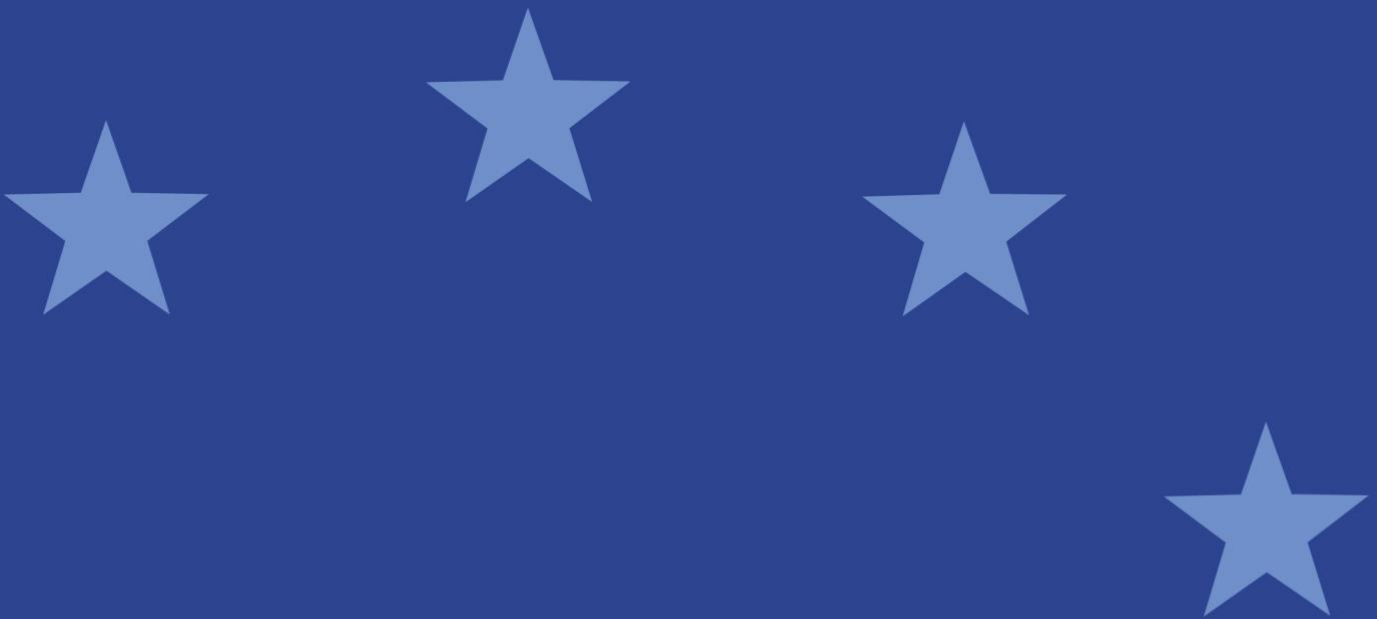


Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclosures





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) 2018/1725¹. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

¹ Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Alternative Investment Management Association
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

The Alternative Investment Management Association (AIMA)² welcomes the opportunity to respond to the European Supervisory Authorities' (ESAs) joint consultation on the taxonomy-related sustainability disclosure ('the Consultation') related to Articles 5 and 6 of the Taxonomy Regulation (2020/852).

We welcome the clarification of the disclosure requirements introduced by the Taxonomy Regulation through the adoption of regulatory technical standards ('RTS') and are pleased to share some comments with a view to contributing to the ultimate objective of ensuring adequate reporting to investors and enabling them to allocate their capital based on sound and reliable information.

To this end, our main comments in relation to the consultation are summarized in this cover letter and detailed in the annex to this letter:

- **Coherence:** It is essential that the Taxonomy Regulation final delegated act be coherent with the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (the 'SFDR') RTS, as well as with the RTS for Article 8 of the Taxonomy Regulation and the upcoming delegated acts integrating sustainability factors in the UCITS directive, the AIFMD and MiFID. We strongly recommend that policy-makers ensure that both substance and implementation timeframes are adopted in a coherent and sequential manner.
- **Scope:** Many members have raised concerns as regards the scope of Article 6 of the Taxonomy Regulation which is not entirely clear in the draft RTS. Our understanding is that it applies to SFDR Article 8 funds which disclose a commitment to making sustainable investments (as defined by Article 2(17) SFDR) and which intend to invest in environmentally sustainable activities (as defined in new Article 1(2) of the draft RTS). A product which does not commit to sustainable investments with environmental objectives would not be required to assess its alignment with the Taxonomy.

² AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage \$400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

We understand from the ESAs' public hearing of 29 April 2021 that this view is also shared by the ESAs.

- We also note that where an Article 8 SFDR product does disclose a commitment to making sustainable investments as defined by Article 2(17) SFDR in its pre-contractual documentation, but happens unintentionally and in the course of the life of the product to invest in assets that include activities which contribute to sustainable objectives as defined in Article 2(17) SFDR, that product would not be required to disclose taxonomy alignment under Article 6 of the Taxonomy Regulation in its periodic reporting. We understand from the ESAs' public hearing that this view is also shared by the ESAs and would welcome a confirmation.
- **Taxonomy Classification:** We note that our understanding of statements made by the ESAs at the public hearing is that the ESAs consider it open to an entity to choose to classify an investment underlying a financial product as not aligned with the Taxonomy either due to a lack of data or where gathering such data would be disproportionately onerous.

We would be grateful for confirmation of this understanding.

<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>

Timeline

We support this approach, although we are concerned that there might be a timeline issue as financial market participants will need to have the Taxonomy Regulation draft RTS finalised before being able to fully comply with SFDR's level 2, especially as some further changes to the SFDR draft RTS that are unrelated to the Taxonomy might be introduced (see amended Articles 18 and 19 of the SFDR draft RTS in the Consultation paper, related to the use of benchmarks and website disclosures).

We strongly recommend a general alignment of all SFDR-related level 2 application dates which should be set several months after the publication of the delegated acts in the Official Journal, or at least a phased out and transitional approach during the first year to allow fund managers to adapt to the various elements of the SFDR and the Taxonomy in a coherent way. It is especially important to avoid a situation where the Taxonomy Article 5 and 6 RTS amending the SFDR RTS are published after the application date of the SFDR RTS.

We believe policy-makers should therefore assess whether 1 January 2022, as proposed in the SFDR draft RTS, is a realistic deadline for the entry into application of all SFDR-related level 2.

Scope of Article 6 TR

As stated in the introductory paragraphs, we understand from the Consultation paper that the scope of Article 6 TR applies to those SFDR Article 8 funds that effectively commit or disclose that they are investing in environmentally sustainable activities, as per the SFDR Article 2(17) definition of sustainable investments, according to para 4. of the consultation paper: *"Article 6 TR applies Article 5 TR disclosures to Article 8 SFDR products that make sustainable investments"*.

However, the scope covered by the new Article 16a of the SFDR draft RTS as amended by the Taxonomy draft RTS would benefit from further clarification, in order to apply only to those SFDR Article 8 funds that disclose that they make sustainable investments. It would be redundant to force an Article 8 fund with environmental characteristics but not committing to invest in sustainable activities to report the alignment of the product with the Taxonomy Regulation.

Derogations

In terms of the derogation provided under the new 16a.3,³ it is not entirely clear how this derogation would apply (this point applies equally to the new Articles 23a.3 and 34(3) and 47(3) and 61a.3 and

³ « By way of derogation from point (b) of paragraph 1, in respect of sustainable investments in environmentally sustainable economic activities of financial products referred to in Article 6 of Regulation (EU) 2020/852, »

67a.3). It would appear to be saying that when a relevant investment qualifies as a sustainable investment in environmentally sustainable activities, presumably within the meaning of Article 3 of the Taxonomy, then the relevant evidentiary information required under 16a.1(b) need not be provided. Noting that in order to qualify as environmentally sustainable under Art. 3 TR, an economic activity needs to meet the requirement under Art. 3(d) that it complies with the technical screening criteria, and that these have only been published (in a draft form to this date) for climate change mitigation and climate change adaptation, does this mean that from e.g. 1 January 2022 only sustainable investments falling under those two categories could take advantage of the derogation? Or could an investment qualify as an investment in environmentally sustainable activities for the purpose of 16a.3 without the relevant technical screening criteria being in effect for that particular environmental objective? Further, it seems that a statement as to the environmentally sustainable nature of an investment would suffice as neither under Art; 3 TR or elsewhere does it appear that there is any evidentiary requirement.

Amendment to Article 18 (benchmarks)

This provision would benefit from clarification. The requirement related to « an explanation of how the reference benchmark is continuously aligned with each of the environmental or social characteristics promoted by the financial product and with the investment strategy; » could be clarified as requiring that deviations should be explained, rather than a requirement that the reference benchmark continuously align with each E/S characteristic promoted by the financial product as very few indices will align 100% with a portfolio's characteristics.

Other clarifications

The drafting in, e.g. Art. 61, para 1(a) should be tightened up by including "sustainable" before "investments" which we understand to be the intended meaning. Similarly in (c) of that Article: *"the proportion of investments during the reference period in different sectors and sub-sectors, including the fossil fuel sectors."* It is our understanding that reference is made to the proportion of sustainability-related investments rather than all investments. The same issue is present elsewhere, for example, in Article 67 and would benefit from clarifications.

Finally, there are a couple cross references to Art. 16a(1)(c). This provision does not appear to exist and therefore it is not clear to what the relevant provision making the cross reference is referring – see e.g. 61a(2)(b)(ii).

<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>

Our main concerns as regards the KPI is related to the denominator, which we present below.

As regards the KPI and the numerator, we suggest flexibility to treat other green bond regimes the same as under 16b(1)(c) ("*green bonds issued under a future EU legal act setting out an EU Green Bond Standard*"), subject to some form of confirmation from the ESAs that such regime is valid.

We also recommend clarifying the notion of "market value" in Article 16b as we feel this notion is not entirely clear for all market participants, including, but not limited to, private debt fund managers which are more active in the SME universe.

<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>

We do not object to the use of operational expenditure as one of the possible ways to calculate the KPI.

However, we note that while operational expenditure can in principle be easy to calculate, this may not always be the case for managers of alternative investment funds. Such funds may not be able to easily obtain figures relating to operational expenditure on a quarterly basis (or otherwise) outside of a control private equity position (e.g. a minority holder of listed shares or a debt investor may not be able to obtain such data from an investee company, if it is not required to provide such data under the revised CSRD). We also note that for SMEs the calculation of operational expenditure may not be possible or proportionate.

<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>

We support the International Swaps and Derivatives Association (ISDA)'s view in considering that derivatives should be included in the proposed KPI for the disclosure of the extent to which investments are aligned with the taxonomy but only where they are used to attain the environmental or social characteristics promoted by the financial product or the sustainable investment objective of the financial product.

<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>

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<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>

Reiterating our response made to ESMA consultation on the draft advice regarding Article 8 of the Taxonomy Regulation and in view of the substantial lack of taxonomy-related data, we support the limitation of the denominator to a set of eligible assets that would be assets for which the alignment with the Taxonomy is readily available. This approach would at least allow a picture that would be closer to reality than a KPI based on a denominator for which a number of assets, if not the majority of assets in the case of our membership, will have no relevance to the Taxonomy (sovereign bonds, interest rates derivatives...).

<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>

Many of our members feel that this statement, which comes in addition to other disclosure requirement related to the Taxonomy, is redundant and does not provide meaningful benefit for the investor or potential investor.

Our members also feel that the third party review provision could be expensive when the pre-contractual disclosures are actually governed by a contractual relationship.

<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>

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<ESA_QUESTION_ESG_8>

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

<ESA_QUESTION_ESG_9>

We understand from the ESAs' hearing but also from the draft RTS (Article 16 (2)(a) for example) that the intention for the pre-contractual template is to show a potential "commitment" to invest in sustainable activities (as per the SFDR 2(17) definition) rather than a fixed share of investments that will be sustainable. Indeed, such a fixed share would be very difficult to maintain overtime as the portfolio evolves, the relative value of assets varies within the portfolio and as the underlying assets' alignment with the taxonomy varies as well. We would

therefore strongly recommend that the template allows the fund manager to disclose an intention, rather than a definite degree of alignment of the overall portfolio.

Furthermore, a clarification that the requirement to assess and disclose the degree of alignment of a financial product with the taxonomy does not apply to those SFDR Article 8 products which do not tick the box “invest partially in sustainable investments” in the template – but do have other environmental characteristics such as environmentally-based screening criteria – would be welcome.

Our members would also welcome taking into account those investments which fit into the definition of a “sustainable investment” , meet the “PAI/DNSH” test but for which an EU taxonomy is not yet available. A specific section of the pie chart could be dedicated to those types of investment.

<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 welcome the integration of Articles 5 and 6 TR disclosure in Articles 8 or 9 SFDR disclosures but we would reiterate the timeline issue mentioned in response to Q1. We ask that EU policy-makers take into consideration the materiality and time-consuming aspects of changes to pre-contractual documentation for open-ended funds and be mindful of differing application deadlines that would force financial market participants and supervisors to conduct overlapping updates and reviews of pre-contractual documents.

<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>

In our view, it should be clear from the template that a financial product which commits to make socially sustainable investments (and not environmentally sustainable investments) is not required to use the Taxonomy and should not be required to state whether it does so. We consider that the current template is potentially misleading in this respect.

<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>
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<ESA_QUESTION_ESG_12>