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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 | Transport & Environment |
| Activity | Non-governmental Organisation and Other Associations |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_TRART8\_1>

Transport and Environment is Europe’s leading clean transport research and campaign group. Our staff in Brussels, Rome, Madrid, Berlin, Warsaw and London collaborate with our 63 national member and supporter organisations in 24 countries across Europe. All together our members and supporters represent more than 3.5 million people.

T&E is an appointed member of the EU Platform for Sustainable Finance.

We welcome the opportunity to comment on ESMA’s draft advice to the Commission on the forthcoming delegated act to specify the content and presentation of the information to be disclosed by non-financial undertakings and asset managers under Article 8 of the Sustainable Finance Taxonomy Regulation.

We believe it is of vital importance that the information regarding transitional and enabling activities, as per art.5 of the Taxonomy regulation, are included among the disclosure requirements together with those specified in art.8 on revenues, capex and opex. Without disclosure requirements that demand a clear distinction between sustainable, transitional and enabling activities investors will still be subject to substantial greenwashing.

In our view, in the interest of investor transparency and to promote the propagation of non-financial information through the investment value chain, there should be a strong alignment between what non-financial undertakings and financial undertakings disclose.

In this respect, we believe that intent of the co-legislators when drafting Article 8 of the Taxonomy should be interpreted to set a minimum standard for disclosure indicators for non-financial firms, without suggesting that standards should be more concise for financial operators and only limited to the disclosure of the share of taxonomy-eligible investments. In particular the disclosure of the portfolio’s weighted Capex in our view helps investors understand whether and how fast the business of investee companies in a portfolio will align to the taxonomy’s environmental objectives, instead of static reporting of the current share of taxonomy-eligible investments only.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

No. Or at least not in any significant way, given the size of the organisations involved and the disclosure requirements already in place.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

No. Or at least not in any significant way, given the size of the organisations involved and the disclosure requirements already in place.

<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>

Yes

<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>

Yes

<ESMA\_QUESTION\_TRART8\_15>

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

<ESMA\_QUESTION\_TRART8\_16>

Yes. While recognized as taxonomy-eligible activities, enabling and transition activities are very specific ways of meeting the taxonomy objectives, and investors should be able to identify why certain activities are considered eligible, in the interest of transparency to end investors who might have certain investment preferences.

Should these specific taxonomy compliant activities (transitional and enabling) NOT be reported clearly and distinctly as prescribed in art.5 of the Taxonomy regulation substantial greenwashing would still be possible. Greenwashing would be caused by a confusion of what is ‘taxonomy compliant’ and what is ‘sustainable’, along the line of what is currently happening in the market with ESG ratings, erroneously confused by many as ‘sustainability’ ratings.

As defined in art. 10 and art.16 transitional and enabling activities do contribute to the environment but are not simply ‘environmentally sustainable’ (otherwise there would have been no need for specific sub-categories). It is important that this distinction is communicated to investors.

As an example in support of this requirement is the EU Ecolabel for financial services, one of the key initial applications of the taxonomy, that would benefit from a more granular form of disclosure of why companies’ economic activities qualify as taxonomy-eligible. This is because more granular disclosure would allow asset managers who place investment products on the market that (potentially) benefit from the EU Ecolabel to show to end investors why these products are labelled and what the “source” of the taxonomy eligibility of the fund is: which taxonomy objective, and whether that objective is met using pure play, enabling or transition activities.

Future applications of the taxonomy such as changes to capital requirements reflecting climate risk, would also benefit from more granular disclosure, over a binary taxonomy eligibility indicator.

<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>

Yes. Article 9 SFDR products might specifically target one of the six current taxonomy objectives or a subset of them, and asset managers need information from non-financial companies on KPIs per environmental objective to develop and justify the taxonomy eligibility of such products.

<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>

Absolutely yes

<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>

TYPE YOUR TEXT HERE

<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>

No. Or at least not in any significant way, given the size of the organisations involved and the disclosure requirements already in place.

<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>

Yes

<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>

The table misses completely the information required in art.5 on the proportion of transitional and enabling activities over the total. If this format was approved it would be possible for an undertaking that is exclusively involved in enabling activities (such as the mining of cobalt for batteries) to be rated as 100% taxonomy compliant. It is of vital importance that non-financial undertakings disclose this kind of information for financial players to be able to choose the right investments and for end investors to understand where their money is being put to work. This is absolutely vital. Currently ANNEX III is in breach of art.5 and is not coherent with ANNEX IV. How are asset managers supposed to disclose that information (transitional and enabling) if it isn’t included in the disclosures of non-financial undertakings? ANNEX III would be the ‘source’ for the reporting of asset managers and is now incomplete.

<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>

TYPE YOUR TEXT HERE

<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>

No. Or at least not in any significant way, given the size of the organisations involved and the disclosure requirements already in place.

<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>

Agree

<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>

Yes. This is the current methodology being adopted in the context of the EU Ecolabel for fsustainable financial product.

<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>

We object to the use of “eligible investments” to narrow the scope of the denominator. See our answer to Q33 for more information.

As regards sovereigns specifically, investing in them means that the same amount cannot be invested in explicitly sustainable instruments such as green bonds. This should be disclosed to end investors and therefore, if an eligibility definition is used, these should be included as eligible.

<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>

No, the denominator should simply be the value of all assets in the fund managed by the asset manager.

The purpose of the indicator is to provide accurate information about the sustainability of the entire portfolio, and to compare asset managers with each other. Limiting the denominator to eligible investments would introduce opportunities to game the system and would also incorrectly present “grey” investments without a sustainability element (such as those in sovereign bonds) as neutral vis-à-vis sustainability. Investing in such assets removes available funds that the manager could otherwise invest in explicitly sustainability (green, not grey) activities, and this should be disclosed.

<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>

No. The denominator should cover the entire value of assets managed by the asset manager, and not be restricted to the Article 8 or 9 SFDR funds that the asset manager manages. The purpose of the indicator is to allow (potential) investors to compare the sustainability performance of undertakings, including financial ones. Comparing asset management firms with large Article 8/9 portfolios to those who do not have such products would be meaningless if the denominator is restricted.

<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>

No it is not. Fixed income investments, such as green bonds, are normally accounted for using the principle of ‘use of proceeds’. In the case of generic ‘corporate bonds’ one could simply use the KPIs of the issuer but the information provided to investors would be somewhat misleading and confusing. E.g. the shares of Renault and the bonds issued by Renault would be presented as equal despite having considerably different risk profiles.

<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>

No. Or at least not in any significant way, given the size of the organisations involved and the disclosure requirements already in place.

<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>

The main problem lies in the banking sector. Banks will have to disclose KPIs for SMEs and households (for mortgages for example) that do not disclose the relevant information. Banks will struggle to produce the information to properly classify a large part of their loans portfolio.

<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>

We are concerned that a sector-coefficient would lead to potential greenwashing, as non-reporting investee companies would “freeride” on other companies in the same industry that do provide data. Especially in applications of the Taxonomy that involve retail consumers, such as the Ecolabel, consumer expectations show that it is more important to avoid “false positives” than to avoid “false negatives”. In other words, the credibility of the sustainable finance project and the of the Taxonomy would suffer if consumers end up buying products whose portfolio includes investee companies that consumers do not want to see in those products, just because they happen to be in an industry that as a whole contributes to sustainability. The recommendation should err on the side of caution and not allow investee companies to “claim” they are in sustainable whereas in reality they are not reporting.

<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>

Yes, to the extent that the underlying is (equity futures).

<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>

Very good table. Very informative.

<ESMA\_QUESTION\_TRART8\_42>

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

<ESMA\_QUESTION\_TRART8\_43>

Yes.

<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>

No, all relevant information should be in the vicinity of the tables.

<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>