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| 5 November 2020 |

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| Response form for the Consultation Paper on the Draft advice to European Commission under Article 8 of the Taxonomy Regulation |
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| Date: 5 November 2020 |

**Responding to this paper**

ESMA invites responses to the questions set out throughout this Consultation Paper and summarised in Annex II. Responses are most helpful if they:

* respond to the question stated and indicate the specific question to which they relate;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **4 December 2020**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

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

* Insert your responses to the consultation questions in the form “Response form\_Consultation Paper on TR Article 8 advice”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) → ‘Your input – Open consultations’ → ‘Consultation on advice under Taxonomy Regulation Article 8’).
* Please do not remove tags of the type <ESMA\_QUESTION\_TRART8\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* 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.
* When you have drafted your response, name your response form according to the following convention: ESMA\_TRART8\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TRART8\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ → ‘Consultation on advice under Taxonomy Regulation Article 8’).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. If you do not wish for your response to be publicly disclosed, please clearly indicate this by ticking the appropriate box on the website submission page. 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 ESMA’s rules on 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 ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This Consultation Paper may be of particular interest to non-financial undertakings and asset managers covered by Article 8 of Regulation (EU) 2020/852 (the ‘Taxonomy Regulation’) as well as to investors and other users of non-financial information

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | REPSOL S.A |
| Activity | Issuer/ Non-Financial Undertaking |
| Are you representing an association? |[ ]
| Country/Region | SPAIN |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_TRART8\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_TRART8\_1>

1. For this KPI, do you agree with the proposed approach to defining turnover (bullet a in the draft advice)?

<ESMA\_QUESTION\_TRART8\_1>

We do agree as it is consistent with Accounting Directive and IFRS standards

<ESMA\_QUESTION\_TRART8\_1>

1. For this KPI, do you agree with the proposed approach to when turnover can be counted (bullet b in the draft advice)?

<ESMA\_QUESTION\_TRART8\_2>

We do agree, but more clarification on environmental objective climate change adaptation is needed. <ESMA\_QUESTION\_TRART8\_2>

1. For this KPI, do you agree with the proposed approach to defining CapEx (bullet a in the draft advice)?

<ESMA\_QUESTION\_TRART8\_3>

More clarification on rights of use (leases) is needed, those intangibles that should be excluded (Goodwill).

<ESMA\_QUESTION\_TRART8\_3>

1. For this KPI, do you agree with the proposed approach to when CapEx can be counted, including the definition of ‘plan’ (bullet b in the draft advice)?

<ESMA\_QUESTION\_TRART8\_4>

We believe that not timeframe thresholds should be defined as the transition to a decarbonized world will take investments for more than 5 year span. Perhaps the correct approach on the Plan is not to be on a formal Plan but in a broader sense of complying with defined and public goals and metrics.

<ESMA\_QUESTION\_TRART8\_4>

1. For this KPI, do you agree with the proposed approach to defining OpEx (bullet a in the draft advice)?

<ESMA\_QUESTION\_TRART8\_5>

We agree.

<ESMA\_QUESTION\_TRART8\_5>

1. For this KPI, do you agree with the proposed approach to when OpEx can be counted, including the definition of ‘plan’ (bullet b in the draft advice)? With reference to the TEG’s inclusion of the words “if relevant” in relation to OpEx, in which situations should it be possible to count OpEx as Taxonomy-aligned?

<ESMA\_QUESTION\_TRART8\_6>

Regarding the definition of a Plan see answer #4.

<ESMA\_QUESTION\_TRART8\_6>

1. Do you believe that any of the suggested approaches covered in questions 1 to 6 above will impose additional costs on non-financial undertakings? If yes, please specify the type of those costs, including whether they are one-off or ongoing, and provide your best quantitative estimate of their size.

<ESMA\_QUESTION\_TRART8\_7>

Reporting alignment with the taxonomy will incur additional cost for all companies. These new reporting requirements require a great effort to adapt all internal processes to these new requirements. From the point of view of meeting the technical requirements of the Taxonomy, it will be necessary to carry out a bottom-up evaluation of all the assets of a Company, since it is possible that for the same activity, some assets meet the requirements and others don't. From the point of view of financial KPIs, it is necessary to adapt the Company's accounts to this new requirements.

All these processes will be especially challenging for companies in transition where each new project will have to be evaluated in its individual basis.

Additionally, it must be taken into account that the technical criteria will evolve and new activities will be included. This will suppose companies an effort, every year, to align their report with the Taxonomy.

Al these new requirements will collide with the rest of financial and non-financial information. So the already collapsed reporting processes will be added a new requirement that will bring additional personnel, IT and supervision cost.

<ESMA\_QUESTION\_TRART8\_7>

1. Do you agree that sectoral specificities should not be addressed in the advice, as proposed in Section 3.2.3?

<ESMA\_QUESTION\_TRART8\_8>

We agree that sectoral specificities should not be addressed in the advice, and therefore regulated. However, we consider it convenient that the Companies have the option of reporting these sector specificities in the complementary information to the KPIs. For companies in transition, this type of sector information can help investors understand the position of the Company with respect to its peers, and thus facilitate investment decisions.

<ESMA\_QUESTION\_TRART8\_8>

1. Do you agree with the requirements for accompanying information which ESMA has proposed for the three KPIs?

<ESMA\_QUESTION\_TRART8\_9>

We agree that it is necessary to report complementary information on the methodologies and the context which helps investors to better understand the KPIs.

However, the degree of detail required for this task should be established. For companies in transition, the alignment with the Taxonomy will involve an exercise in detail, which will require an evaluation of all activities and sub-activities, asset by asset, in a bottom-up aproach. For this reason, we consider that the complementary information should be reported in an aggregated way for KPI at company level. This will provide investors with homogeneous information that allows them to make comparisons between companies. Furthermore, we believe that any reporting requirements for accompanying information should ensure flexibility while ensuring consistency with the NFRD, avoiding excessive or duplicate reporting obligations on non-financial corporations.

Due to the heavy reporting burden added by the Taxonomy Regulation, we agree to the "comply by reference" proposal. Additionally, about the location of the information, we understand that the KPIs and the calculation methodology should be reported in the Financial Statements, while the information regarding the context should be reflected in the non-financial statements.

Regarding the recommendation to establish objectives for these KPIs (even if it is voluntary), we believe that it exceeds the mandate of Article 8.

<ESMA\_QUESTION\_TRART8\_9>

1. Do you consider that the requirement to refer to the relevant line item(s) in the financial statements for each KPI ensures sufficient integration between the KPIs and the financial statements?

<ESMA\_QUESTION\_TRART8\_10>

Yes, we agree with the proposed approach

<ESMA\_QUESTION\_TRART8\_10>

1. Do you agree with ESMA’s suggestion to permit compliance by reference, so that non-financial undertakings may present the accompanying information elsewhere in the non-financial statement than in the immediate vicinity of the KPIs, as long as they provide a hyperlink to the location of the accompanying information?

<ESMA\_QUESTION\_TRART8\_11>

Yes, we agree with this approach as it provides a flexible approach

<ESMA\_QUESTION\_TRART8\_11>

1. Do you consider there are additional topics that should be considered by ESMA in order to specify the content of the three KPIs? If yes, please elaborate and explain the relevance of these topics.

<ESMA\_QUESTION\_TRART8\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_12>

1. Do you believe that providing the suggested accompanying information will impose additional costs on non-financial undertakings? If yes, please specify the type of those costs, including whether they are one-off or on-going, and provide your best quantitative estimate of their size.

<ESMA\_QUESTION\_TRART8\_13>

Reporting alignment with the taxonomy will incur additional cost for all companies. These new reporting requirements require a great effort to adapt all internal processes to these new requirements. From the point of view of meeting the technical requirements of the Taxonomy, it will be necessary to carry out a bottom-up evaluation of all the assets of a Company, since it is possible that for the same activity, some assets meet the requirements and others don't. From the point of view of financial KPIs, it is necessary to adapt the Company's accounts to this new requirements.

All these processes will be especially challenging for companies in transition where each new project will have to be evaluated in its individual basis.

Additionally, it must be taken into account that the technical criteria will evolve and new activities will be included. This will suppose companies an effort, every year, to align their report with the Taxonomy.

Al these new requirements will collide with the rest of financial and non-financial information. So the already collapsed reporting processes will be added a new requirement that will bring additional personnel, IT and supervision cost.

<ESMA\_QUESTION\_TRART8\_13>

1. Do you agree that non-financial undertakings should provide the three KPIs per economic activity and also provide a total of the three KPIs at the level of the undertaking / group? If not, please provide your reasons and address the impact of your proposal to financial market participants along the investment chain.

<ESMA\_QUESTION\_TRART8\_14>

We do not agree. We would rather Approach 1 shown in paragraph 125 in the consultation paper as simplicity must be the main principle for the users of the information. Non-financial undertakings should disclose the KPIs only as a total across all the undertaking’s economic activities.

We believe that the information reported should be as simple as possible to make it easier for investors to make comparisons between companies.

<ESMA\_QUESTION\_TRART8\_14>

1. Do you agree that where an economic activity contributes to more than one environmental objective, non-financial undertakings should explain how they allocated the turnover / CapEx / OpEx of that activity across environmental objectives and where relevant the reasons for choosing one objective over another?

<ESMA\_QUESTION\_TRART8\_15>

We agree that it is necessary to avoid double counting. In this sense, we consider that a brief explanation could be included in the KPIs calculation methodology at company level. However, we cannot agree to report this information on an activity-by-activity basis as it would make the report much more complex. <ESMA\_QUESTION\_TRART8\_15>

1. Do you agree that non-financial undertakings should provide information on enabling and transitional activities?

<ESMA\_QUESTION\_TRART8\_16>

At Repsol, we have the ambition to be a net zero emissions company by 2050. In this sense, we believe that transition and enablement activities will play a crucial role in helping the EU meet its climate and energy targets. However, the EU Taxonomy, as defined by TEG, proposes very demanding limits misaligned with the current reality of the industry. More incentives need to be provided for high-emitting industries and companies to lower their emissions.

<ESMA\_QUESTION\_TRART8\_16>

1. Do you agree that the three KPIs should be provided per environmental objective as well as a total at undertaking or group level across all objectives? If not, please provide your reasons and address the impact of your proposal to financial market participants along the investment chain.

<ESMA\_QUESTION\_TRART8\_17>

We do agree with this approach as it will provide investors with more detailed information.

<ESMA\_QUESTION\_TRART8\_17>

1. Do you agree that non-financial undertakings should be required to provide the three KPIs for economic activities which are covered by the Taxonomy, economic activities which are covered by the Taxonomy but for which the relevant criteria are not met and therefore are not Taxonomy-aligned as well as for economic activities which are not covered by the Taxonomy?

<ESMA\_QUESTION\_TRART8\_18>

We consider that in order to simplify the report and make the information reported easier and more affordable for investors, only the activities included in the Taxonomy that comply with the established limits should be reported.

<ESMA\_QUESTION\_TRART8\_18>

1. Do you agree with the proposal not to require retroactive disclosure concerning the four environmental objectives relating to the financial year 2021?

<ESMA\_QUESTION\_TRART8\_19>

We agree with the proposal not to require retroactive disclosure of the four environmental targets related to fiscal year 2021. The exercise of alignment with the Taxonomy will require a big effort on reporting for companies during the first years, especially in adaptation of internal process to comply with this new requirements. So we appreciate, the proposal not to require retroactive disclosures.

Another option could be a phased approach, to allow companies to adapt their internal process to comply with Article 8 of the Taxonomy Regulation. Given that the delegated acts are to be published at the end of 2020 and during 2021, Commission should give Companies a period of at least one year to adapt. That is to say, that the alignment with the Taxonomy begins to be reported for the year 2022 when the legislative process is completed.

<ESMA\_QUESTION\_TRART8\_19>

1. Do you consider that there are specific elements in ESMA’s draft advice which are not in line with the information needed by financial market participants in order to comply with their own obligations under the Taxonomy Regulation and the SFDR? If yes, please specify in your answer.

<ESMA\_QUESTION\_TRART8\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_20>

1. Are there points that should be addressed in ESMA’s advice in order to facilitate compliance of financial market participants across the investment chain? If yes, please specify.

<ESMA\_QUESTION\_TRART8\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_21>

1. Do you believe that ESMA’s detailed proposals under Section 3.3 will impose additional costs on non-financial undertakings? If yes, please specify the type of those costs, to which specific proposal they relate including whether they are one-off or on-going, and provide your best quantitative estimate of their size.

<ESMA\_QUESTION\_TRART8\_22>

Reporting alignment with the taxonomy will incur additional cost for all companies. These new reporting requirements require a great effort to adapt all internal processes to these new requirements. From the point of view of meeting the technical requirements of the Taxonomy, it will be necessary to carry out a bottom-up evaluation of all the assets of a Company, since it is possible that for the same activity, some assets meet the requirements and others don't. From the point of view of financial KPIs, it is necessary to adapt the Company's accounts to this new requirements.

All these processes will be especially challenging for companies in transition where each new project will have to be evaluated in its individual basis.

Additionally, it must be taken into account that the technical criteria will evolve and new activities will be included. This will suppose companies an effort, every year, to align their report with the Taxonomy.

Al these new requirements will collide with the rest of financial and non-financial information. So the already collapsed reporting processes will be added a new requirement that will bring additional personnel, IT and supervision cost.

<ESMA\_QUESTION\_TRART8\_22>

1. Do you consider there are additional topics that should be considered by ESMA in order to specify the methodology that non-financial undertakings should follow? If yes, please elaborate and explain the relevance of these topics.

<ESMA\_QUESTION\_TRART8\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_23>

1. Do you agree that in order to ensure the comparability of the information disclosed under Article 8(2) of the Taxonomy Regulation and as such facilitate its usage, ESMA should propose the use of a standardised table?

<ESMA\_QUESTION\_TRART8\_24>

We agree with the proposal to have a standardized reporting table that helps companies to simplify the reporting process.

<ESMA\_QUESTION\_TRART8\_24>

1. Do you consider that the standard table provided in Annex III of this Consultation Paper is fit for purpose? Do you think the standard table provides the right information, taking into account the burden on non-financial undertakings of compiling the data versus the benefit to users of receiving the data? If not, please explain and provide alternative suggestions to promote the standardisation of the disclosure obligations pursuant to Article 8 of the Taxonomy Regulation.

<ESMA\_QUESTION\_TRART8\_25>

Table in Annex III is too complex and granular. We do agree, but considering exceptions on our comments on Section 3.3.

Non-financial undertakings should disclose the KPIs only as a total across all the undertaking’s economic activities and not for each economic activity.

<ESMA\_QUESTION\_TRART8\_25>

1. Do you agree that the disclosure in the three standard tables should comply with the formatting rules mentioned in Table 5?

<ESMA\_QUESTION\_TRART8\_26>

We agree to use the proposed formatting rules only for the report in English. In our case, for example, it is not possible to use the "." instead of "," for the decimal points in the report in Spanish, as this would imply an inconsistency with the rest of the report.

So we ask the Commission to be flexible in formatting to ensure consistency with the rest of corporates’ Annual Report disclosures.

<ESMA\_QUESTION\_TRART8\_26>

1. Do you believe that ESMA’s detailed proposals under Section 3.4 will impose additional costs on non-financial undertakings? If yes, please specify the type of those costs, to which specific proposal they relate including whether they are one-off or on-going, and provide your best quantitative estimate of their size.

<ESMA\_QUESTION\_TRART8\_27>

Reporting alignment with the taxonomy will incur additional cost for all companies. These new reporting requirements require a great effort to adapt all internal processes to these new requirements. From the point of view of meeting the technical requirements of the Taxonomy, it will be necessary to carry out a bottom-up evaluation of all the assets of a Company, since it is possible that for the same activity, some assets meet the requirements and others don't. From the point of view of financial KPIs, it is necessary to adapt the Company's accounts to the report by activity and environmental objective. Ultimately, the process is complex, and it will be especially challenging for companies in transition where each new project will have to be evaluated annually. In this sense, we want to take the opportunity to expose our disagreement with the deadlines proposed by the Commission to comply with article 8 of the Taxonomy. Given that the delegated acts are to be published at the end of 2020 and during 2021, they should give Companies a period of at least one year to adapt. That is to say, that the alignment with the Taxonomy begins to be reported for the year 2022 when the legislative process is completed.

<ESMA\_QUESTION\_TRART8\_27>

1. Do you agree that a share of investments is an appropriate KPI for asset managers? If you do not, what other KPI could be appropriate, please justify.

<ESMA\_QUESTION\_TRART8\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_28>

1. This advice focuses on the collective portfolio management activities of asset managers. Should this advice also cover potentially any other activities that asset managers may have a license for, such as individual portfolio management, investment advice, safekeeping and administration or reception and transmission of orders (‘RTO’)?

<ESMA\_QUESTION\_TRART8\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_29>

1. Do you agree that for the numerator of the KPI the asset manager should consider a weighted average of the investments exposed to investee companies based on the share of turnover derived from Taxonomy-aligned activities of the investee companies? If not please propose and justify an alternative.

<ESMA\_QUESTION\_TRART8\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_30>

1. Do you agree that in addition to a main turnover-derived Taxonomy-alignment KPI, there is merit in requiring the disclosure of CapEx and OpEx-derived figures for Taxonomy-alignment of an asset managers’ investments?

<ESMA\_QUESTION\_TRART8\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_31>

1. Do you think sovereign exposures, such as sovereign bonds (but excluding green bonds complying with the EU Green Bond Standard) should be considered eligible investments and if so under what methodology?

<ESMA\_QUESTION\_TRART8\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_32>

1. Do you agree that the denominator should consist of the value of eligible investments in the funds managed by the asset manager or should it be simply the value of all assets in the funds managed by the asset manager?

<ESMA\_QUESTION\_TRART8\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_33>

1. Do you support restricting the denominator to funds managed by the asset manager with sustainability characteristics or objectives (i.e. governed by Article 8 or 9 of Regulation (EU) 2019/2088)? What are the benefits and drawbacks of such an approach?

<ESMA\_QUESTION\_TRART8\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_34>

1. Is it appropriate to combine equity and fixed income investments in the KPI, bearing in mind that these funding tools are used for different purposes by investee companies? If not, what alternative would you propose?

<ESMA\_QUESTION\_TRART8\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_35>

1. Do you believe the proposed advice will impose additional costs on asset managers? Please specify the type of those costs, to which specific proposal they relate including whether they are one-off or on-going, and provide your best quantitative estimate of their size.

<ESMA\_QUESTION\_TRART8\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_36>

1. What are the benefits and drawbacks of limiting Taxonomy-aligned activities to those reported by Non-Financial Reporting Directive companies?

<ESMA\_QUESTION\_TRART8\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_37>

1. Do you agree with ESMA’s recommendation that the Commission develop a methodology to allow a sector-coefficient to be assigned for non-reporting investee companies?

<ESMA\_QUESTION\_TRART8\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_38>

1. Should netting be allowed, on the lines of Article 3 of the Short-Selling Regulation?

<ESMA\_QUESTION\_TRART8\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_39>

1. How should derivatives be treated for the calculation purposes? Should futures be considered as potential Taxonomy-aligned investments?

<ESMA\_QUESTION\_TRART8\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_40>

1. What are the costs and benefits associated with the different options for non-reported activity coverage, netting and derivatives treatment presented above? Please provide a quantitative estimate for each option, distinguishing between one-off and on-going costs.

<ESMA\_QUESTION\_TRART8\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_41>

1. Do you have any views on the proposed advice recommending a standardised table for presentation of the KPI for asset managers in Annex IV?

<ESMA\_QUESTION\_TRART8\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_42>

1. Do you agree with presenting accompanying information in the vicinity of the standard table?

<ESMA\_QUESTION\_TRART8\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_43>

1. Do you agree that there would be merit in including in the accompanying information a link, if relevant, to an asset managers’ entity-level disclosures on principal adverse impacts of investment decisions on sustainability factors?

<ESMA\_QUESTION\_TRART8\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_44>

1. Do you agree with adopting the same formatting criteria as presented in Section 3.4.2 for the asset manager KPI disclosure?

<ESMA\_QUESTION\_TRART8\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_45>

1. What are the one-off and on-going costs of setting up the reporting and disclosure under this obligation? Please clarify the type of costs incurred and provide a quantitative estimation where possible.

<ESMA\_QUESTION\_TRART8\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRART8\_46>