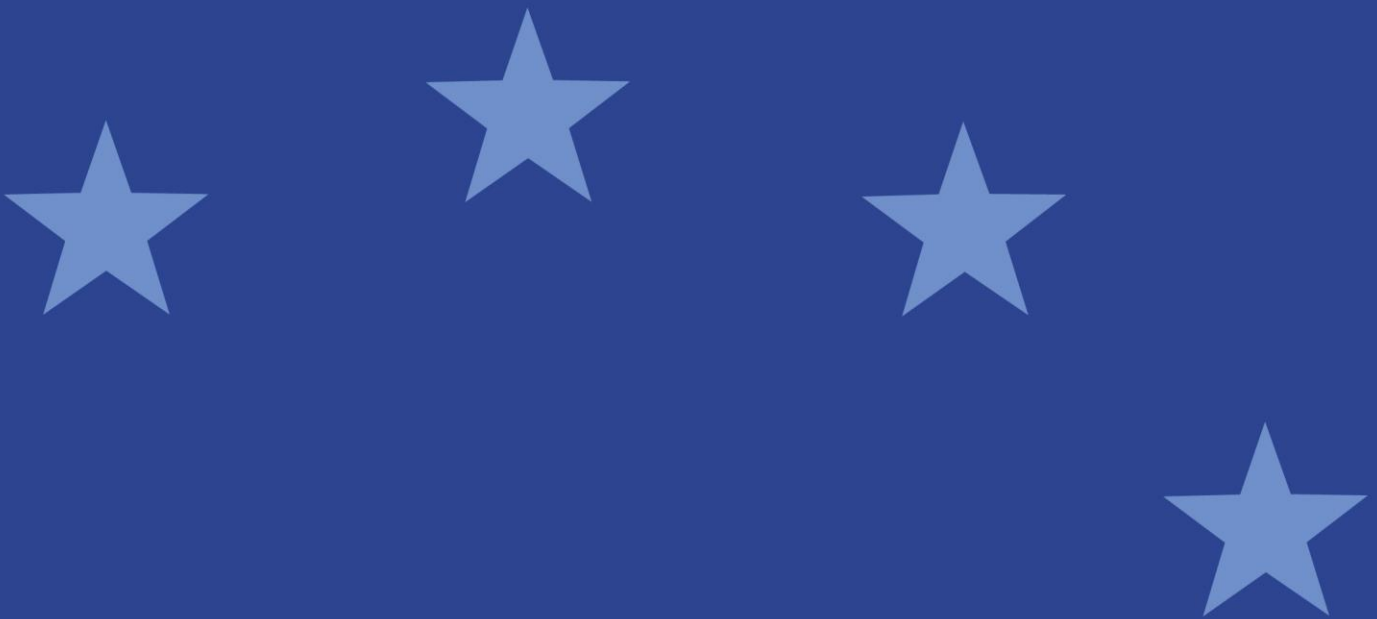




European Securities and  
Markets Authority

## **Response form for the Consultation Paper on the Draft advice to European Commission under Article 8 of the Taxonomy Regulation**



## 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](#)'.

### **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	RWE AG
Activity	Issuer/ Non-Financial Undertaking
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

## Introduction

***Please make your introductory comments below, if any:***

<ESMA\_COMMENT\_TRART8\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_TRART8\_1>



**Q1 For this KPI, do you agree with the proposed approach to defining turnover (bullet a in the draft advice)?**

<ESMA\_QUESTION\_TRART8\_1>

Yes, as it follows the international standards of the IFRS.

<ESMA\_QUESTION\_TRART8\_1>

**Q2 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>

In principle, yes. However, the requirement to publish a plan on a company's website might be difficult to fulfil in practice, especially if a company pursues many investment projects at a time. Additionally, investment plans could include sensitive business information which cannot be published.

<ESMA\_QUESTION\_TRART8\_2>

**Q3 For this KPI, do you agree with the proposed approach to defining CapEx (bullet a in the draft advice)?**

<ESMA\_QUESTION\_TRART8\_3>

Yes, as it follows the international standards of IFRS. However, the proposed definition is not detailed enough as it only considers adjusting for depreciation and amortisations. Additionally all non-cash effects have to be eliminated, such as capitalization of addition to provisions or inception of leasing contracts; compare IAS 7.6. In general, it would be helpful to closely align with the statutory cash flow according to IAS 7.

<ESMA\_QUESTION\_TRART8\_3>

**Q4 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>

Yes, but the requirement for a 'plan' to be published on the company's website may not be practical or suitable, especially if a company has many investment projects at a time. Also, the requirement of a 'five years maximum' necessitates further investigation and clarification of what constitutes the start of a 'plan' i.e. significant initial investigation costs and planning may occur before the final investment decision and the total period of the plan to become an 'activity' may last longer than 5 years. In point 80 of the consultation there is a reference to consideration of cases (such as low carbon technologies) that can already be considered to make a substantial contribution without needing to be part of a plan. It is crucial that these exceptional cases are included in the final guidance.<ESMA\_QUESTION\_TRART8\_4>

**Q5 For this KPI, do you agree with the proposed approach to defining OpEx (bullet a in the draft advice)?**

<ESMA\_QUESTION\_TRART8\_5>

No, as this definition is too vague and further specification on this KPI is needed. Several questions arise on this KPI:

- 1) Would companies need to include or exclude items that are reported as non-operating result (aperiodic and/or non-operating activities such as impairments, results of derivatives or disposal gains)?
- 2) do we understand it correctly that OpEx would be basically defined as residual between operating result (EBIT) and turnover/revenues?
- 3) what about income from participations, e.g. Joint Ventures?<ESMA\_QUESTION\_TRART8\_5>

**Q6 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>

We don’t see the benefit of providing plans for OpEx. All OpEx related to taxonomy-aligned activities should be counted.

<ESMA\_QUESTION\_TRART8\_6>

**Q7 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>

Yes, identifying the KPIs and relevant taxonomy-aligned as well as out of scope activities will be a significant additional work load for companies. It will increase personnel costs and IT costs. <ESMA\_QUESTION\_TRART8\_7>

**Q8 Do you agree that sectoral specificities should not be addressed in the advice, as proposed in Section 3.2.3?**

<ESMA\_QUESTION\_TRART8\_8>

No. As per point 115, the energy-sector that is at the heart of the transformation required, needs sector-specific guidance for CapEx as the primary KPI to describe this transition. For the energy sector, Turnover as the primary KPI will simply reflect previous investments and remain both too small and too slow to reflect the major investments being made and the unique importance of this sector for large-scale taxonomy-alignment. <ESMA\_QUESTION\_TRART8\_8>

**Q9 Do you agree with the requirements for accompanying information which ESMA has proposed for the three KPIs?**

<ESMA\_QUESTION\_TRART8\_9>

Yes, 'method' and 'context' are important.

<ESMA\_QUESTION\_TRART8\_9>

**Q10 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 would always intend to ensure that KPIs are consistent with line items in our financial statements.

<ESMA\_QUESTION\_TRART8\_10>

**Q11 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.

<ESMA\_QUESTION\_TRART8\_11>

**Q12 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>

Yes, there is a need for sector-specific guidance. A reframing of Turnover as a measure of change/delta would be more appropriate for the energy-sector than focus on an absolute figure. Additionally, more specific guidance on OpEx is needed.

<ESMA\_QUESTION\_TRART8\_12>

**Q13 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>

Yes. It will constantly increase personnel costs due to higher work load for the organisation. Additionally one-off costs for IT landscape and projects have to be considered.<ESMA\_QUESTION\_TRART8\_13>

**Q14 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>

No, we do not agree. To provide KPIs at each activity level is likely to introduce a level of reporting complexity and reconciliation that far outweighs the benefit to investors and gives rise to potential information overload. The requirement for accompanying information better serves the need to explain KPI developments to investors.

<ESMA\_QUESTION\_TRART8\_14>

**Q15 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>

Yes, we agree.

<ESMA\_QUESTION\_TRART8\_15>

**Q16 Do you agree that non-financial undertakings should provide information on enabling and transitional activities?**

<ESMA\_QUESTION\_TRART8\_16>

Yes, we agree.

<ESMA\_QUESTION\_TRART8\_16>

**Q17 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>

No, we do not agree. For investors it should be sufficient to see if the activity is Taxonomy-aligned. In reality, it is not easy to make the split per environmental objective. Though, only the main environmental objective that has been duly chosen to assess significant contribution towards should be disclosed. In principle, the taxonomy regulation should not result in the obligation to disclose unduly small details which would lead to difficulties when comparing different companies.

<ESMA\_QUESTION\_TRART8\_17>

**Q18 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>

No, we do not agree. Article 8 of the Taxonomy Regulation clearly states, that undertakings shall disclose the proportion of their turnover, CapEx and OpEx, which is taxonomy-aligned. A reporting of activities, that are not taxonomy-aligned is not foreseen in the regulation. This will only lead to additional administrative burden. <ESMA\_QUESTION\_TRART8\_18>

**Q19 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>

Yes, we do agree.

<ESMA\_QUESTION\_TRART8\_19>

**Q20 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>

Yes, the level of detail required such that each KPI is presented at every activity level will lead to a potentially significant explanatory burden where, for example, company A has to explain why its hydro activities are not taxonomy-relevant whereas company B's are. These industry-specific screening criteria are better explained as part of an annual audit and confirmed by auditors, than made available to each investor where sector-specific expertise cannot be expected. <ESMA\_QUESTION\_TRART8\_20>

**Q21 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>



**Q22 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>

Yes, it will constantly increase personnel costs due to higher work load for the organisation. Additionally one off costs for IT landscape and projects have to be considered.<ESMA\_QUESTION\_TRART8\_22>

**Q23 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>

In general, the methodology should be IFRS-compliant and aggregated with explanatory disclosures and an annual audit.

<ESMA\_QUESTION\_TRART8\_23>

**Q24 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>

Yes, we agree in principle.

<ESMA\_QUESTION\_TRART8\_24>

**Q25 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>

We agree only partly. Thus, we agree, it would be good to report on an economic activity level but do not agree that each environmental objective needs its own column. We agree with the first 4 columns and the last 3 columns. Column 5 could read instead “covered by Taxonomy and meets TSC” (for the chosen relevant environmental objective). The remaining columns could become one column for showing whether DNSH criteria is met or not for the remaining objectives, and one column for minimum safeguards. In addition, activities that are nor taxonomy-aligned or covered by the taxonomy should not be subject to reporting.

<ESMA\_QUESTION\_TRART8\_25>

**Q26 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>



No, we do not agree. Although some guidance on how to report is good, the table formatting should be in line with the overall design rules of the respective company. Otherwise the taxonomy section will be inconsistent with the formats of the rest of the financial and non-financial report.<ESMA\_QUESTION\_TRART8\_26>

**Q27 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>

Yes. It will constantly increase personnel costs due to higher work load for the organisation. Additionally one off costs for IT landscape and projects have to be considered.<ESMA\_QUESTION\_TRART8\_27>

**Q28 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>

**Q29 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>

**Q30 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>

No, we do not agree. As ESMA rightly points out, CapEx is often the more important metric, especially in sectors in transition. This must be reflected in the disclosure of asset managers as well. Looking mainly at the turnover will lead to a static picture, that doesn’t take future plans of companies and their decarbonization potential into account. The use of CapEx will show, which path a company is following and if it is willing to decarbonize. Thus, asset managers should weight their investments based on CapEx, not turnover.<ESMA\_QUESTION\_TRART8\_30>

<ESMA\_QUESTION\_TRART8\_30>

**Q31 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>



Yes, there is merit in requiring the disclosure of Capex for Taxonomy alignment of asset managers. Indeed, Capex should be the main KPI disclosed and should not be seen as a secondary to turnover.  
<ESMA\_QUESTION\_TRART8\_31>

**Q32 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>

**Q33 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>

**Q34 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>

**Q35 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>

**Q36 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>

**Q37 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>



**Q38** 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>

**Q39** 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>

**Q40** How should derivatives be treated for the calculation purposes? Should futures be considered as potential Taxonomy-aligned investments?

<ESMA\_QUESTION\_TRART8\_40>  
No. The activities of the energy industry and wider real economy on the wholesale commodity and commodity derivatives markets should not be in scope of the EU Taxonomy. Non-financial firms using the commodity and commodity derivatives markets to reduce their commodity (price) risks and this risk management activity should not be constrained by an assessment under the EU Taxonomy. Also, a commodity derivative is typically not specifically linked to an underlying specific economic activity of a corporate in scope of the current EU Taxonomy, but rather to the market price of an underlying commodity.  
<ESMA\_QUESTION\_TRART8\_40>

**Q41** 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>

**Q42** 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>

**Q43** 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>

**Q44** 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>

**Q45      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>

**Q46      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>