JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclosures

Date: 17 March 2021
ESMA34-45-1218

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (hereinafter “RTS”) on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (hereinafter Sustainable Finance Disclosure Regulation “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:

- contain a clear rationale; and
- 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:

- Insert your responses to the questions in the Consultation Paper in the present response form.

- 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.

- 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: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.

- 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 12 May 2021.

- Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

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

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[1]. 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	European Federation for Transport & Environment
Activity	Choose an item.
Are you representing an association?	☒
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
TYPE YOUR TEXT HERE
<ESA_COMMENT_ESG_1>

Q1 : Do you have any views regarding the ESAs' proposed approach to amend the existing SFDR RTS instead of drafting a new set of draft RTS?

<ESA_QUESTION_ESG_1>
We are *supportive of having the RTS "single rule book"* and so, to amend the existing SFDR/RTS rather than to draft the new set of draft RTS. The rationale for this, is following:

- The European sustainable finance legislation framework is deemed new and rather complex, where various laws (i.e. TR, NFRD/CSRD, SFDR etc.), cross-refer, many of them are subsets of one another and quite a few, are not yet finalized and will be adopted and implemented in 1-2yrs only. In such a "work in progress" and uncertain context, we believe that one, comprehensive SFDR/RTS rule book, shall *bring some much needed simplicity, clarity and certainty* to various relevant stakeholders.
- The RTS regulatory technical standards, shall be a *comprehensive, "one stop shop" rule book*, where more specific and technical rules are delineated. Rules and standards which help "translating", often vague & legal language of a basic legislative act (Level 1 legislation), into a more pragmatic, more detailed, technical language of the RTS (Level 2 legislation). It is important to have such standards covered in a single book, rather than to have them spread across variety of subsets of books.
- Furthermore, as taxonomy-aligned products (TR art 5 & 6 products) are subsets of sustainable investments products (i.e. SFDR art 8 & 9 products), it is important to present the reporting standards for all these products in a *joint and coherent* manner. To have the rules for a "sub-set product", being displayed together with the rules for a given "set product".

We support the RTS single rule book, as we understand that the *timing of the Level 2 law's implementation won't be negatively impacted* by this. We understand that the implementation dates of the SFDR & RTS disclosures, as per art 20 SFDR and also, as further detailed in ESAs joint statement (link), shall remain valid and in place (key dates: already past due 10/03/2021 for majority of SFDR disclosures at entity level; 01/01/2022 and 01/01/2023 for many RTS disclosures at product level)

<ESA_QUESTION_ESG_1>

Q2 : Do you have any views on the KPI for the disclosure of the extent to which investments are aligned with the taxonomy, which is based on the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies? Do you agree with that the same approach should apply to all investments made by a given financial product?

<ESA_QUESTION_ESG_2>
2.1. Answer & comment regarding methodology (i.e. turnover, capex, opex) that shall be used, for the underlying non-financial investee companies, in order to calculate product's overall taxonomy-alignment KPI:

For the sake of clarity, the answer to this Q2.1., refers only to the weighted average of the underlying non-financial investee companies – this is only one of the components of the numerator in the overall product's taxonomy-alignment KPI – please see the chart below.

As defined in art 8 of the TR, any undertaking that falls under the scope of the NFRD/CSRD, shall disclose taxonomy-alignment calculated based on the 3 KPIs: (i) "Turnover", and (ii) "CapEx" and (iii) "OpEx". While more adequate and specific KPIs have been developed by ESAs for the underlying financial investee companies (EBA/banks; EIOPA/pensions & insurance, ESMA/asset managers), these 3 KPIs are particularly relevant for the underlying non-financial investee companies. We underscore the word "and", because the

DENOMINATOR = TOTAL INVESTMENTS (AUM)

		EUR mln
	Total AUM	*200*

			TAXO-ALIGN	
NOMINATOR = SUM OF THE BELOW:		**EUR mln**	*Taxo-alignment %*	***TOTAL EUR mln (WAv)***
(c) bonds issued under EU Green Bond Standard (EUGBS)	*EUGBS*	10	100%	*10*
(b) bonds, other than in point (c)	*bonds*	20	50%	*10*
(a) equity and debt investment in the investee company				
non-financial company	*shares & bonds*	50	10%	*5*
financial company	*shares & bonds*	50	10%	*5*
(d) investments in real estate assets				
		130		30

KPI for taxonomy alignment of the product

$$\text{KPI} = \frac{30}{200} \text{"="} \quad 15\%$$

current wording of the Draft RTS (e.g. (5) p. 17; art 16 a 2(a) p. 21; art. 16 b 3 p.22) seems to allow the FMP to freely decide what KPI it wishes to report on, for the taxo-alignment of the underlying non-financial investee company.

We would *suggest revising and amending the draft RTS*, to better align with the wording and original intention of the art. 8 TR. It is important to underline that the 3 KPIs are not alternative to each other; “CapEx” & “OpEx” as forward looking KPIs, are to complement “Turnover” KPI, not to replace it. We are concerned that the current wording, which leaves a total freedom of choice to FMP for the selection of the product’s relevant KPI, might create confusion and eventually *lead* to the much unwanted *greenwashing*. It has to be clearly stated that for the non-financial investee companies *all the 3 KPIs shall be always reported on.*

Furthermore, we are concerned that draft RTS seems to leave a freedom of choice of the right methodology (Turnover/Capex/OpEx) with FMPs. *It shall be ESAs, delineating the principles*, as well as potential exceptions (if any), *not the FMPs*. We fear that if we leave too much freedom to FMPs, there is a significant *risk of greenwashing*:

- *Example: let’s assume that an FMP decides to report it product’s taxo-alignment as per CapEx methodology –> as a result such FMP might put into the product, a dirty & polluting company, which revenues are 0% -taxo-aligned, however its CapEx is 100% taxo-aligned because e.g. the company decides to build an adjacent small solar power plant – such approach is wrong and shall not be permitted! It is important however to look closer at the above-mentioned example, to understand that such polluting company, shall be scored its taxo-alignment as per its core “brown” business Revenues, especially if a fund keeps an equity stake in it. At the same time such a company can still transit its operations towards “green” & sustainable, as it can get scored, even 100% taxo-alignment, if the fund finances the company’s solar PV CapEx. This the intention of the Taxonomy and the overall European Sustainable Finance strategy, to support transition towards sustainability.*

While we recognise the need of KPI coherency across the entire product (pls see further in point 2.2. below) and yet, the need of simplicity of the KPI disclosure due to the potentially limited financial literacy of the end-users, we believe that the templates shall disclose:

- *chart pie* – a visual representation of only *one, key KPI* (importantly and as mentioned above, the key KPI shall be defined by ESAs – pls see some suggestions in Q2.2. below), which is coherent across the entire product;
- *numerical value* – a numerical value (%) of *all the 3 KPIs* for the non-financial company;

The above shall ensure that on top of the product’s coherent reporting methodology:

- the end-users are *adequately and transparently informed* about all the relevant KPIs (i.e. if they wish so, they can cross-check and compare the relevant % values) and yet,
- the end-users are *not confused by too many information* (i.e. only the key & the most adequate global KPI is presented in a visual way, for the user’s special attention).

Another consideration could be for the fund manager to use a *weighted average of the non-financial company’s 3 KPIs* (Revenues & CapEx & OpEx) and to use such value as the investee’s taxo-alignment weighted average, to calculate fund’s total taxo-alignment KPI. However, further considerations shall be given to such a solution, as it might skew, positively or negatively the underlying investee's taxo-alignment profile.

2.2. Answer & comment regarding the required coherency of the numerator, in the taxonomy-aligned KPI, across the entire financial product

The answer to Q2.1 above, focuses solely on the type of the underlying investee company, asking specifically about the non-financial investee companies. Therefore, our above-mentioned Q2 and for the purpose of an *overall coherent and adequate product's reporting* one needs to consider product's diversity, in terms of both:

- *underlying investees* – e.g. a fund can invest in non-financial companies, financial companies or a mix of both; for all these companies, different KPIs might be more/less representative/relevant (e.g. revenues for non-fin. company; GAR for banks etc.)
- *investments made* – e.g. a fund can make equity or debt investment (where the latter, can e.g. be a general purpose loan or a project/proceeds specific debt); again, for different types of investments, different KPIs might be more/less representative/relevant (e.g. revenues for equity based investments or general purpose loans; CapEx for PF/use of proceeds debt structures).

The more complex and the more diverse the financial product (in terms of types of investments and/or types of underlying investees), the more difficult it is to apply the same approach and methodology across the entire product. In principle, *we'd agree that the same approach should apply to all investments* made by a given product (as stated in Draft RTS (5) p. 17), in order to have a coherent and comparable data at the product's level.

As mentioned in Q2.1 above, we would *suggest that ESAs provide further clarification and set key rules* (principles and exceptions if such are deemed necessary) to have clear framework of what methodology shall be used & reported on, in what specific case. Again, we believe that the freedom of choice left with the FMPs, might lead to so much unwanted greenwashing and eventual misinformation of the end users.

While we believe that setting up such rules will require further discussion among the experts of ESAs & other relevant stakeholders (incl. a.o. members of PSF, CSOs, Academia, Consumers, Industry etc.), *at this stage and very preliminarily, we'd suggest to consider the following options:*

- ***Product's type of investments:***
    - *Equity* – funds with equity investments shall in principle look at the "Revenues" of the underlying assets in order to define the % of the asset's taxonomy-alignment; pls see example mentioned in Q2.1 above;
    - *Debt (general purpose)* – in principle, shall follow the same logic of an equity fund;
    - *Debt (project finance / use of proceeds etc.*) – in principle "CapEx" shall be the most informative KPI here; this shall be particularly relevant during e.g. construction phase of a Renewable Energy asset; "Revenue" KPI, might turn out to be more relevant at the later stage and once the asset is constructed and enters its operation phase, generating "green" revenues;
- ***Product's types of underlying assets***:
    - *Non-financial companies* – for products that have only non-financial companies' exposure, all the 3 KPIs, Revenues & Capex & Opex shall be disclosed (pls ref. to Q2.1 above)
    - *Financial companies* – for products that have only financial companies' exposure, disclosure of KPIs as per ESAs advices shall be followed (a.o. EBA/banks/GAR; ESMA/asset managers/taxo-aligned assets to total AUMs etc.)
- ***Hybrid & very complex structures*** – further discussion is recommended on how to define the rules for various types of more complex and very diversified financial products.

<ESA_QUESTION_ESG_2>

Q3 : Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?

<ESA_QUESTION_ESG_3>
For a non-financial company, "OpEx" is a *very relevant KPI*, as it includes general, operating expenditures, incl. a.o.: salaries & wages, variety of fees (legal, financial, etc.), office rent & supplies, advertisement & marketing, trips & travels, repairs & maintenance, etc. However, and although very important as it shows the costs of the company's daily, operating activities, (in most cases and for regular non-financial companies), it *shall be seen as an additional KPI*, further to the "Turnover" KPI and "CapEx" KPI, *rather than "in lieu"* of them.

As mentioned in Q2 above, one shall look at all the 3 KPIs together, as in principle one would like the company to have:

- sustainable revenues – where the core business activities, are sustainable and so, generate sustainable revenues; AND
- sustainable CapEx – where the company keeps on expanding in a sustainable way, by creating or purchasing sustainable assets; AND
- sustainable OpEx – where the company's daily operations and expenditures related to those, are also sustainable.

As further explained in Q2 above, it is important however, that *one KPI is not freely swapped with- and replaced by- another KPI*, as this could lead to misunderstandings and eventually to some serious greenwashing:

- *Example: a company might report a very sustainable "OpEx", which is a very positive signal, as it indicates that its daily operations (travels, suppliers, office space etc.) are environmentally and/or socially sustainable. As an end-investor you want to see this information and this is why in Q2 above we ask that all 3 KPIs and so, also OpEx, are disclosed for non-financial companies. However, and in principle, a company cannot be considered 100% taxo-aligned, if its "OpEx" is 100% taxo-aligned, yet its core business, and so it's "Revenues", remain highly polluting and therefore, still unsustainable. Once again, think of a coal fired power plant, that has OpEx very green & socially sustainable, but its core revenues derive from polluting energy generation – EU Sustainable Finance legal framework shall not allow such loopholes or misrepresentation in the SFDR disclosures*.

<ESA_QUESTION_ESG_3>

Q4 : The proposed KPI includes equity and debt instruments issued by financial and non-financial undertakings and real estate assets, do you agree that this could also be extended to derivatives such as contracts for differences?

<ESA_QUESTION_ESG_4>
The numerator of the KPI of the product's taxonomy alignment presented in the current draft RTS (art 16 (b)), seems to include equity and debt instruments only (the latter seems to include also green bonds, and bonds issued under EU Green Bond Standard). However, the *numerator seems not to include derivatives – and we are concerned about this*. For the sake of clarity, we understand that the denominator includes all the assets (so, also derivatives, gross position) – we are supportive of such approach (Q5 below); however, we also suggest that RTS shall be clearer about the definition and composition of the KPI, incl. for its numerator and denominator (Q6 below)

We believe that the *numerator shall include derivatives, net position*. As presented in scenarios below we can see that *"Scenario A", where derivatives are excluded from the numerator, shows persistently higher taxonomy –alignment KPI*, than "Scenario B" where derivatives net position is included in the numerator.

SCENARIO A		SCENARIO B
DERIVATIVES - **EXCLUDED FROM THE NOMINATOR**		DERIVATIVES **(NETTED) INCLUDED IN THE NOMINATOR**

1. RE/PV fully netted			**2. RE/PV fully netted**	
equity invest. (L)	50		equity invest. (L)	50
short deriv. (S)	50		short deriv. (S)	50
AUM (GROSS)	100		AUM (GROSS)	100
numerator	50		numerator	0
denominator (AUM)	100		denominator (AUM)	100
KPI	**50%**	>	**KPI**	**0%**

3. RE/PV fully netted + "brown"			**4. RE/PV fully netted + "brown"**	
equity invest. (L)	50		equity invest. (L)	50
short deriv. (S)	50		short deriv. (S)	50
other "dirty" debt	50		other "dirty" debt	50
AUM (GROSS)	150		AUM (GROSS)	150
numerator	50		numerator	0
denominator (AUM)	150		denominator (AUM)	150
KPI	**33%**	>	**KPI**	**0%**

** "dirty debt" not counted in the numerator as not taxo aligned but counted in the denominator*

5. RE/PV fully netted + "brown" + another RE			**6. RE/PV fully netter + "brown" + another RE**	
equity invest. (L)	50		equity invest. (L)	50
short deriv. (S)	50		short deriv. (S)	50
other "dirty" debt	50		other "dirty" debt	50
other "green" debt	50		other "green" debt	50
AUM (GROSS)	200		AUM (GROSS)	200
numerator	100		numerator	50
denominator (AUM)	200		denominator (AUM)	200
KPI	**50%**	>	**KPI**	**25%**

** "dirty debt" not counted in the numerator as not taxo aligned but counted in the denominator*
"green debt" (renewable energy project) counted in the numerator as taxo aligned and counted in the denominator

The above scenarios assume 3 different funds, where we have:
(a) an equity exposure in a RE asset (e.g. PV plant), fully netted however with a short derivative position;
(b) an exposure as in (a) above + some debt investment in polluting company;
(c) an exposure as in (b) above + some debt investment in sustainable company;

For all the 3 funds, their taxo-aligned KPI would score better (respectively 50%, 33% and 50% for fund a, b and c), when derivatives are not considered in the numerator. However, *should the netted derivatives be counted in the numerator, the taxonomy-alignment KPI would score lower* (respectively 0%, 0% and 25% for fund a, b and c). This is very important as the *KPIs without derivative will be misleading* – end investors would think that the fund (a) is very "green" as it seems to be 50% taxonomy aligned under Scenario A. However, if we consider that this fund's exposure is fully netted by the derivative and so, it is 0% taxonomy-aligned under Scenario B, the end-user may wish to reconsider its investment decision and ask the fund manager to reallocate its capital towards another product; ideally a product which will show higher KPI and therefore proof to be more and truly sustainable. We *need to ensure that end-users are properly informed* about the *real underlying sustainability of the product - real risks, opportunities and impacts of the investments.* And this is why we would strongly recommend to consider including net derivatives in the numerator. And in case this is excluded, *ESAs shall clearly explain to the end-users what is the rationale for a choice of derivatives non-inclusion* (ideally presenting some examples and scenarios).

Also, further consideration shall be given to the *foreign currency (FX) hedge funds*, their underlying investments and the way in which such funds will be able/ or not, to report their taxonomy-alignment. FX hedging is of particular relevance in development finance, when often very green and sustainable projects (e.g. renewable energy projects, microfinance), would not happen if the currency risk would not be hedged. And very often if such projects are not financed by foreign investors, they are not financed at all (or badly/expensively financed – this given still shallow local financial markets or limited specific financial expertise). We believe that FX hedge, especially in the world of development finance, shall be considered as an important enabler of sustainable financing and shall be given *further consideration*.

At the same time, we appreciate the *current SFDR/RTS drafting language*, where *investors are required to report* and disclose to the end users that *where the product uses derivatives* to achieve ESG objective/characteristic, *a more detailed description of how the use of these derivatives support such goal* - as per art 16, art 22, art 59, 65 of the draft consolidated SFDR/RTS.
<ESA_QUESTION_ESG_4>

Q5 : Is the use of "equities" and "debt instruments" sufficiently clear to capture relevant instruments issued by investee companies? If not, how could that be clarified? Are any specific valuation criteria necessary to ensure that the disclosures are comparable?

<ESA_QUESTION_ESG_5>
First and foremost, we believe that current draft RTS (art 16b) does not fully, nor clearly, define the taxonomy-alignment KPI, neither the KPI's nominator or denominator (its compositions, elements included, excluded etc.). We believe it is very important to *clearly define what exact instruments* are considered (i.e. included) and what exact instruments are not considered (i.e. excluded), in the KPI; both *in terms of numerator and denominator*.

Together with this, *a clear rationale behind the inclusion/exclusion* shall be provided; and also, *whether exclusion is temporary or final*.

While equity and debt are relatively straightforward financial instruments, there are many others (as a.o. derivatives, please refer to Q4 above) which are more complex, less homogenous, less tangible or intuitive and above all, are much less commonly understood by majority of a society.
Fairly enough, if you have low/average financial knowledge you might be sceptical or distrustful towards complex ratios and various underlying assets being excluded or included, especially if they are too complex and/or not properly explained to you.
Such lack of clear information, might *unnecessarily create confusion, debates and eventually lead to the increased risk of greenwashing*.
Also and in a long-term this might also be very *counterproductive* - if people don't understand how their money is invested in, or they don't trust that the financiers would invest their money in a truly sustainable way, private capital might actually outflow rather than inflow towards sustainable activities – this would be an *unintended, exact opposite result* should the EU Sustainable Finance legal framework be badly designed (or not properly communicated).
<ESA_QUESTION_ESG_5>

Q6 : Do you have any views about including all investments, including sovereign bonds and other assets that cannot be assessed for taxonomy-alignment, of the financial product in the denominator for the KPI?

<ESA_QUESTION_ESG_6>
As mentioned in Q4 above, we agree that the denominator of the taxo-aligned KPI, *shall include all investments* of the financial product. Denominator shall therefore include: equity, debt (incl. bonds and also sovereign bonds) and derivatives, *regardless of whether such products can, or cannot be, currently taxonomy assessed*.

More specifically, and with regards to *sovereign bonds*, we appreciate and agree with the explanation provided in point 21 of the Section 3 of the Joint Consultation Paper, which underlines current challenges (lack of data and methodology) that prevent sovereign bonds from having their exposure assessed against the taxonomy and therefore a need to address those as soon as possible. At the same time and as mentioned above, we believe that indeed all investments shall be included in the denominator, regardless of whether they can/cannot, be taxonomy assessed.

Inclusion of all the investments in the denominator is the only way in which we can ensure that the EU-taxonomy alignment KPIs will be *comparable across various products* and *will not penalize or promote* certain types of products over another, only because of the type of financial instruments it uses.

Also, and as mentioned in Q5 above, it is very important to *clearly define in the RTS what* is eligible (i.e. included) what is not-eligible (i.e. excluded); *why* is it so and *for how long* (in case inclusion/exclusion of certain products is expected to be revised in the future).

At the same time, we believe that it is important that the end-user is well informed about the composition of the product. Therefore, and further to a more detailed and more self-explanatory "*Asset allocation*" chart that we suggest in Q9 below, we believe it would also make sense to present a breakdown of the EU taxonomy-alignment pie chart, to *show the composition of the "Non EU taxonomy aligned*" investments. It is important to inform the end-users what is the reason of the underlying assets' EU taxonomy non-alignment, whether it is:

- a *simple, EU taxonomy non-alignment of the investee* – i.e. underlying company disclosed the relevant data as per TR/art 8 and NFRD (CSRD) -> data has been assessed and resulted in the company's taxonomy non-alignment;
- a *lack of disclosed data* – i.e. underlying company does not need to disclose its sustainability data as per TR/art 8 and NFRD/CSRD -> data could not have been assessed and resulted in the company's taxonomy non-alignment;

In the latter case, i.e. when the underlying investee does not need to disclose as per art 8 TR and NFRD, we agree with ESAs' suggestion that *other data sources could be used* to assess the company's taxonomy alignment (in priority order – public reporting data, privately obtained data either directly from the investee or from third parties). Such alignment could be mentioned in the pre-contractual/periodic reporting templates; however, and even if on the basis of such disclosure, the investee seems to be taxonomy-aligned, *it shall never be allowed to count, into a "Taxonomy –aligned" part of the product's global KPI*
<ESA_QUESTION_ESG_6>

Q7 : Do you have any views on the statement of taxonomy compliance of the activities the financial product invests in and whether those statements should be subject to assessment by external or third parties?

<ESA_QUESTION_ESG_7>
Yes, we believe that the taxonomy alignment *shall be assessed and certified by external/third parties*. Although many information that FMP will be reporting on, will be of the highest quality as already verified by independent third parties (e.g. art 8 TR disclosures and for the companies under NFRD/CSRD scope), we believe that additional taxonomy-alignment verification of the product, would not harm but only *add further assurance* of the ESG profile of the product, to the end clients and investors, hence *increasing overall trust* in the underlying product, its sustainability and taxonomy alignment.

Also, we believe that the *costs of such external verification is limited/low*, especially if compared with the value of the fund's underlying assets or management fees of the asset managers.

At the same time, we would like to underline the importance of the *quality of such external assessment;* it must not be a "tick-box" exercise, where the external verifiers check only if the statement is provided/or in compliance with the requirements of the relevant SFDR/TR articles. It is important that what is verified is that the information provided is correct, that the ratios are properly calculated, underlying information accurate, etc.
<ESA_QUESTION_ESG_7>

Q8 : Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?

<ESA_QUESTION_ESG_8>
In principle, *it seems reasonable, logic and coherent for the templates to mirror each other*, as much as possible. If a statement or a commitment is made at the initial investment phase (i.e. at the pre-contractual level), it is important to verify and report on those very same commitments/statements at the later investment phase (i.e. in the reporting phase).
<ESA_QUESTION_ESG_8>

Q9 : Do you have any views on the amended pre-contractual and periodic templates?

<ESA_QUESTION_ESG_9>
Wording:

- ***"Minimum (…)"*** (min. proportion; min. taxonomy alignment; min. share of transitional and enabling); word used across PC Annex I, Annex II templates, e.g. p 33-35 – this word might be misleading as currently, none of the relevant regulation (neither TR nor SFDR) imposes or requires any minimum sustainability thresholds to be reached by the financial product. We believe that the word "minimum" (or its context) used in here, shall be clarified. We understand that the intention of ESAs was that the FMP set a certain "target" for taxonomy-alignment of its product and report against this target at the later stage. If this is so, we are supportive of it – however would suggest *replacing "minimum" with "targeted*" and anyway clarify the context and rationale of such term.

Charts & data visual presentation:

- ***Asset allocation*** - we believe that having a pie-chart disclosing only product's taxonomy-alignment doesn't give an adequate global picture of the *fund's level of its ESG focus and intensity*. This could be misleading and confusing. Also it could penalize the products which although not (yet?) taxonomy-aligned have certain important ESG characteristics.
Furthermore, we believe it is important to transparently disclose to the end users, the *composition of the entire produc*t, indicating clearly how much (%) and what is the underlying assets invested in. Therefore, we believe it is important to *complement* the EU-taxonomy alignment pie chart with a more *self-explanatory "Asset allocation*" chart – if read together, these two charts shall inform the end-investor in a transparent and comprehensive way, about fund's profile and focus (E and/or S sustainability and/or its taxonomy -alignment).
- ***Taxonomy enabling & transitional activities*** - we believe that this information shall also be *presented in the "Asset allocation" chart*. Graphic and visual presentation is often more informative to the end-users than lengthy descriptions. However, we believe that the section entitled "*What is the minimum share of transitional and enabling activities*" shall remain in place ("minimum" word adjusted as suggested above) and require brief description of the enabling & transitional activities.
- ***Colours*** - we also suggest using a different and *more informative and self-explanatory set of colours*, e.g. green – for "E" funds (with environmental objectives/characteristics); blue – for funds "S" funds (with social objectives/characteristics); yellow – for funds that have both E&S focus.
- Please refer to ***Annex I*** to see suggested *modifications to the SFDR/RTS templates' "Asset allocation" graph*

Important consideration – confusing sustainability definition & prodcuts' classification – we believe that the current SFDR Level 1 & Level 2 legislation creates *some confusion around the exact level and intensity of product's sustainability*. As of now, there are 3 possible ways to define products' sustainability, where it can be scored against: (i) ESG characteristic, (ii) ESG objectives (sustainable investment), (iii) Taxonomy alignment.

At this stage only taxonomy-alignment is well defined (and for now only part of Environmental Taxonomy, as Social Taxonomy is not yet existent – pls see further on this in Q11 below). *Neither ESG characteristics nor ESG objectives, are well defined in the SFDR;* it is not clearly explained how do these two categories differ, what do they encompass, what do they exclude, etc. Yet, on the basis of such undefined terms, the SFDR builds two distinctive categories of products ("light" Art 8 product and "dark" Art 9 product).

We believe that such current products' classification and structure (where SFDR Art 9 seems to be in certain way a sub-set of SFDR Art 8, and TR Art 5 is a subset of SFDR Art 9, and then TR ar. 6 is a sub-set of SFDR Art 8 etc.) ***is over-complicated.*** We are worried, that as a result it will only ***confuse the end-users***, who eventually will not really know if the product is sustainable or not - because how is the ESG characteristic different from the ESG objective and how the ESG objective (and sustainable investment) is again different from the taxonomy aligned investment? Again, we fear that such confusion might eventually lead to so much unwanted greenwashing.

Clearly, such confusion is due to the ***different scopes and definitions used by SFDR and TR*** *– as mentioned in Q11 below, SFDR "*sustainable investment" is wider than the TR "environmentally sustainable activity"; as a result, you can have an SFDR sustainable investment in environmentally not sustainable activity - for a regular end-user, this might be very ***counterintuitive and confusing***. Therefore, we believe that:

- In a mid-term the legislators shall ***aim at aligning SFDR and TR "sustainability" definition***, as much as possible - "sustainable investment" under SFDR, shall be ideally in line with the "sustainable activities" as defined in the Environmental Taxonomy and the Social Taxonomy which hopefully shall be created soon; until these discrepancies exist, there is high risk of misinformation and confusion;
- In a short term a ***clear guidance***, clarification and some practical examples of the terms "***ESG characteristics"*** and "***ESG objectives***" shall be made (we'd suggest aligning the latter with Taxonomy, ENV and hopefully soon SOC., objectives); as long as these two terms are not clarified, we fear that the risk of green confusion is high;
- Also in a short term we would suggest ***simplifying categorisation of products*** and ideally to have:
  - ***"light" sustainability products*** - in principle Art 8 products, which shall be dedicated to investments that promote ESG characteristics (as mentioned above, both terms shall be clarified & defined); however, we believe that "Other" types of investments (i.e. investments which are neither aligned with E/S characteristics, nor are qualified as sustainable investments), shall not be allowed in such product – current draft RTS seems to allow that. We believe that such investments shall be kept out of Art 8 "light" sustainability products.
  - ***"dark sustainability products*** – which shall be dedicated ***solely to sustainable investments***, where sustainability term shall be defined as per Taxonomy Regulation (for now only the Environmental Taxonomy and hopefully soon, also a Social Taxonomy). Therefore, we believe that a sustainable ***SFDR Art 9 "dark" product, shall be de facto a TR Art 5 "dark sustainable product,*** composed solely of truly sustainable investments. And what is sustainable, shall be defined in line with Taxonomy Regulation, only. Otherwise and if sustainability definition in SFDR deviates from the sustainability definition of Taxonomy Regulation and allows Taxonomy-unsustainable investments in, what is the entire purpose of creating an EU Sustainability Dictionary, such as an EU Taxonomy? If the words and terms defined as sustainable in the TR are not applied in practice to define sustainable investments, how could we channel the capital flow in a right and sustainable direction? It seems we are having two pieces of puzzle, in a bigger EU SF jigsaw puzzle, which don't match (and it is still acceptable if today they don't match perfectly, as the EU SF framework is still a "work in progress" with many parallel and complex process being created or adjusted; but we shall ensure that it all matches well, in the nearest future). Also, and as in case of Art.8 "light" product, we believe that "Other" types of investments ***(i.e. investments that do not qualify as sustainable investments), shall not be allowed in*** Art.9 "dark" sustainability products – current draft RTS seems to allow that. We believe that such investments shall be kept out of Art 9 products. If we allow such investments in, this would be contrary to art 5 TR logic (where the product is required to clearly state "how & to what extent the investments (…) are in economic activities that qualify as environmentally sustainable under Art 3 of TR" – the "if" is not questionable here).

Taxonomy alignment (ENV TR or SOC TR):

As mentioned in Q11 below, the Social Taxonomy, is still at the design phase but expected to be created and implemented as yet another important piece of the EU SF legislation. In such context, we would suggest to clearly mention in the disclosure templates (for pre-contractual and periodic templates*) what taxonomy is referred to – is it Environmental Taxonomy or is it a Social Taxonomy*?

We believe that a simple "tick –box" would suffice; depending on what box you ticked (ENV. TR or SOC. TR or both), you will be redirected to the relevant sub-section, where you need to provide further taxonomy related information.

PAIs:
In section entitled: "*Does this fin. product take into account PAI on sust. factors*", we *suggest inserting a hyperlink* to a dedicated document, where the PAIs of the product are disclosed (as per art. 7 SFDR). This in order for the interested end investors to be able to verify and check the PAIs of the selected financial product.

We believe that it is very important to present to the end-users E&S PAIs of the product (of all products i.e. Art 8 and Art 9 SFDR, but also Art 5 and Art 6 TR). *PAIs are universal and commonly understood absolute figures*. *If well defined, revised regularly and aligned* with other EU SF legislation, they would help investors to have a global, comprehensive view of the product's total ESG footprint. GHG emission, energy consumption, tonnes of hazardous waste, gender pay gap, staff turnover or any other well defined PAI might be often more informative or self-explanatory to the end investor than any other statement of alignment or eligibility.
<ESA_QUESTION_ESG_9>

Q10 : The draft RTS propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products (including Article 5 and 6 TR products which are a sub-set of Article 8 and 9 SFDR products). Do you believe it would be preferable to have separate pre-contractual and periodic templates for Article 5-6 TR products, instead of using the same template for all Article 8-9 SFDR products?

<ESA_QUESTION_ESG_10>
We would be *supportive of having unified templates* (pre-contractual and periodic), for Art 5-6 TR products and Art 8-9 SFDR products, as the former seems to be subsets of the latter. We believe such approach is simpler, neater and more friendly for the end users.
<ESA_QUESTION_ESG_10>

Q11 : The draft RTS propose in the amended templates to identify whether products making sustainable investments do so according to the EU taxonomy. While this is done to clearly indicate whether Article 5 and 6 TR products (that make sustainable investments with environmental objectives) use the taxonomy, arguably this would have the effect of requiring Article 8 and 9 SFDR products making sustainable investments with social objectives to indicate that too. Do you agree with this proposal?

<ESA_QUESTION_ESG_11>
This is an important consideration because at the time of SFDR writing, adoption and amendments (the latter as per Taxonomy Regulation art 5 & 6), the only existing Taxonomy was Environmental Taxonomy (ENV TR). Social sustainable elements were included only through a "Minimum Social Safeguard" (MSS) provision in the Taxonomy Regulation. However, as the discussions around ENV. TR proceeded, it became clear that further to "E" also "S&G" elements are important parts of sustainability equation and MSS provision included in the ENV TR will not suffice. There is a clear *need of a Social Taxonomy (SOC TR)*.

Social aspect is even more important given the way in which SFDR has been designed, where a *definition of the "sustainable investment", is wider than a definition of the "sustainable activity"* under the ENV TR. The

SFDR defines sustainable investment as an investment in an economic activity which contributes to: an “environmental objective” OR a “social objective” or in the human capital, provided it does "DNSH" to any other. Such provision has clearly indicated the relevance of the “S&G” elements in the sustainability consideration of the product. And this has also paved the way for the development of the Social Taxonomy.

As of today, *Social Taxonomy is not ready yet and is only in the design phase* – this is the work of the EU Platform on Sustainable Finance PSF (Sub Group 4), where the PSF discusses about the SOC TR structure, its key pillars, objectives etc. PSF’s work will form the basis for the EC’s recommendations to be presented towards the end of 2021 with regards to the

Given such context, and as also mentioned in Q9 above, *we agree* that the draft RTS amended templates which identify if the products making sustainable investment, do so accordingly to the Taxonomy, shall also *include a clear statement & indication which Taxonomy is referred to, i.e. whether the product is aligned with the ENV. Taxonomy or with a SOC. Taxonomy, or both* (as at this stage, SOC TR does not exist, we would suggest to clarify in the templates that any time there is a reference to “taxonomy” it does refer to “environmental taxonomy”).

Also, importantly the relevant *DNSH compliance requirements* and thresholds (and/or minimum safeguards) in both taxonomies will need to be set right, to ensure they are not conflicting or contradicting one another. This is an important aspect to keep in mind while the Social Taxonomy is only in a design phase and not ready yet.
At the same time and until Social Taxonomy is defined (and along with it, most likely its DNSH criteria), it is *important that the SFDR products which are taxonomy-aligned*, for now possibly only ENV TR aligned (starting now with the 2 ENV objectives only; with the 4 other ENV objectives to follow later on), *disclose also on its DNSH alignment as per SFDR requirements*. This is to ensure that an activity which is aligned with the Environmental Taxonomy, and so it does: contribute substantially to one of the ENV objectives + DNSH to any other ENV objective + meet Min. Social Safeguards, does also *meet SFDR requirements of DNSH to SOC & human capital objectives*.

As mentioned in the 2nd paragraph above, it is important to keep in mind, that the scope and definitions of *SFDR, although very similar to those of the TR, are different*. Therefore, and in a long run, we believe it would be important to either:

- try to align the two laws as much as possible,
- be extremely mindful about the discrepancies between the two laws, and make sure the tie in well, without creating unnecessary confusion or leading to potential loopholes.

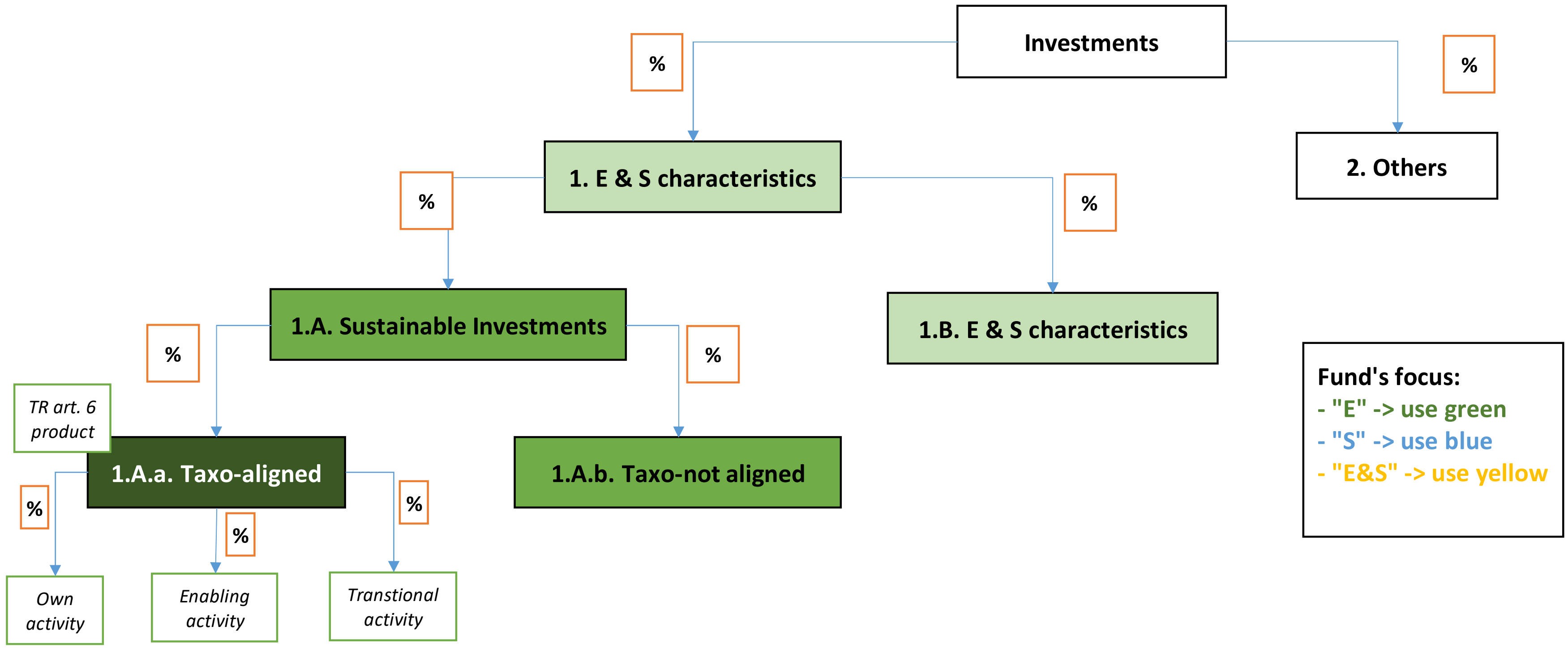
<ESA_QUESTION_ESG_11>

Q12 : 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_12>
No comment
<ESA_QUESTION_ESG_12>

ANNEX I – Question 9 of the Public Consultation - SUGGESTION OF THE MODIFICATIONS TO THE "ASSET ALLOCATION" CHART

ART 8 (PRE-CONTRACTUAL & PERIODIC REPORTING)



1. E & S characteristics - (*as in current template*) investments aligned with E/S characteristics (i.e. incl. the investments used to attain the E/S characteristics promoted by the financial product)

1.A. Sustainable Investments - investments that are aligned with E/S characteristics AND that qualify as sustainable investments (under SFDR definition)

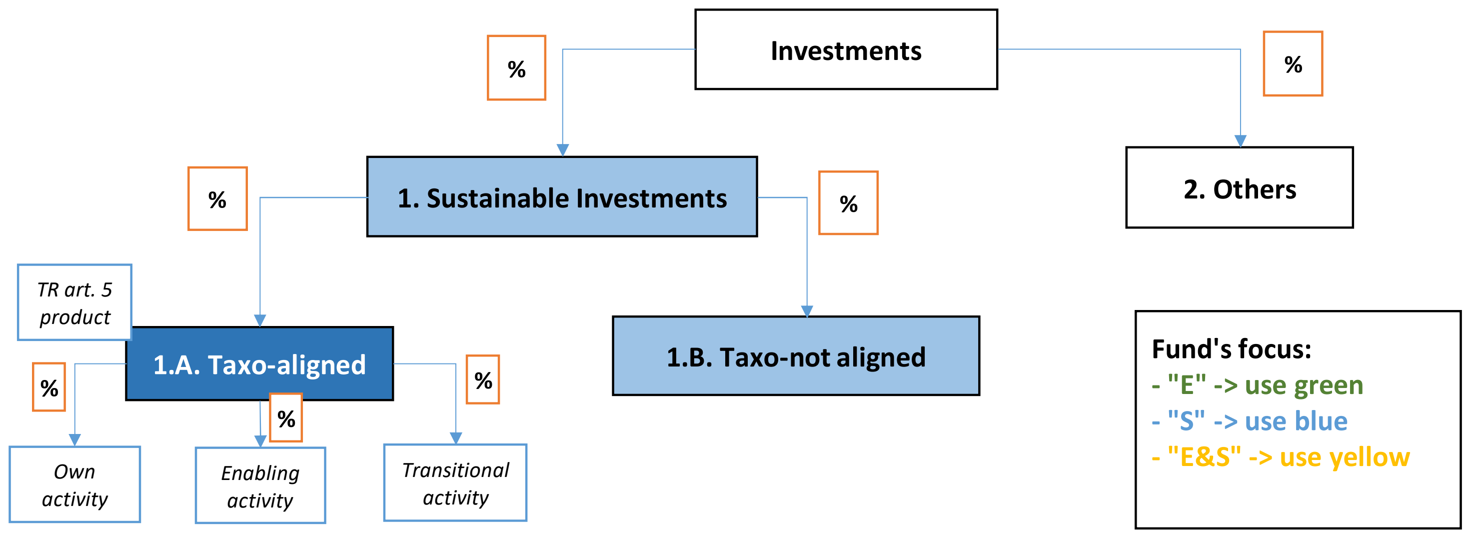
1.B. E& S characteristic s - investments that are aligned with E/S characteristics BUT DO NOT qualify as sustainable investments (under SFDR definition)

1.A.a. Taxo-aligned - investments that are aligned with E/S characteristics AND that qualify as sustainable investments (under SFDR definition) AND that are taxonomy-aligned (under TR definition)

1.A.b. Taxo-not aligned - investments that are aligned with E/S characteristics AND that qualify as sustainable investments (under SFDR definition) BUT ARE NOT taxonomy-aligned (under TR definition)

2. Others - (*as in current template*) remaining investments which are neither aligned with the E/S characteristics, nor are qualified as sustainable investments

ART 9 (PRE-CONTRACTUAL & PERIODIC REPORTING)



1. Sustainable Investments - (*as in current template*) investments that qualify as sustainable investments (under SFDR definition)

1.A. Taxo-aligned - investments that qualify as sustainable investments (under SFDR definition) AND that are taxonomy-aligned (under TR definition)

1.B. Taxo-not aligned - investments that qualify as sustainable investments (under SFDR definition) BUT ARE NOT taxonomy-aligned (under TR definition)

2. Others - (*as in current template*) remaining investments which DO NOT qualify as sustainable investments (under SFDR definition)