid out in a way that is easy to read, using characters of readable size, and shall be written in a style that facilitates its understanding.
2. Financial market participants shall provide the information referred to in this Regulation in searchable electronic format.
3. Financial market participants shall keep the information published on their websites in accordance with this Regulation up to date. They shall include the date of publication of the information and clearly identify any updated text with the date of the update.
4. Financial market participants shall provide, where available, legal entity identifiers (LEIs) and international securities identification numbers (ISINs) when referring to entities or financial products in the information provided in accordance with this Regulation.

Article 3

Commented [A15]: Consider TCFD characteristics: relevant, specific and complete, clear, balanced, and understandable, consistent and understandable, Comparable among organizations within a sector, industry, or portfolio, reliable, verifiable, and objective, provided on a timely basis

Commented [A16]: Consider adding additional principles from GRI: accuracy, balance, clarity, comparability, completeness, sustainability context, reliability and timeliness

Reference benchmarks with basket indexes

⁹ Proposal for a Regulation on the European Regional Development Fund and on the Cohesion Fund (COM(2018)372)

¹⁰ Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 5).

Where an index designated as a reference benchmark is made up of a basket of indexes, financial market participants shall provide the information relating to that index in respect of the basket and each index.

CHAPTER II

TRANSPARENCY OF ADVERSE SUSTAINABILITY IMPACTS

(Paragraphs (1), (3), (4) and (5) of Article 4 of Regulation (EU) 2019/2088)

Article 4

Financial market participant adverse sustainability impacts statement

1. From the date on which principal adverse impacts of investment decisions on sustainability factors are first considered and thereafter by 30 June each year, financial market participants shall publish the information referred to in paragraphs 1(a), 3 and 4 of Article 4 of Regulation (EU) 2019/2088, this Article and Articles 5 to 12 of this Regulation on their websites in a separate section titled, 'Adverse sustainability impacts statement' located in the same part of the website as the section referred to in Article 33 of this Regulation.
2. The adverse sustainability impacts statement shall be published in the format set out in Table 1 of Annex I. It shall be in the order and made up of the following sections titled:
 - (a) 'Summary';
 - (b) 'Description of principal adverse sustainability impacts';
 - (c) 'Description of policies to identify and prioritise principal adverse sustainability impacts';
 - (d) 'Description of actions to address principal adverse sustainability impacts';
 - (e) 'Engagement policies'; ~~and~~
 - (f) 'References to international standards'; and
 - ~~(f)~~(g) Adverse sustainability indicators.
3. By way of derogation to paragraph 1, for a financial market participant that first considers the principal adverse impacts of its investment decisions on sustainability factors in a given year:
 - (a) until 30 June of the following year, that financial market participant shall publish the information referred to in this Article and Articles 6 to 11 except for the information that relates to a reference period; and
 - (b) from 30 June of the following year, the first reference period shall be the period in the preceding year beginning on the date on which principal adverse impacts were first considered and ending on 31 December.

Article 5

Summary

1. The section referred to in point (a) of Article 4(2) shall contain the following information:
 - (a) the name of the financial market participant to which the adverse sustainability impacts statement relates;

(b) the fact that principal adverse impacts on sustainability factors are considered;

- (c) the reference period of the statement; and
 - (d) a summary of the principal adverse impacts statement of a maximum length of two sides of A4-sized paper when printed.
2. The summary shall be provided in, as a minimum, at least one of the official languages of the home Member State of the financial market participant and, if different, in a language customary in the sphere of international finance.

Article 6

Description of principal adverse sustainability impacts

1. The section referred to in point (b) of Article 4(2) shall contain a description, ~~of the assessment~~ for the reference period, of adverse impacts of investment decisions of the financial market participant on sustainability factors that qualify as principal, identified and assessed through due diligence processes as set out in Article 7 of this Regulation. The description shall provide information about the adverse impact and why it was prioritised that is supported by but is not limited to information derived from at least the following:
- (a) the ~~minimum indicators related to~~ principal adverse impacts ~~indicators~~ on sustainability factors as set out in Table 1 of Annex I;
 - (b) at least one additional indicator related to principal adverse impacts ~~indicator~~ on a climate or other environment- related sustainability factor that qualifies as principal as set out in Table 2 of Annex I identified and prioritised through the due diligence process;
 - (c) at least one additional indicator related to principal adverse impact ~~indicator~~ on a social, employee, human rights, anti-corruption or anti-bribery sustainability factor that qualifies as principal as set out in Table 3 of Annex I identified and prioritised through the due diligence process; and
 - ~~(d)~~ other indicators or methodologies used to identify and assess additional principal adverse impacts on a sustainability factor.
2. Where the financial market participant has provided a description of adverse impacts on sustainability factors for at least one previous reference period in accordance with paragraph 1, the statement shall contain a historical comparison of the current reference period with the previous reference periods covering at least the shortest of the following periods:
- (a) the previous ten years;
 - (b) from the date on which the financial market participant first considered principal adverse impacts of its investment decisions on sustainability factors; or
 - (c) from 10 March 2021.

Article 7

Description of policies to identify and prioritise principal adverse sustainability impacts

| 1. The section referred to in point (c) of Article 4(2) shall contain a description of the due diligence policies of the financial market participant on the assessment process to identify and prioritise principal adverse impacts on sustainability factors, of the indicators used and of how those policies are maintained and applied, including at least the following:

(a) the date of approval of the policies by the governing body of the financial market participant;

- (b) the allocation of responsibility for the implementation of the policies within organisational strategies and procedures, including responsibilities for ensuring coherence with these policies across the entity, including portfolio management, engagement and marketing so that the financial market participant's other actions do not undermine or contradict its approach to principle adverse impacts;
- (c) a description of the methodologies to identify, assess and –prevent or mitigate each principal adverse impact and, in particular, how those methodologies take into account the probability of occurrence and severity of adverse impacts, including their potentially irreparable character as a basis for prioritisation of identification and then action to prevent or mitigate principal adverse impacts where necessary;
- (d) an explanation of any associated margin of error within those methodologies; and
- (e) a description of the data sources used, including whether any of the sources include information discussed with affected stakeholders.
2. Where information relating to any of the indicators used is not readily available, the section referred to in point (c) of Article 4(2) shall also contain details of:
- (a) the best efforts used to obtain the information directly from investee companies; and
- (b) where, despite best efforts, the information cannot be obtained directly from investee companies, the best efforts used to assess the adverse impacts, including a description of any reasonable assumptions used, additional research carried out, cooperation with third party data providers, ~~or~~ use of external experts or engagement with relevant stakeholders or civil society representatives.

Commented [A17]: This is very helpful to require a description of methodologies to avoid the black box problem and to avoid that these important issues are dealt with simply through data scraping, looking for a few key words, rather than more active approaches to managing issues.

Commented [A18]: This is also very good to see.

Article 8

Description of actions and engagement policies to address principal adverse sustainability impacts

The section referred to in point (d) of Article 4(2) shall contain the following information:

- (a) a description of the actions taken during the reference period and planned by the financial market participant for the next reference period to avoid or reduce prevent or mitigate the principal adverse impacts identified, together with timelines and benchmarks for improvement; and
- (b) an explanation of the reduction in principal adverse impacts achieved by the actions taken during the reference period.

Commented [A19]: The wording used in the OECD Guidelines and the UNGPs is "prevent or mitigate" so this might be changed to align with agreed wording

Article 9

Engagement policies

The section referred to in point (e) of Article 4(2) shall contain, where applicable, the brief summaries of engagement policies in accordance with Article 3g of Directive 2007/36/EC of the European Parliament and of the Council¹¹, any other relevant engagement policies and an explanation of the reduction in principal adverse impacts achieved of the actions taken during the reference period.

Article 10

References to international standards

The section referred to in point (f) of Article 4(2) shall contain a description of the ~~adherence~~ alignment or commitment of the financial market participant's policies and processes to responsible business conduct codes and internationally recognised standards for due diligence and reporting, including due diligence guidance for responsible business conduct as referred to in Recital 4, and, where relevant, the ~~degree of their alignment with the objectives of the Paris Agreement, including at least forward looking~~

¹¹ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p.17)

~~climate scenarios.~~

~~The description shall specify the adverse indicators used in the assessment of principal adverse sustainability impacts referred to in Article 6 to measure that adherence or alignment.~~

~~The description shall specify:~~

- ~~a. whether the financial market participant has committed to responsible business conduct codes and internationally recognised standards for due diligence and reporting and the objectives of the Paris Agreement in its policy;~~
- ~~b. whether and how the financial market participant has sought to align its due diligence processes with the relevant international standards;~~
- ~~c. whether and how the financial market participant has sought to align its public reporting with relevant international the standards; and~~
- ~~d. the degree of alignment with the objectives of the Paris Agreement, including at least its forward-looking climate scenarios.~~

Article 11

Financial market participant statement of no consideration of adverse impacts on sustainability factors

Financial market participants shall publish the information referred to in Article 4(1)(b) of Regulation (EU) 2019/2088 on their websites in a separate section titled, 'No consideration of sustainability adverse impacts'. That section shall start with a prominent statement that the financial market participant does not consider the adverse impacts of its investment decisions on sustainability factors. The clear reasons for why the financial market participant does not do so shall include, where relevant, information on whether and, if so, when it intends to consider those adverse impacts by reference to at least the principal adverse impacts referred to in Table 1 of Annex I.

Article 12

Financial adviser adverse sustainability impacts statement

Financial advisers shall publish the information referred to in Article 4(5)(a) of Regulation (EU) 2019/2088 on their websites in a separate section titled, 'Adverse sustainability impacts statement'. The statement shall contain details on the process to select the financial products they advise on, including the following:

- (a) how the information published by financial market participants in accordance with this Regulation is used;
- (b) whether the financial adviser ranks and selects financial products based on the principal adverse impacts referred to in Table 1 of Annex I at a minimum, and, if so, a description of the ranking and selection methodology used; and
- (c) any criteria or thresholds used to select financial products and advise on them based on those impacts.

Article 13

Financial adviser statement of no consideration of adverse impacts on sustainability factors

Financial advisers shall publish the information referred to in Article 4(5)(b) of Regulation (EU) 2019/2088 on their websites in a separate section titled, 'No consideration of sustainability adverse impacts'. That section shall start with a prominent statement that the financial adviser

does not consider the adverse impacts of investment decisions on sustainability factors in their investment advice or insurance advice. The clear reasons for why the financial adviser does not do so shall include, where relevant, information on whether and, if so, when it intends to consider such adverse impacts by reference to at least the principal adverse impacts referred to in Table 1 of Annex I.

CHAPTER III
PRE-CONTRACTUAL PRODUCT DISCLOSURE

Section 1

Pre-contractual information for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088

(Article 8(1) and (2) of Regulation (EU) 2019/2088)

Article 14

Presentation of pre-contractual information for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088

Financial market participants shall present the information disclosed in accordance with Article 8(1) and (2) of Regulation (EU) 2019/2088, this Article and Articles 15 to 21 of this Regulation in accordance with the template set out in Annex II. The information shall be presented in summary format in the order and made up of the following sections titled:

- (a) 'Environmental or social characteristics promoted by the financial product';
- (b) 'No sustainable investment objective';
- (c) 'Investment strategy';
- (d) 'Sustainability indicators';
- (e) 'Use of derivatives';
- (f) 'Website reference'; and
- (g) if an index has been designated for the financial product as a reference benchmark, 'Reference benchmark'.

Article 15

Environmental or social characteristics promoted by the financial product

1. The section referred to in point (a) of Article 14 shall contain the following information:
 - (a) a description of the environmental or social characteristics promoted by the financial product;
 - (b) a narrative and graphical representation of the investments of the financial product; and
 - (c) a reference to the webpage where the information referred to in Article 4 is published.
2. For the purposes of point (b) of paragraph 1:
 - (a) the graphical representation shall illustrate the planned proportions of:
 - (i) the total investments that are sustainable investments and, where relevant, the subdivision of those sustainable investments between environmental or social objectives;
 - (ii) the total investments other than those in point (i) that contribute to the attainment of the environmental or social characteristics promoted by the financial product and, where relevant, the subdivision of those investments between environmental or social characteristics; and

(iii) the remainder of the investments.

(b) the narrative explanation shall explain:

- (i) the planned proportions in point (a); distinguishing between direct holdings in investee companies and all other types of exposures to those companies;
- (ii) the purpose of the planned remainder of the investments, including a description of any potential minimum environmental or social safeguards and whether those investments are used for hedging, relate to money market instruments or are investments for which there is insufficient data; and
- (iii) the planned proportion of investments in different sectors and sub-sectors, including the fossil fuel sectors.

Article 16

No sustainable investment objective

1. The section referred to in point (b) of Article 14 shall contain the following statement: "This product does not have as its objective sustainable investment."
2. Where a financial product invests in a sustainable investment, the section shall also contain an explanation of how the sustainable investment does not significantly harm the sustainable investment objectives, including:
 - (a) how the indicators ~~for related to~~ adverse impacts in Annex I at a minimum are taken into account; and
 - (b) how investments that significantly harm the sustainable investment objectives are excluded.

Article 17

Investment strategy

The section referred to in point (c) of Article 14 shall contain the following information:

- (a) a description of the type of investment strategy used to attain the environmental or social characteristics promoted by the financial product, the binding elements of that strategy to select the investments to attain each of those characteristics and how the strategy is implemented in the investment process on a continuous basis;
- (b) where there is a commitment by the financial market participant to reduce by a minimum rate the scope of investments considered prior to the application of the strategy referred to in point (a), an indication of that rate;
- (c) a short description of the policy to assess good governance practices of the investee companies and a reference to the website containing the information referred to in Article 34(e)(ii).

Article 18

Sustainability indicators

The section referred to in point (d) of Article 14 shall contain a list of the sustainability indicators used to measure the attainment of each of the environmental or social characteristics promoted by the financial product.

Article 19

Use of derivatives

The section referred to in point (e) of Article 14 shall contain information on how the use of derivatives within the meaning of Article 2(1)(29) of Regulation (EU) No 600/2014 of the European Parliament and of the Council¹² meets each of the environmental or social characteristics promoted by the financial product.

Article 20

Website reference

The section referred to in point (f) of Article 14 shall contain the following statement: "More product-specific information can be found on the website". The statement shall also contain a reference to the website containing the information referred to in Article 34.

Article 21

Reference benchmark

1. The section referred to in point (g) of Article 14 shall contain the following information:
 - (a) an explanation of how the reference benchmark is continuously aligned with each of the environmental or social characteristics promoted by the financial product and with the investment strategy; and
 - (b) where an index is designated as a reference benchmark that is consistent with each of the environmental or social characteristics promoted by the financial product, an explanation of how the designated index differs from a broad market index.
2. By way of derogation from paragraph 1(a), if the methodology of the reference benchmark is not aligned with an environmental or social characteristic promoted by the financial product, the section shall contain a prominent statement that the reference benchmark is not consistent with the environmental or social characteristics promoted by the financial product.

Article 22

Financial products referred to in Article 8(1) of Regulation (EU) 2019/2088 with underlying investment options

By way of derogation from Articles 14 to 21, where a financial product offers the investor, among other investment options, investment options that qualify that financial product as a financial product referred to in Article 8(1) of Regulation (EU) 2019/2088, the information to be disclosed in accordance with Article 8(1) and (2) of that Regulation shall include:

- (a) the summary list of those investment options; and

¹² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p.84).

- (b) the information provided by those investment options in accordance with Article 8(1) and (2) or Article 9(1) to (4) of Regulation (EU) 2019/2088 with clear indications to which investment options the information relates.

The summary list shall make a clear distinction among those investment options that qualify as financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088 and those investment options that qualify as financial products referred to in Article 8(1) of that Regulation.

The summary list shall include for each of those investment option cross-references to the disclosures required by the sectoral legislation referred to in Article 6(3) of that Regulation.

Section II

Pre-contractual information for financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088

(Article 9(1) to (4) of Regulation (EU) 2019/2088)

Article 23

Presentation of pre-contractual information for financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088

Financial market participants shall present the information disclosed in accordance with Article 9(1) to (4) of Regulation (EU) 2019/2088, this Article and Articles 24 to 31 of this Regulation in accordance with the template set out in Annex III. The information shall be presented in summary format in the order and made up of the following sections titled:

- (a) 'Sustainable investment objective of the financial product';
- (b) 'No significant harm to the sustainable investment objectives';
- (c) 'Investment strategy';
- (d) 'Sustainability indicators';
- (e) 'Use of derivatives';
- (f) 'Website reference';
- (g) for a financial product referred to in Article 9(1) of Regulation (EU) 2019/2088, 'Sustainable investment objective attainment with a designated index'; and
- (h) for a financial product referred to in Article 9(3) of Regulation (EU) 2019/2088, 'Objective of a reduction in carbon emissions'.

Article 24

Sustainable investment objective of the financial product

1. The section referred to in point (a) of Article 23 shall contain the following information:
 - (a) a description of the sustainable investment objective of the financial product;
 - (b) a narrative explanation and a graphical representation of the investments of the financial product; and

(c) a reference to the hyperlink of the webpage where the information referred to in Article 4 is published.

2. For the purposes of point (b) of paragraph 1:

(a) the graphical representation shall illustrate the planned proportion of the total investments that are sustainable investments and, where relevant, the subdivision of those sustainable investments between environmental or social objectives;

(b) the narrative explanation shall explain:

- (i) the planned proportion in point (a) distinguishing between direct holdings in investee companies and all other types of exposures to those companies;
- (ii) the purpose of the planned remainder of the investments, including a description of any minimum environmental or social safeguards, how their proportion and use does not affect the delivery of the sustainable investment objective on a continuous basis and whether those investments are used for hedging, relate to money market instruments or are investments for which there is insufficient data; and
- (iii) the proportion of investments in different sectors and sub-sectors, including the fossil fuel sectors.

Article 25

No significant harm to the sustainable investment objectives

The section referred to in point (b) of Article 23 shall contain an explanation of how the investments of the financial product do not significantly harm the sustainable investment objectives, including:

- (a) how the indicators ~~for-related to~~ adverse impacts in Annex I at a minimum are taken into account as part of the implementation of the entity's due diligence policies; and
- (b) how investments that significantly harm the sustainable investment objectives are excluded.

Article 26

Investment strategy

The section referred to in point (c) of Article 23 shall contain the following information:

- (a) a description of the type of investment strategy used to attain the sustainable investment objective of the financial product, the binding elements of that strategy to select the investments to attain that objective and how the strategy is implemented in the investment process on a continuous basis;
- (b) where there is a commitment by the financial market participant to reduce by a minimum rate the scope of investments considered prior to the application of the strategy referred to in point (a), an indication of that rate;
- (c) a short description of the policy used to assess good governance practices of the investee companies and a reference to the website containing the information referred to in

Article 35(e)(ii);

Article 27
Sustainability indicators

The section referred to in point (d) of Article 23 shall contain a list of the sustainability indicators used to measure the attainment of the sustainable investment objective.

Article 28
Use of derivatives

The section referred to in point (e) of Article 23 shall contain information on how the use of derivatives within the meaning of Article 2(1)(29) of Regulation (EU) No 600/2014 of the European Parliament and of the Council¹³ attains the sustainable investment objective.

Article 29
Website reference

The section referred to in point (f) of Article 23 shall contain the following statement: "More product-specific information can be found on the website". The statement shall also contain a reference to the website containing the information referred to in Article 35.

Article 30
Sustainable investment objective attainment with a designated index

For a financial product referred to in Article 9(1) of Regulation (EU) 2019/2088, the section referred to in point (g) of Article 23 shall contain:

- (a) an explanation of how the taking into account of sustainability factors within the methodology of the reference benchmark is continuously aligned with the sustainable investment objective of the financial product;
- (b) an explanation as to why and how the designated index differs from a broad market index; and
- (c) an explanation of how the alignment of the investment strategy referred to in Article 26 with the methodology of the index is ensured on a continuous basis.

Article 31
Objective of a reduction in carbon emissions

1. For a financial product referred to in Article 9(3) of Regulation (EU) 2019/2088, the section referred to in point (h) of Article 23 shall contain an explanation that the reference benchmark qualifies as an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark under Chapter 3a of Title III of Regulation (EU) 2016/1011 of the European Parliament and of the Council¹⁴.
2. By way of derogation from paragraph 1, where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark in accordance with Regulation (EU) 2016/1011 is available,

¹³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

¹⁴ Regulation (EU) 2016/1011 of the European Parliament and of the Council on on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p.1)

the section referred to in point (h) of Article 23 shall explain that fact and how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming targets of the Paris Climate Agreement. In particular, the financial market participant shall explain how the financial product complies with the methodological requirements set out in Articles 19a, 19b and 19c of Regulation (EU) 2016/1011.

Article 32

Financial products referred to in Article 9(1) to (3) of Regulation (EU) 2019/2088 with underlying investment options

By way of derogation from Articles 23 to 31, where a financial product offers the investor a range of investment options that qualify that financial product as a financial product referred to in Article 9(1), (2) or (3) of Regulation (EU) 2019/2088, the information to be disclosed in accordance with Article 9(1) to (4) of that Regulation shall include:

- (a) the summary list of those investment options; and
- (b) the information provided by those investment options in accordance with Article 9(1) to (4) of Regulation (EU) 2019/2088 with clear indications to which investment options the information relates.

The summary list shall include for each of those investment options cross-references to the disclosures required by the sectoral legislation referred to in Article 6(3) of that Regulation.

CHAPTER IV

WEBSITE PRODUCT DISCLOSURE

(Article 10(1) of Regulation (EU) 2019/2088)

Article 33

Sustainability-related product disclosure section

Financial market participants shall publish the information on their websites in accordance with Article 10(1) of Regulation (EU) 2019/2088 and this Chapter in a section titled 'Sustainability-related disclosures' in the same part of the website as the other information relating to the financial product, including marketing communications. They shall clearly identify the financial product to which the information in the sustainability-related disclosure section relates and prominently display the environmental or social characteristics or the sustainable investment objective of that financial product.

Article 34

Website product disclosure for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088

1. Financial market participants shall publish the information referred to in Article 10(1) of Regulation (EU) 2019/2088 and this Article for each financial product referred to in Article 8(1) of Regulation (EU) 2019/2088. They shall publish that information in the order and made up of the following sections titled:

- (a) 'Summary', which shall contain a summary of the information referred to in this Article that relates to the financial product of a maximum length of two sides of A4-sized paper when printed;

- (b) 'Environmental or social characteristics of the financial product', which shall contain the information referred to in Article 10(1)(a) of Regulation (EU) 2019/2088;
 - (c) 'Proportion of investments' which shall contain the information referred to in Article 15(1)(b);
 - (d) 'No sustainable investment objective', which shall contain the information referred to in paragraph 4;
 - (e) 'Investment strategy', which shall contain a description of the investment strategy referred to in Article 17 and a description of the policy to assess good governance practices of the investee companies referred to in Article 17(c).
 - (f) 'Monitoring of environmental or social characteristics', which shall contain a description of how the environmental or social characteristics referred to in Article 15(1)(a) and the sustainability indicators referred to in Article 18 are monitored throughout the lifecycle of the financial product and the related internal or external control mechanisms;
 - (g) 'Methodologies', which shall contain a description of the methodologies to measure the attainment of the social or environmental characteristics promoted by the financial product using the sustainability indicators referred to in Article 18 and 37(2);
 - (h) 'Due diligence', which shall contain a description of due diligence carried out on the underlying assets of the financial product, including the internal and external controls on that due diligence, bearing in mind the definition of due diligence set out in Article 7 of this Regulation;
 - (i) 'Engagement policies', which shall contain a description of the engagement policies implemented if engagement is part of the environmental or social investment strategy, including any management procedures applicable to sustainability-related controversies in investee companies;
 - (j) 'Data sources and processing', which shall contain a description of:
 - i. the data sources used to attain each of the environmental or social characteristics promoted by the financial product;
 - ii. the measures taken to ensure data quality;
 - iii. how data is processed;
 - iv. the proportion that is estimated;
 - (k) 'Limitations to methodologies and data', which shall contain a description of any limitations to the methodologies referred to in point (g) and the data sources referred to in point (j) as well as how such limitations do not affect the attainment of the environmental or social characteristics promoted by the financial product, including the actions taken to address such limitations; and
 - (l) for financial products with an index designated as a reference benchmark, 'Designated reference benchmark', which shall contain the information referred to in paragraph 4.
2. The summary referred to in point (a) of paragraph 1 shall be provided in at least one of the official languages of the home Member State and, if different, in a language customary in the sphere of international finance.

3. The section referred to in point (d) of paragraph 1 shall contain the following statement: “This product does not have as its objective sustainable investment.” Where a financial product invests in a sustainable investment, the section shall also contain an explanation of how the sustainable investment does not significantly harm the sustainable investment objectives, including:
 - (a) how the indicators for adverse impacts in Annex I at a minimum are taken into account; and
 - (b) how investments that significantly harm the sustainable investment objectives are excluded.
4. The section referred to in point (h) of paragraph 1 shall contain a description of the index designated as a reference benchmark, including the input data, the methodologies used to select that data, the rebalancing methodologies, the underlying components, how the index is calculated and the effect of leverage within the index. In case part or all of that information is published on the website of the administrator of the reference benchmark, a hyperlink may be provided to that information.

Article 35

Website product disclosure for financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088

1. Financial market participants shall publish the information referred to in Article 10(1) of Regulation (EU) 2019/2088 and this Article for each financial product referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088. They shall publish that information in the order and made up of the following sections titled:
 - (a) ‘Summary’, which shall contain a summary of the information referred to in this Article that relates to the financial product of a maximum length of two sides of A4-sized paper when printed;
 - (b) ‘Sustainable investment objective of the financial product’, which shall contain the information referred to in Article 10(1)(a) of Regulation (EU) 2019/2088;
 - (c) ‘Proportion of investments’ which shall contain the information referred to in Article 24(1)(b);
 - (d) ‘No significant harm to the sustainable investment objective’, which shall contain the information referred to in paragraph 3;
 - (e) ‘Investment strategy’, which shall contain a description of the investment strategy referred to in Article 26 and a description of the policy to assess good governance practices of the investee companies referred to in Article 26(c), in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance;
 - (f) ‘Monitoring of sustainable investment objective’, which shall contain a description of how the sustainable investment objective referred to in Article 24(1)(a) and the sustainability indicators referred to in Article 27 and 37(2) are monitored throughout the lifecycle of the financial product and the related internal or external control mechanisms;
 - (g) ‘Methodologies’, which shall contain a description of the methodologies to measure the attainment of the sustainable investment objective using the sustainability indicators referred to in Article 27 and 37(2);

- (h) 'Due diligence', which shall contain a description of due diligence carried out on the underlying assets of the financial product, including the internal and external controls on that due diligence, bearing in mind the definition of due diligence set out in Article 7 of this Regulation;
 - (i) 'Engagement policies', which shall contain a description of the engagement policies implemented if engagement is part of the environmental or social investment strategy, including any management procedures applicable to sustainability-related controversies in investee companies;
 - (j) 'Data sources and processing', which shall contain a description of:
 - i. the data sources used to attain each sustainable investment objectives of the financial product;
 - ii. the measures taken to ensure data quality;
 - iii. how data is processed;
 - iv. the proportion that is estimated;
 - (k) 'Limitations to methodologies and data', which shall contain a description of any limitations to the methodologies referred to in point (g) and the data sources referred to in point (j) as well as how such limitations do not affect the attainment of the sustainable investment objective, including the actions taken to address such limitations; and
 - (l) 'Attainment of the sustainable investment objective', which shall contain the information referred to in paragraph 4.
2. The summary referred to in point (a) of paragraph 1 shall be provided in at least one of the official languages of the home Member State and, if different, in a language customary in the sphere of international finance.
 3. The section referred to in point (d) of paragraph 1 shall contain an explanation of how the investments of the financial product do not significantly harm the sustainable investment objectives, including:
 - (a) how the indicators for adverse impacts in Annex I at a minimum are taken into account; and
 - (b) how investments that significantly harm the sustainable investment objectives are excluded.
 4. The section referred to in point (l) of paragraph 1 shall contain a description of:
 - (a) for a financial product referred to in Article 9(1), the index designated as a reference benchmark, including the input data, the methodologies used to select that data, the rebalancing methodologies, the underlying components, how the index is calculated and the effect of leverage within the index; and
 - (b) for a financial product referred to in Article 9(3), a statement that the reference benchmark qualifies as an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark under Chapter 3a of Title III of Regulation (EU) 2016/1011 of the European Parliament and of the Council¹⁵.

Commented [A20]: Can this be qualified to require that this becomes more than a data scraping exercise and is about active engagement?

¹⁵ Regulation (EU) 2016/1011 of the European Parliament and of the Council on on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending

5. By way of derogation from point (a) of paragraph 4, in case part or all of the information referred to in that point is published on the website of the administrator of the reference benchmark, a hyperlink may be provided to that information.
6. By way of derogation from point (b) of paragraph 4, where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark in accordance with Regulation (EU) 2016/1011 is available, the section referred to in point (l) of paragraph 1 shall explain that fact and how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming targets of the Paris Climate Agreement. In particular, the financial market participant shall explain how the financial product complies with the methodological requirements set out in Articles 19a, 19b and 19c of Regulation (EU) 2016/1011.

CHAPTER V

PRODUCT DISCLOSURE IN PERIODIC REPORTS

(Article 11(1) of Regulation (EU) 2019/2088)

Section 1

Periodic reports for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088

Article 36

Presentation requirements for periodic reports for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088

Financial market participants shall present the information referred to in Article 11(1) of Regulation (EU) 2019/2088, this Article and Articles 37 to 42 of this Regulation in accordance with the templates set out in Annex IV of this Regulation. The information shall be in the order and made up of the following sections titled:

- (a) 'Attainment of the environmental or social characteristics promoted by the financial product';
- (b) 'No significant harm of sustainable investment objectives';
- (c) 'Top investments of the financial product';
- (d) for a financial product with an index designated as a reference benchmark that is not aligned with an environmental or social characteristic promoted by the financial product, 'Sustainable performance of the index designated as a benchmark';
- (e) 'Proportion of sustainability-related investments'; and
- (f) 'Actions taken to attain environmental or social characteristics'.

Article 37

Attainment of the environmental or social characteristics promoted by the financial product

1. The section referred to in point (a) of Article 36 shall contain the following:

- (a) a description of the extent to which the environmental or social characteristics promoted by the financial product were attained during the reference period, including the performance of the sustainability indicators used;
 - (b) where the financial market participant has provided at least one previous periodic report in accordance with this Article for the financial product, a historical comparison between the reference period and previous reference periods.
2. In respect of any additional sustainability indicator excluded from the pre-contractual information provided in accordance with Article 18 or in a previous periodic report provided in accordance with this Article, the section shall also include an explanation and justification of the use of that indicator, including how it is consistent with the environmental or social characteristic promoted by the financial product.

Article 38

No significant harm to sustainable investment objectives

For a financial product with a sustainable investment, the section referred to in point (b) of Article 36 shall contain an explanation of how that sustainable investment has not harmed significantly the sustainable investment objectives during the reference period, including:

- (a) how the indicators ~~for related to~~ adverse impacts in Annex I at a minimum were taken into account; ~~and as part of the implementation of the entity's due diligence policies;~~
- (b) whether any investments were excluded due to their significant harm to the sustainable investment objectives.

Article 39

Top investments of the financial product

1. The section referred to in point (c) of Article 36 shall contain a list, in descending order of size, of the 25 investments constituting on average the greatest proportion of investments of the financial product during the reference period, including the sector and location of those investments.
2. By way of derogation from paragraph 1, where the number of investments constituting on average 50 percent of the investments of the financial product during the reference period is less than 25, a list of those investments, in descending order of size, including the sector and location of those investments.

Article 40

Sustainable performance of the index designated as a benchmark

1. The section referred to in point (d) of Article 36 shall include:
 - (a) an explanation of how the index designated as a reference benchmark differs from a broad market index, including at least the performance during the reference period of the sustainability indicators deemed relevant by the financial market participant to determine the alignment of the index with the sustainable investment objective and the sustainability factors referred to in the benchmark statement of the benchmark administrator in accordance with Article 27(2a) of Regulation (EU) 2016/1011;

- (b) a comparison of the performance during the reference period of the financial product with regard to the indicators measuring the sustainability factors of the index referred to in point (a); and
 - (c) a comparison of the performance during the reference period of the financial product with regard to a relevant broad market index.
2. The comparisons referred to in points (b) and (c) shall be presented in the form of a table or graphical representation.

Article 41

Proportion of sustainability-related investments

The section referred to in point (e) of Article 36 shall contain the following:

- (a) a graphical representation that illustrates the proportions during the reference period of:
 - (i) the total investments that are sustainable investments and, where relevant, the subdivision of those sustainable investments between environmental or social objectives;
 - (ii) the total investments other than those in point (i) that contribute to the attainment of the environmental or social characteristics promoted by the financial product and, where relevant, the subdivision of those investments between environmental or social characteristics; and
 - (iii) the remainder of the investments; and
- (b) a narrative explanation that explains:
 - (i) the proportions in point (a) distinguishing between direct holdings in investee companies and all other types of exposures to those companies;
 - (ii) the purpose of the remainder of the investments during the reference period, including a description of any potential minimum environmental or social safeguards and whether those investments are used for hedging, relate to money market instruments or are investments for which there is insufficient data; and
 - (iii) the proportion of investments during the reference period in different sectors and sub-sectors, including the fossil fuel sectors.

Article 42

Actions taken to attain environmental or social characteristics

The section referred to in point (f) of Article 36 shall contain the actions taken within the reference period to attain the environmental or social characteristics promoted by the financial product, including shareholder engagement as defined in Article 3g of Directive 2007/36/EC and any other relevant shareholder engagement.

Section 2

Periodic reports for financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088

Article 43

Presentation requirements for periodic reports for financial products referred to Article 9(1), (2) and (3) of Regulation (EU) 2019/2088

Financial market participants shall present the information referred to in Article 11(1) of Regulation (EU) 2019/2088, this Article and Articles 43 to 51 of this Regulation in accordance with the templates set out in Annex V of this Regulation. The information shall be in the order and made up of the following sections titled:

- (a) 'Attainment of the sustainable investment objective of the financial product';
- (b) 'No significant harm of sustainable investment objectives';
- (c) 'Top investments of the financial product';
- (d) for a financial product referred to in Article 9(1) of Regulation (EU) 2019/2088, 'Sustainable performance of the index designated as a benchmark';
- (e) for a financial product referred to in Article 9(3) of Regulation (EU) 2019/2088, 'Objective of a reduction in carbon emissions';
- (f) 'Proportion of sustainability-related investments'; and
- (g) 'Actions taken to attain the sustainable investment objective'.

Article 44

Attainment of the sustainable investment objective of the financial product

1. The section referred to in point (a) of Article 43 shall contain the following:
 - (a) a description of the extent to which the sustainable investment objective was attained during the reference period, including the performance of the sustainability indicators used; and
 - (b) where the financial market participant has provided at least one previous periodic report in accordance with this Article for the financial product, a historical comparison between the current reference period and previous reference periods.
2. In respect of any additional sustainability indicator excluded from the pre-contractual information provided in accordance with Article 27 or in a previous periodic report provided in accordance with this Article, the section shall also include an explanation and justification of the use of that indicator, including how it is consistent with the sustainable investment objective.

Article 45

No significant harm to sustainable investment objectives

The section referred to in point (h) of Article 43 shall contain an explanation of how the investments of the financial product have not significantly harmed the sustainable investment objectives during the reference period, including

- (a) how the indicators ~~for-related to~~ adverse impacts in Annex I at a minimum were taken into account as part of the implementation of the entity's due diligence policies; and

- (b) whether any investments were excluded due to their significant harm to the sustainable investment objectives.

Article 46

Top investments of the financial product

1. The section referred to in point (b) of Article 43 shall contain a list, in descending order of size, of the 25 investments constituting on average the greatest proportion of investments of the financial product during the reference period, including the sector and location of those investments.
2. By way of derogation from paragraph 1, where the number of investments constituting on average 50 percent of the investments of the financial product during the reference period is less than 25, a list of those investments, in descending order of size, including the sector and location of those investments.

Article 47

Sustainable performance of the index designated as a benchmark

1. For financial products referred to in Article 9(1) of Regulation (EU) 2019/2088, the section referred to in point (c) of Article 43 shall contain the following:
 - (a) an explanation of how the index designated as a reference benchmark differs from a broad market index, including at least the performance during the reference period of the sustainability indicators deemed relevant by the financial market participant to determine the alignment of the index with the sustainable investment objective, including the ESG factors referred to in the benchmark statement of the benchmark administrator in accordance with Article 27(2a) of Regulation (EU) 2016/1011;
 - (b) a comparison of the performance during the reference period of the financial product with regard to the indicators measuring the sustainability factors of the index referred to in point (a); and
 - (c) a comparison of the performance during the reference period of the financial product with regard to a relevant broad market index.
2. The comparisons referred to in point (b) and (c) shall be made in the form of a table or graphical representation.
3. By way of derogation from point (a) of paragraph 1, if the number of investments constituting on average 50 percent of the investments of the index during the reference period is less than 25, the section referred to in point (c) of Article 43 shall contain a list of those investments, in descending order of size, including the sector and location of those investments.

Article 48

Objective of a reduction in carbon emissions

For a financial product referred to in Article 9(3) of Regulation (EU) 2019/2088, the section referred to in point (e) of Article 43 shall contain a description of the contribution of the financial product during the reference period to achieving the long-term global warming objectives of the Paris Agreement, including in respect of an EU Climate Transition Benchmark or EU Paris-aligned Benchmark, the ESG factors and criteria considered by the benchmark administrator in accordance with Articles 19a to 19d and Article 27(2a) of Regulation (EU) 2016/1011.

Article 49

Proportion of sustainability-related investments

The section referred to in point (f) of Article 43 shall contain the following:

- (i) a graphical representation that illustrates the proportions during the reference period of the total investments that are sustainable investments and, where relevant, the subdivision of those sustainable investments with environmental or social objectives;
- (ii) a narrative explanation that explains:
 - (i) the proportions in point (a) distinguishing between direct holdings in investee companies and all other types of exposures to those companies; and
 - (ii) the purpose of the remainder of the investments during the reference period, including a description of any minimum environmental or social safeguards and whether those investments are used for hedging, relate to money market instruments or are investments for which there is insufficient data; and
 - (iii) the proportion of investments during the reference period in different sectors and sub-sectors, including the fossil fuel sectors.

Article 50

Actions taken to attain the sustainable investment objective

The section referred to in point (g) of Article 43 shall contain the actions taken within the reference period to attain the sustainable investment objective of the financial product, including shareholder engagement as defined in Article 3g of Directive 2007/36/EC and any other relevant shareholder engagement.

Section 3

Historical comparisons for periodic reports

Article 51

Historical comparisons for periodic reports

1. The historical comparisons referred to in Articles 37(1)(b) and 44(1)(b) shall compare the current reference period with previous reference periods that cover at least the shortest of the following:
 - (a) the previous ten years;
 - (b) from the date on which the financial market participant first considered the sustainability indicator reported on; or
 - (c) from 1 January 2022.
2. For the purposes of paragraph 1, financial market participants shall report on the performance of the sustainability indicators consistently over time, including the following information:
 - (a) annual average performance figures net of fees, including an identification of the charges and fees included or excluded from the calculation of performance figures;

- (b) where quantitative disclosures are made, figures with a relative measure such as impact per euro invested;
- (c) whether each indicator is subject to an assurance provided by an auditor or a review by a third party; and
- (d) the proportion of underlying assets of the financial product referred to in Articles 41(b)(ii) and 49(b)(ii).

Article 52

Financial products with underlying investment options

By way of derogation from Articles 36 to 51, financial products that offer the investor investment options referred to in Articles 22 and 32 of this Regulation shall include in the disclosures in accordance with Article 11(1) of Regulation (EU) 2019/2088:

- (a) summary of information provided in accordance with Article 11(1) of Regulation (EU) 2019/2088 by selected investment options that qualify as financial products referred to in Article 8(1) and Article 9(1), (2) and (3) of that Regulation; and
- (b) information provided by those investment options in accordance with Article 11(1) of Regulation (EU) 2019/2088 with clear indications to which investment options the information relates.

CHAPTER VI

FINAL PROVISIONS

Article 53

Transitional provision

In respect of a financial market participant that first considered the principal adverse impacts of its investment decisions before 1 March 2021, from that date until 30 June 2022, by way of derogation from Article 4(1), that financial market participant shall publish the information in Articles 5 to 10 except for the information that relates to a reference period.

Article 54

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from 10 March 2021.
3. By way of derogation from paragraph 2 of this Article, Articles 36 to 52 shall apply from 1 January 2022.

**Annex B. Global Witness, Danish Institute for Human Rights and Business and Human Rights Resource Centre
in consultation with the Responsible Business Conduct Centre of the OECD Secretariat
Submission 1 September 2020**

TABLE 1 Template Principle Adverse Impact Statement

Section 1. Definitions

- *General comment: Annex 1 currently includes few definitions that relate to social and employee matters. In accordance with the recommendations given below, the final definitions included in Annex 1 should be consistent with final social, employee and human rights indicators included and where relevant specify indicator methodologies.*
- Specific recommendations:
 - (v) Human rights policy means a publicly disclosed policy commitment consistent with UN Guiding Principles on Business and Human Rights and approved at the highest level of the investee company covering the activities of the investee company and its business relationships
 - (xx) “in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas” (OECD Minerals Guidance) means that disclosures must consist of information called for in Step 5 of the Supplement on Tin, Tantalum and Tungsten for companies producing or sourcing base metals, and Step 5 of the Supplement on Gold for companies producing or sourcing precious metals or stones. Disclosures must address how the company in question has taken all risks outlined in Annex II of the OECD Minerals Guidance into account in the course of carrying out its due diligence.”

1. Table 1 Principle Adverse Impacts Statement – Re-order

- *We recommend that Table 1 is reordered in alignment with comments and suggestions made to the draft RTS, by moving up to the top of Table 1 the items currently at the bottom of the table and adding 1 more line for the very important descriptions in Article 6. This recommendation is made to ensure better alignment of the table with internationally recognised standards on responsible business conduct and to*

reflect the importance of the financial market participant’s own assessments, policies and actions on principal adverse sustainability impacts. This ordering will also help put the mostly quantitative information from the indicators into context as they will be preceded by a description of the key issues and what the investor is doing to address them. Note also that some of the cross references in the existing Table 1 to RTS articles appear to be incorrect.

Summary
Description of the assessment of principal adverse sustainability impacts (reference to article 6)
Description of policies to assess principal adverse sustainability impacts (reference to article 7)
Description of actions to address principal adverse sustainability impacts (reference to article 8)
Engagement policies (reference to article 9)
Adherence to international standards (reference to article 10)
Historical comparison (reference to article 6.2)
Adverse sustainable indicators

2. Specific Recommendations on changes related to adverse sustainability indicators

Climate and other Environment-Related Indicators
<u>Explanation of Recommendations</u>
<ul style="list-style-type: none"> <i>We note that the environmental section does not include any indicators on environmental policies and management systems and are surprised by this. Both are important in driving company actions to achieve the outcomes included in the indicators - but importantly, also addressing many other environmental impacts that may not rise to the level of PAI but are nonetheless important to address. The EU has its own standard on environmental management systems – the EMAS Regulation, and there are also international standards – ISO 140001. We would suggest consulting with the European Environmental Agency and adding at least one indicator, if not, more on these issues.</i>

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

- General Comment on the grouping of topics: We recognise that the Level 1 text has grouped these issues as “environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery” under the definition of “sustainability factors.” However, we suggest that these could be more logically reorganised to reflect how they are treated under international law by grouping “social and employee matters and respect for human rights” under “human rights” rather than splitting them up. However, to avoid confusion, we have maintained the division in the draft RTS in our comments.*

Social and Employee Matters - Mandatory	
ESA Draft KPIs <i>(*the numbers indicate the numbering assigned in the draft Annex to the RTS)</i>	Recommendations
<p><u>Explanation of Recommendations</u></p> <p>We recommend revising this section as follows:</p> <ul style="list-style-type: none"> • We are suggesting that you use the term “workers” rather than “employees” as companies use an increasing range of contracting arrangements with workers so not all are “employees” but nonetheless are covered by human rights and labour rights protections. • Due diligence, including of impacts that relate to workers, is covered in the human rights section below; we suggest instead that the initial indicator focuses on a commitment to respect the human rights of workers. This includes some corrections on the appropriate references as well. • We are suggesting indicators that correspond to (i) the 4 ILO Core Standards areas (which are then covered in the 8 ILO Conventions referenced): freedom of association and collective bargaining, forced labour, child labour and discrimination; (ii) Wages (regrouping indicators on pay) and (iii) health and safety as these are all core issues for workers. A few comments in relation to these indicators: <ul style="list-style-type: none"> ○ We have suggested dropping the indicator on trafficking as this is likely to catch only a very narrow sub-set of workers and instead have suggested an indicator on forced labour that highlights the key risk that traps workers in conditions of forced labour and trafficking: the payment of recruitment fees to get a job. The indicator asks for information that is straightforward to collect. Because forced labour is prohibited, collecting information on the practice is not straightforward. ○ On child labour, we are concerned about the unintended consequences of potentially driving much needed investment out of countries, regions and sectors with higher risks of child labour and instead have tried to focus on steps to be taken when companies are operating or sourcing from those areas. ○ On discrimination, we suggest regrouping and modifying some of the existing related indicators under this heading. ○ We are also suggesting reframing the indicators on pay and wages to address both ends of the pay spectrum: (i) a limit on top pay for CEOs; and (ii) lifting of pay on the bottom. ○ Health and safety on the job is such a core issue for workers that we are suggesting that it is moved from optional to mandatory. ○ We have also added an additional mandatory indicator on working hours. • We have suggested a framing for many of the indicators based on two parts: (i) a requirement that the information is publicly disclosed in order to drive further transparency around how companies and in turn investors are managing PAI; and (ii) a substantive requirement indicating the information to be disclosed that reflects a company’s policies/practices/procedures. Care should be taken in framing the final indicators that they do not become Y/N just about whether there is disclosure on a topic but instead about disclosure of meaningful information. • Where possible, we have indicated the sources for indicators. 	

	<u>Recommended Revisions to Indicators</u>
<p>17. Implementation of fundamental ILO Conventions</p> <ul style="list-style-type: none"> ○ Share of investments in entities without due diligence policies on issues addressed by the fundamental ILO Conventions 1 to 8 ○ Share of investee companies without due diligence policies on issues addressed by the fundamental ILO Conventions 1 to 8 	<p>1. Commitment to and Implementation of fundamental ILO Conventions</p> <ul style="list-style-type: none"> - Share of investments in entities / share of investee companies that do not publicly disclose a policy commitment that commits the company to respect the human rights of workers (employees and other workers) covered by the ILO Core Labour Standards (set out in the ILO Declaration on Fundamental Principles and Rights at Work)* <ul style="list-style-type: none"> ○ Source: https://www.ilo.org/declaration/lang--en/index.htm ○ <i>*Note that this commitment may be a part of a broader human rights policy commitment covered below</i>
	<p>2. Freedom of Association and Collective Bargaining</p> <ul style="list-style-type: none"> - Percentage of investee company workforce whose terms and conditions of work are not covered by collective bargaining agreements compared with the industry average - Average trade union density rate in investee companies <ul style="list-style-type: none"> ○ Source: ILOSTAT: (https://ilostat.ilo.org/resources/methods/description-industrial-relations)
<p>25. Processes and measures for preventing trafficking in human beings</p> <ul style="list-style-type: none"> ● Share of investments in investee companies / all investments without policies against trafficking in human beings ● Share of all investments exposed to entities without international framework agreements combating trafficking in human beings 	<p>3. Forced Labour</p> <ul style="list-style-type: none"> - Share of investments in entities / Share of investee companies that do not publicly state [disclose] that they pay the costs of recruitment (i.e., recruitment fees and related costs) for workers to get a job ("Employer Pays Principle"). <ul style="list-style-type: none"> ○ Source: ILO: <i>General Principles and Operational Guidelines For Fair Recruitment (2019)</i>

<p>27. Operations and suppliers at significant risk of incidents of forced or compulsory labour</p> <ul style="list-style-type: none"> ● Operations and suppliers at significant risk of incidents of forced or compulsory labour ● Share of the investments in investee companies / share of all investments exposed to operations and suppliers at significant risk of incidents of forced or compulsory labour in terms in terms of geographic areas and/or the type of operation 	
<p>26. Operations and suppliers at significant risk of incidents of child labour</p> <ul style="list-style-type: none"> ● Share of the investments in investee companies exposed to operations and suppliers at significant risk of incidents of child labour exposed to hazardous work in terms of geographic areas or type of operation ● Share of investee companies exposed to operations and suppliers at significant risk for incidents of child labour exposed to hazardous work in terms of geographic areas or type of operation 	<p>4. Child Labour</p> <ul style="list-style-type: none"> - Share of investments in investee companies / Share of investee companies with operations or suppliers at significant risk of hazardous child labour that do not disclose that they carry out due diligence to identify and respond to hazardous child labour <ul style="list-style-type: none"> ○ <i>Source: https://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm</i>
<p>20. Board gender diversity</p>	<p>5. Discrimination</p>

<p>-</p>	<ul style="list-style-type: none"> - Average ratio of female to male board members disclosed by investee companies - Average ratio of female to male senior managers (CEO -1) disclosed by investee companies <ul style="list-style-type: none"> o <i>Source: SDG Indicator 5.5.2</i>
<p>18. Gender pay gap</p> <ul style="list-style-type: none"> o Average gender pay gap of investee companies <p>19. Excessive CEO pay ratio</p> <ul style="list-style-type: none"> o Average ratio within investee companies of the annual total compensation for the highest compensated individual to the median annual total compensation for all employees (excluding the highest-compensated individual) 	<p>6. Pay and Wages</p> <ul style="list-style-type: none"> - Average ratio disclosed by investee companies of the annual total compensation for the highest compensated individual to the median annual total compensation for all employees (excluding the highest-compensated individual) - Average gender pay gap disclosed by investee companies - Share of investments in investee companies / Share of investee companies that do not publicly disclose a policy commitment that commits the company to pay a living wage, supported by description of the methodology used to determine living wage <p><i>To Consider:</i></p> <ul style="list-style-type: none"> - Average pay gaps on the basis of race, sexual orientation, age and disability (<i>We suggest a discussion with the EU Fundamental Rights Agency (member of the Sustainable Finance Platform) to discuss appropriate formulation of this and other discrimination indicators, bearing in mind that they need to work for companies both within and outside the EU</i>)
<p>22. Investment in investee companies without workplace accident prevention policies</p> <ul style="list-style-type: none"> o Share of investments in investee companies without a workplace accident prevention policy o Share of investee companies without a workplace accident prevention policy <p>Additional Indicator 1.</p> <ul style="list-style-type: none"> ● Number of days lost for injuries, accidents, fatalities, illness <ul style="list-style-type: none"> ● Number of workdays lost to injuries, accidents, fatalities, illness of investee companies 	<p>7. Health and Safety</p> <ul style="list-style-type: none"> - Share of investments in investee companies / Share of investee companies that have not disclosed that they have implemented an occupational health and safety management system <p><i>Note: GRI has recently updated its reporting requirements on OHSMS and has a range of indicators that have been subject to extensive multistakeholder consultation and expert input. We suggest that you use the GRI indicators to ask about reporting on health and safety – see 403-9 and 403-10:</i></p> <ul style="list-style-type: none"> o https://www.globalreporting.org/standards/media/1910/gri-403-occupational-health-and-safety-2018.pdf

<p>Additional Indicator 2.</p> <ul style="list-style-type: none"> ● Number/rate of accidents, injuries, fatalities, frequency <ul style="list-style-type: none"> ● Number/rate of accidents, injuries, fatalities frequency in investee companies 	
	<p>8. Working Hours</p> <p><i>Note: we recommend that an indicator on working hours is included. We did not have time to reach out to the ILO, but suggest you do so to discuss a potential indicator, while being careful that the indicator chosen should not drive a reduction of hours that result in reduction of worker income. For inspiration see: https://ilostat.ilo.org/resources/methods/description-hours-of-work/</i></p>

Human Rights – Mandatory	
<u>ESA Draft KPIs</u>	<u>Recommendations</u>
	<p><u>Explanation of Recommendations</u></p> <ul style="list-style-type: none"> ● <i>We have suggested a re-organisation of the human rights section to focus primarily on the three core process steps of the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines on Multinational Enterprises (OECD Guidelines) that support companies and investors in meeting the corporate responsibility to respect human rights, a global expectation for all companies: (i) policy commitment to respect human rights; (ii) due diligence processes; and (iii) access to remedy; for measurability sake this focuses on information around grievance mechanisms, rather than more detailed information on remediation, which is nevertheless a key part of access to remedy in line with international standards. As these three steps are core to a robust approach to human rights, we are recommending that all three are included as mandatory indicators.</i> ● <i>As a number of the other indicators that were previously in this section addressed the rights of workers covered in ILO Core Labour Standards, they have been moved to the Section above on Social and Employee Matters. We have also included additional indicators on the human rights of other groups besides workers in the optional indicators below.</i> ● <i>In addition, the mandatory indicators below cover investee company human rights due diligence processes; these processes should pick up the most severe human rights that an investee company may impact and hence the indicators ask about whether investee companies are putting in place due diligence processes and using those to identify the rights they may impact, which may go beyond the human rights included in the mandatory or optional PAI indicators.</i> ● <i>Engaging stakeholders in human rights due diligence is integral to ensuring relevant outcomes and is central in both UNGPs and OECD Guidelines. For this reason we suggest a mandatory indicator on stakeholder engagement.</i>

- Given the often deeply integrated nature of many businesses in and using global supply chains, and the fact that risks to human rights are often in supply chains and other business relationships, we think it is important to reflect that reality in the mandatory indicators. We recommend incorporating 2 indicators on due diligence on supply chains/other business relationships. Due diligence should cover both a company's own operations and its supply chains and other business relationships, but by breaking it out, this gives appropriate attention to these risk areas.
- The indicator on Whistleblower Protection is more appropriate for the section on Anti-bribery and Corruption. These types of mechanisms can be adapted to dealing with human rights (including workers' rights) complaints, but often are not, so it is better to separate the two types of mechanisms to avoid confusion.

<p>23. Human rights policy</p> <ul style="list-style-type: none"> • Share of investments in entities without a human rights policy • Share of investee companies without a human rights policy 	<p>1. Human Rights Policy</p> <ul style="list-style-type: none"> - Share of investments in entities /Share of investee companies without a publicly disclosed policy commitment to respect human rights* <ul style="list-style-type: none"> ○ <i>*Note that committing to respect the human rights of workers is covered above – the two policy commitments may be combined into one document</i> ○ <i>Source: UNGPs and OECD Guidelines</i>
<p>24. Due diligence</p> <ul style="list-style-type: none"> • Share of investments in entities without a due diligence process to identify, prevent, mitigate and address adverse human rights impacts • to identify, prevent, mitigate and address adverse human rights impacts <p>Additional Indicator 3 Supplier code of conduct</p> <ul style="list-style-type: none"> • Share of investments in investee companies without any supplier code of conduct (against unsafe working conditions, precarious work, child labour and forced labour) • Percentage of specific control and/or certified compliance for 	<p>2. Due Diligence</p> <ul style="list-style-type: none"> - Share of investments in entities / Share of investee companies without publicly disclosed description of due diligence processes to identify, prevent, mitigate and account for adverse human rights impacts in their own operations - Share of investments in entities / Share of investee companies without publicly disclosed description of due diligence processes to identify, prevent, mitigate and account for adverse human rights impacts in business relationships, including supply chains - Share of investments in entities / Share of investee companies that do not disclose their most severe human rights risks (potential impacts) and/or actual impacts across their own operations and in their business relationships, including supply chains - Share of investments in entities / Share of investee companies that do not disclose action taken to prevent, mitigate and account for [or address] the risks and impacts identified in their own operations - Share of investments in entities / Share of investee companies that do not disclose action taken to prevent, mitigate and account for [or address] the risks and impacts identified in business relationships, including supply chains

<p>this code of conduct among suppliers of investee companies</p>	<ul style="list-style-type: none"> ○ <i>Source: RTS Art. 6-8</i> ○ <i>Source: UNGPs and OECD Guidelines</i>
<p>Additional Indicator 4. Grievance/complaints handling mechanism</p> <ul style="list-style-type: none"> ● Share of investments in investee companies without any grievance/complaints handling mechanism ● Share of investee companies without any grievance/complaints handling mechanism <p>28. Number and nature of identified cases of severe human rights issues and incidents</p> <ul style="list-style-type: none"> ● Number and nature of identified cases of severe human rights issues and incidents ● Number and nature of cases of severe human rights issues and incidents connected to investee companies 	<p>3. Grievance Mechanisms</p> <ul style="list-style-type: none"> - Share of investments in entities/ share of investee companies that do not disclose that they have (an) operational-level grievance mechanism(s) open to internal and external stakeholders that accepts human rights grievances - Share of investments in entities/ share of investee companies that do not disclose that they track the effectiveness of their grievance mechanism and do not provide examples of grievances resolved
	<p>4. Stakeholder Engagement</p> <ul style="list-style-type: none"> - Share of investments in entities/ share of investee companies that do not disclose a description of their approach to engaging with potentially affected and affected stakeholders and their representatives
<p>29. Exposure to controversial weapons (land mines and cluster bombs)</p> <ul style="list-style-type: none"> ● Exposure to controversial weapons (land mines and cluster bombs) 	<p>6. Controversial Weapons</p> <ul style="list-style-type: none"> - Share of investments in entities / share of investee companies involved in the manufacture, selling or trading of controversial weapons (land mines and cluster bombs)

<ul style="list-style-type: none"> Any investment in entities involved in the manufacture or selling of controversial weapons (land mines and cluster bombs) 	
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Human Rights – Additional Indicators

ESA Draft KPIs	Recommendations
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Explanation of Recommendations

- Given the wide range of human rights, it is challenging to develop indicators beyond those applicable to workers’ rights that would be relevant to a very wide range of circumstances, but we have suggested a set of optional human rights indicators in the table below covering a range of human rights that are often affected by business operations and are often connected to impacts on other stakeholder groups including communities or consumers. They by no means cover the full range of human rights but seek to bridge the gap in a practical way between indicators focused only on impacts on workers and a far wider set of indicators that are available for example from the Global Reporting Initiative, the Corporate Human Rights Benchmark, Know the Chain, etc.*
- The suggested optional indicators are grouped by affected stakeholder groups commonly impacted: communities, consumers and workers.*

Communities	<ul style="list-style-type: none"> - Share of investments in entities/ share of investee companies without publicly disclosed policies and procedures to identify and prevent or mitigate adverse impacts on the legitimate land tenure rights of communities’ and indigenous peoples’ when acquiring or using land - <i>Additional water indicator to add to the indicators in the environmental section:</i> Share of investments in entities/ share of investee companies that do not publicly disclose how they address community water use in areas of water-stress or shared water sources - Share of investments in entities/ share of investee companies with activities/operations affecting indigenous peoples directly without consultation and free, prior and informed consent - Share of investments in entities / share of investee companies that produce or source minerals or metals, or products containing mineral-derivative inputs, that do not publicly disclose due diligence practices in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (“the OECD Minerals Guidance”) - Share of investments in entities/ share of investee companies without a public commitment to not tolerating (zero tolerance) of threats, intimidation, physical or legal attacks against human rights defenders
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Consumers	<ul style="list-style-type: none"> - Share of investments in entities/ share of investee companies without publicly disclosed policies and procedures to protect personal data / privacy
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	<ul style="list-style-type: none"> - Share of investments in entities/ share of investee companies without publicly disclosed policies and procedures to avoid adverse health and safety impacts associated with use of products - Share of investments in entities/ share of investee companies without publicly disclosed policies and procedures to ensure anti-discrimination in marketing of products
Workers	<ul style="list-style-type: none"> - Annual average of workforce that is contracted through indefinite contracts, temporary contracts and part-time contracts by sex, [age] and professional classification
<p>5. Incidents of discrimination</p> <ul style="list-style-type: none"> - Number of incidents of discrimination reported in investee companies - Number of incidents of discrimination leading to sanctions in investee companies 	<p><i>Comment: This is likely to create perverse incentives – i.e. companies seeking to report 0 incidents that intimidate or retaliate against workers who bring these kinds of claims. There are also likely to be significant cultural and regional differences about whether these kinds of incidents are reported.</i></p> <p><i>We did not have time to reach out to the EU Fundamental Rights Agency (member of the Platform on Sustainable Finance) but suggest you do so to discuss an alternative indicator and/or other indicators that could be used to assess discrimination, while remembering that the indicator(s) has to work for companies inside and outside the EU, and to be mindful of perverse incentives.</i></p>
<p>Lack of separation of CEO and Chair functions on the boards of investee companies</p> <ul style="list-style-type: none"> - Share of investments in investee companies without separate CEO and Chair functions - Share of investee companies without separate CEO and Chair functions 	No comment
<p>Social securities</p> <ul style="list-style-type: none"> - Share of securities not certified as social - Share of securities in investments not certified as social 	We do not understand what this indicator is supposed to cover – needs to be clarified or deleted

Anti-corruption and anti-bribery - Mandatory	
ESA Draft KPIs	Recommendations
<p><u>Explanation of Recommendations:</u></p> <ul style="list-style-type: none"> <i>We suggest moving the Whistleblower indicators to this section as whistleblower lines are typically set up to address non-compliance with internal policies and laws. We have added text on the protections that should be included in the Whistleblower Policies</i> 	
<p>30. Anti-corruption and anti-bribery policies</p> <ul style="list-style-type: none"> ● Share of investments in entities without policies on anti-corruption and anti-bribery consistent with the United Nations Convention against Corruption ● Share of investee companies without policies on anti-corruption and bribery consistent with the United Nations Convention against Corruption 	<p>Anti-corruption and anti-bribery policies</p> <ul style="list-style-type: none"> - Share of investments in entities / Share of investee companies without publicly disclosed policies on anti-corruption and anti-bribery consistent with the United Nations Convention against Corruption - Share of investments in entities / Share of investee companies without oversight of and compliance programmes to prevent and detect corruption and bribery
<p>31. Cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery</p> <ul style="list-style-type: none"> ● Share of investments in investee companies with identified insufficiencies in actions taken to address breaches in procedures and standards of anti-corruption and anti-bribery ● Share of investee companies with insufficiencies in actions taken to address breaches in procedures and standards of anti-corruption and anti-bribery 	<ul style="list-style-type: none"> - Share of investments in entities / Share of investee companies that do not monitor its anti-corruption-anti-bribery programme and disclose information on the results of actions taken to address breaches in anti-corruption and anti-bribery internal controls/compliance programmes and/or measures for preventing and detecting corruption and bribery

<p>32. Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws</p> <ul style="list-style-type: none"> ● Numbers of convictions and amount of fines for violations of anti-corruption and anti-bribery laws by investee companies 	<p>- Numbers of convictions and non-trial resolutions and amount of fines for violations of anti-corruption and anti-bribery laws by investee companies</p>
<p>21. Insufficient whistleblower protection</p> <ul style="list-style-type: none"> ● Share of investments in entities without policies on the protection of whistleblowers ● Share of investee companies without policies on the protection of whistleblowers 	<p>Insufficient whistleblower protection</p> <p>- Share of investments in entities / share of investee companies without publicly disclosed whistleblowing policies that guarantee confidentiality, anonymity and protection against retaliation</p>