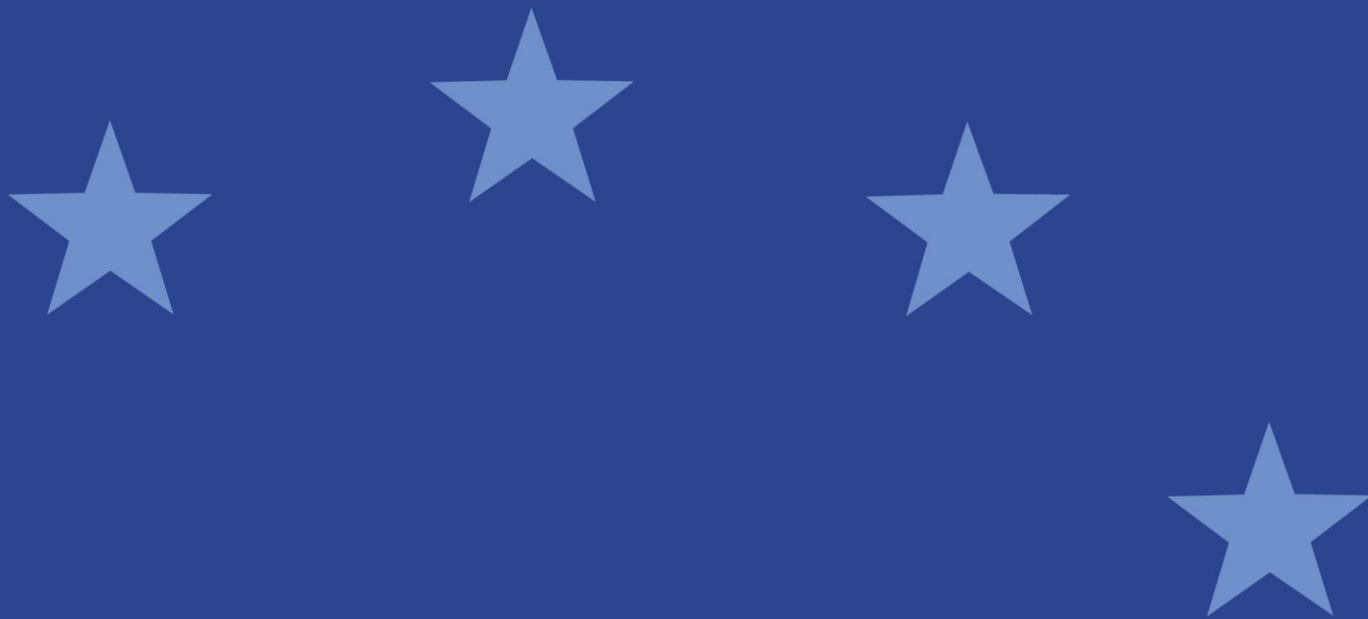


Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclo- sures





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) 2018/1725¹. 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	BNP PARIBAS GROUP
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	France

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

BNP Paribas Group EU Transparency Register Identification Number: 78787381113-69

<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 to this approach as it should allow to ensure consistency between the various sets of rules in this area. It is key that the articulation between the various requirements is clear and does not create some legal uncertainty.

At the same time, we have some concern on the date of publication of the final rules in the Official Journal as the final report for these RTS will be available at end of June 2021 at the earliest. Due to the time required for final adoption, probably these rules will not be validated prior to end of Q3 2021, that **will** not allow sufficient time for Financial Market Participants to adapt to this framework to start to disclose on January 2022 as required by the level 1 texts (Taxonomy Regulation and SFDR Regulation) , in a context where availability of data is already a key issue.

That's why we strongly believe that the implementation date of the mandatory use of the templates under the SFDR should be postponed to at least six months after the publication of the final Templates stemming from the current consultation in the EU Official Journal. In addition, we propose that a 1-year transition phase after the date of entry into force should be introduced in the final RTS during which a best effort approach would be allowed.

<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>

As a first comment, we are of the view that asset managers, insurers and portfolio managers should be allowed to use the KPI which is most relevant in view of each portfolio composition and its investment strategy. This means that any of the three KPIs should not be imposed for all products. In some cases, CAPEX may be more adapted to the general investment strategy of one portfolio, especially when transitional activities represent a key element of the investment strategy, for example in the case of an infrastructure fund, dedicated to financing long term transitional activities. When turnover is used, it does provide information mainly on the past performance of the investee, so this KPI would be relevant for products dedicated to "already green" companies, while the impact of the product, in terms of expected emission reduction, for example, would be less than in the first example. The third KPI on operating expenses does not seem to be relevant in this context, apart from very specific products dedicated to research efforts that cannot be capitalized from an accounting point of view.

In addition, the possibility to use a combination of several KPIs for one portfolio should also be left open at this stage to the discretion of financial market participants when it is considered relevant. It is simpler for users to use one combined indicator instead of publishing 2 or 3 KPIs. In addition, the calculation of the share of assets aligned to the European ECOLABEL (as currently defined) combines investments weighted by revenues and investments weighted by CAPEX.

This flexibility may be reconsidered, if needed, at a later stage when sufficient time has allowed to test different approaches and assess which one(s) is/are most relevant from a transparency perspective for end-investors.

In any case, information regarding the use of combined KPI should be disclosed in the pre-contractual documents on which KPI(s) is/are used with information by types of asset classes when needed.

<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>

At this stage, it seems that Turnover and Capex should be the most relevant KPIs to disclose the taxonomy-alignment of each investee company and of the portfolio. However we are of the opinion that use of Opex should be maintained at this stage as it is part of the three indicators retained in the draft Delegated Acts for Article 8 under the EU Taxonomy Regulation. Cf. Question 2

<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>

When a derivative is used to build the ESG exposure of a fund (ETF...), the fund should be allowed to include these derivatives in the numerator and in the denominator of the KPI, and thus on a voluntary basis, and not on a mandatory basis.

The information regarding the voluntary inclusion of some derivatives in the KPI should be disclosed in the pre-contractual documents.

We are of the view that the systematic inclusion of such derivatives (when the purpose of the derivative is to generate exposure to an ESG-related underlying asset) in the KPI on a mandatory basis is premature, given no common approach and methodology has been developed / agreed so far to take into consideration the specificities of the various types of derivatives and to aggregate the exposures to all derivatives. The adoption of such common methodologies is key notably because all derivatives are not used for the same purpose and for the same horizon of time. Further work needs to be done on derivatives before including them on a mandatory basis.

Of course, the other derivatives (IR swaps, currency swaps....) used for hedging purposes, referencing underlying parameters that are not at all ESG related (such as rates, currencies, or other market parameters...) will have nothing to do in the KPI, neither in the numerator, nor in the denominator.

<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>

We are of the opinion that the use of these two categories is sufficiently clear to capture all relevant instruments issued by investee companies, with taking into consideration the comment made above about the derivatives instruments.

We have additional comments on green bonds:

- First, as long as the Green Bond Standards (GBS) have not been adopted and published in the Official Journal (which probably not happened before end of 2021), we recommend to consider grandfathering of green bond holdings of investors issued under the Green Bond Principles (GBP), the de facto global industry-led standard, at least until the Taxonomy Delegated Acts for relevant activities enter into force. Existing investor holdings of green bonds under the GBP should be duly recognized and grandfathered as good faith investments, aligned with available best practices. Otherwise, the EU leadership in green bonds emissions by EU public and private issuers may be lost, and investor communication could be quite problematic, suggesting that those bonds may have been subject to “greenwashing”. If a potential EU Green Bond Standard were to enter into force, its provisions could take primacy thereafter, without prejudice to GBP-aligned securities issued prior to that date.
- The disclosure of other green bonds with use-of-proceeds should be based on the proportion of the alignment of the use of proceeds with the taxonomy if this information is available. If this information is not available, we recommend to use the “corporate level” disclosure on the alignment with the EU Taxonomy as a proxy.

<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>

ESAS are proposing that all types of investments should be included in the denominator of the mandatory indicator.

Firstly, we strongly recommend ESAS to exclude sovereign debts from the denominator, following the EC proposal in its consultation paper on the Delegated Act related to the Taxonomy Regulation, Article 8 ‘Common rules for disclosure by financial undertakings’ in point 1: “The exposures to central governments and central banks shall be excluded from the numerator and denominator of key performance indicators of financial undertakings”.

Secondly, we are also concerned about the inclusion in the denominator of other investments that fall out of the scope of the EU Taxonomy, generating KPI results that could be misleading and wrongly interpreted by the market:

- Non-EU investees and SMEs are not submitted today to the NFRD (2022 – 2023 disclosures) and will remain not be submitted to the future CSRD (from 2024 reportings), hence they will not be required to disclose their Revenues/ capex/opex aligned with the Taxonomy
- Many sectors are still not covered by the EU Taxonomy in the Delegated Act published on the 21st of April as they only address the climate change mitigation and adaptation objectives
- Investments on environmental objectives other than climate objectives are still not covered by the Taxonomy as well as social objectives.

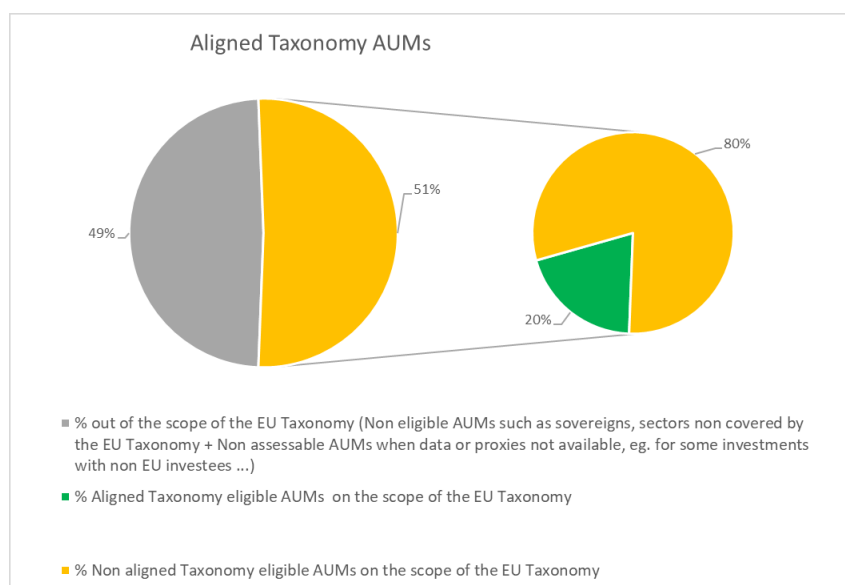
Let’s take the concrete examples of the General Fund of an insurer or of a geographically diversified fund that want to be recognized as an Article 8 product:

- Sovereign debts are an important asset class for (re)insurers, especially for the types of long-term products in scope of the SFDR. Given the importance of this asset class for insurance-related products, the inclusion of all investments in the denominator would both dilute the ratio and impede a relevant comparison with SFRD products on the real comparable perimeter, namely the scope of the EU Taxonomy. It is important to note that investments in such assets often reflect other characteristics of the financial product, such as the risk level. A guaranteed product, or a product aiming to deliver a stable return, often have a higher allocation to these types of investments. It would not be fair to compare a KPI for such a product with eg an equity fund where all / most assets can be assessed for taxonomy-alignment.
- Funds that are geographically diversified and with a huge non-EU component will also face uneven playing field in comparison to EU-oriented funds.

One way to address the lack of data availability is to allow the use of proxies / estimations. However, we believe that the use of proxies should be envisaged only if / when methodologies to produce these kinds of proxies and estimations are common to all stakeholders and have been preliminary validated by the European Commission. Otherwise it would not allow comparability of products and would not avoid greenwashing, which remains a key priority of the SFDR.

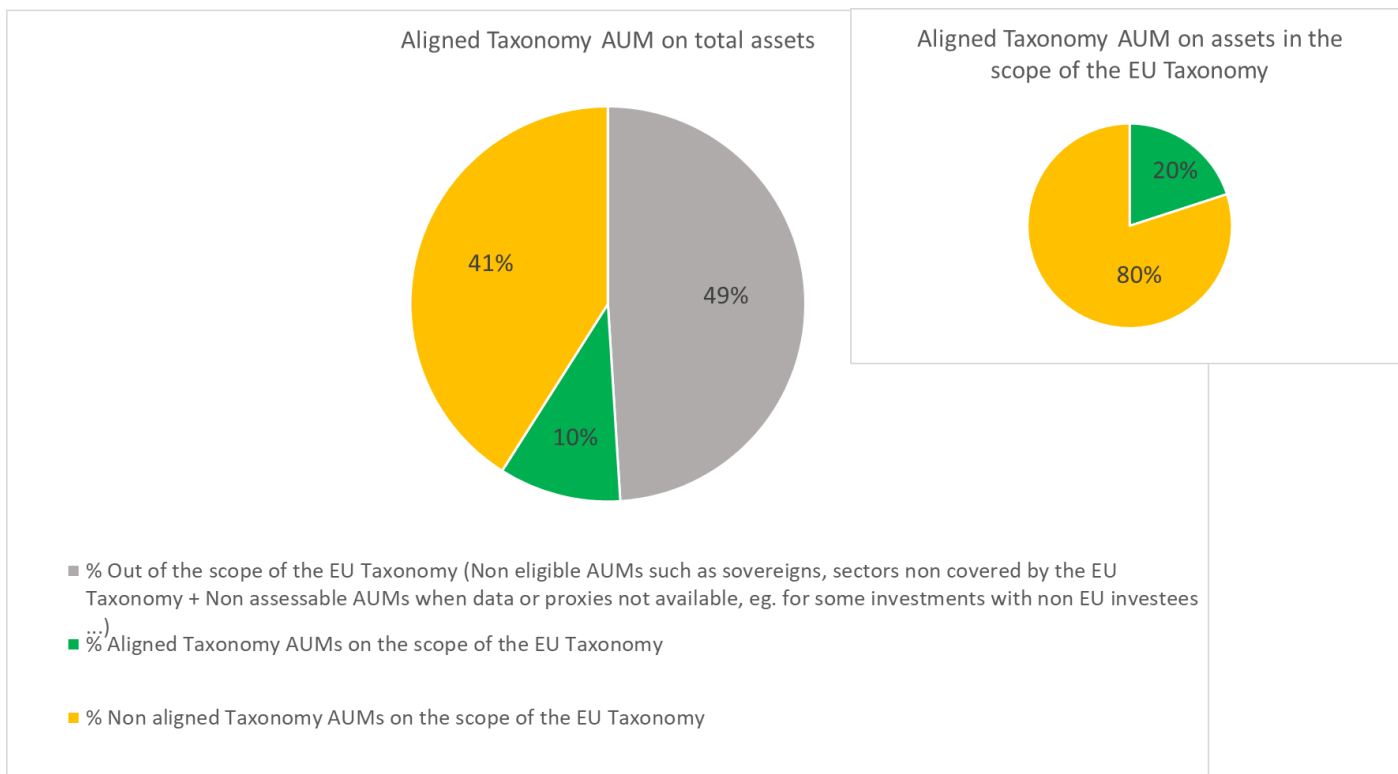
That's why, we recommend that the template should be enriched/ amended/ adjusted to highlight the scope of the investments for which taxonomy is available, and to recalculate the KPI on this scope. Typically sovereign debts, investments in investees not submitted to NFRD/CSRD and activities/sectors not yet in the scope of the EU taxonomy as currently defined should be excluded from the denominator and the KPI should be recalculated on that basis. With this approach, the taxonomy alignment disclosure would better reflect the capacity of one product to invest in taxonomy-aligned activities. The scope of investments taken into account will of course extend progressively, in particular when delegated acts for other environmental objectives will be adopted and when a social taxonomy will be developed. For clarity sake towards the customers, the template should be modified accordingly, by splitting the chart between EU Taxonomy scope and Out of the EU Taxonomy scope and highlighting the KPI calculated on the EU Taxonomy scope.

Example n°1 for an insurance general fund which includes by construction a high part of sovereign debts (out of the EU Taxonomy scope)



Alternatively, if the above proposal were not be retained, we recommend that the first pie reports the split of total investments in Out of EU Taxonomy scope / EU Taxonomy scope – not aligned / Aligned. To complement, a second pie should report only the investments in the scope of the EU Taxonomy with the split between Not aligned/ Aligned.

Example n°2 of template for an insurance general fund which includes by construction a high part of sovereign debts (out of the EU Taxonomy scope)



In the end, the most important point is to ensure that there is a **consistent approach between the numerator and the denominator**. The use of the same template with the KPI calculated on the whole investments and the KPI calculated on the scope of the investments for which taxonomy is available is also crucial for sake of comparability and avoiding greenwashing. Consequently rules on the composition and calculation of the denominator should be fully clear with no room for interpretation.

<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>

In our view, this statement is relevant in case of periodic information but is not adapted for pre-contractual disclosure as this information can be produced only on an ex-post basis. Would this statement be maintained in the pre-contractual documents, it should be referred to “expected minimum share of taxonomy aligned investments” instead of “minimum share”.

In addition, assessment by third parties should be done at the level of data disclosed by investee companies themselves and not at the level of the statement itself. This audit requirement is to be considered in the rules of the new CSRD.

<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>

We are in favour of having similar templates for pre-contractual disclosure and periodic ones.

However, as already mentioned in our response to Q.7, we consider that in case of pre-contractual disclosure, new requirements should be kept aligned with the initial purpose of the SFDR. Our understanding is that financial participants have to provide transparency on all elements identified in the RTS, in a similar way notably to allow comparison between products which are in the same category (i.e. Article 8 and Article 9 products). This does not mean that financial market participants should be asked to commit to achieve minimum level of alignment with taxonomy when making this information available in the pre-contractual documents (as it could be suggested with the use of “minimum share of investments aligned with the EU taxonomy”). This disclosure should be information-oriented and not commitment-oriented.

As a consequence, as already mentioned above, we recommend that the template should refer to “expected minimum share” of taxonomy alignment instead of “minimum share”.

Finally, we ask for a periodic disclosure on an annual basis, for portfolio management products.

<ESA_QUESTION_ESG_8>

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

<ESA_QUESTION_ESG_9>

Our main comment, in coherence with our response to the previous questions, is about the graph introduced to represent the minimum share of investments aligned with the EU taxonomy. This graph should be removed as this information is not relevant from an ex-ante perspective. It is much more relevant in the periodic disclosure template as the FMP can use reliable data to disclose this information.

In addition, we are of the opinion that the first section in the template (where the FMP indicates if the product is Article 8 or Article 9 product) should allow providing more general information on the characteristics of the products by mentioning if the product invests or not in activities / sectors which are in the scope of the taxonomy (i.e. taxonomy-eligible activities/sectors). This can be done by adding a new line or box tick (both for Article 8 and Article 9 products) asking if the investments are taxonomy-eligible or not.

As a result, we would suggest that, in case the answer is no in this new box (i.e. the box has not been ticked), the question on the minimum share of investments aligned with the taxonomy is removed from the template to avoid any confusion for end-investors. Would this question be maintained (with amended wording as suggested previously, i.e. “minimum expected share” instead of “minimum share”), then the financial market participants should be allowed to answer “non-applicable” or “non relevant” to reflect that taxonomy compliance cannot be fulfilled as underlying investments are not covered by the EU taxonomy.

Finally, from a customer perspective, this section should be also be simplified. Please find below a proposal of more readable template:

<input type="checkbox"/> Promotes environmental or social characteristics, but does not have as its objective a sustainable investment <ul style="list-style-type: none"> <input type="checkbox"/> It invests partially in sustainable investments <ul style="list-style-type: none"> <input checked="" type="checkbox"/> In activities out of the scope of the EU Taxonomy <input checked="" type="checkbox"/> In activities in the scope of the EU Taxonomy <input checked="" type="checkbox"/> In activities aligned with the EU Taxonomy
<input type="checkbox"/> Has sustainable investment as its objective. Sustainable investment means an investment in an economic activity that contributes to an environmental or social objective, provided that the investment does not significantly harm any environmental or social objective and that the investee companies follow good governance practices. <ul style="list-style-type: none"> <input type="checkbox"/> In activities out of the scope of the EU Taxonomy <input checked="" type="checkbox"/> In activities in the scope of the EU Taxonomy <input checked="" type="checkbox"/> In activities aligned with the EU Taxonomy

<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 support the approach which consists in having similar templates for both Article 8-9 SFDR products and Article 5-6 TR products. This would avoid proliferation of templates that might add operational complexity and create confusion for end-investors.

Our recommendation on this point is the one made in the answer to Q.9, i.e. adding a new line or a new tick box in the first part of the template to allow this distinction.

We take the opportunity of this question to raise a major challenge relating to the reporting requirement in the pre-contractual documents. As of today, the article 6 of the SFD Regulation states that the information referred to in Articles 6, 8 and 9 shall be disclosed in the prospectus referred to in Article 69 of Directive 2009/65/EC, but does not precise in which manner this information shall be provided. The RTS states that such information shall be presented in an annex of the prospectus, in accordance with the templates set out in Annexes of the RTS, and with a prominent statement in the main body of the prospectus indicated that information related to environmental or social characteristics/sustainable investment is available in that annex.

Due to the level of content of the information requested and the size that may reach each annex per product in a given prospectus (especially in respect of umbrella funds with many sub-funds), we do recommend that the RTS indicates clearly that such information may be put at disposal of the investor in the prospectus thanks to a pdf/website link. This can greatly contribute to making this regulatory document management more efficient, avoid multiplying the sources of information for an investor within a single document and participate widely in greater clarity of the information communicated to the investor.

As a last comment, we are asking for more clarity on the timeline for effective entry into force of these templates, in order to avoid that financial market participants have to duplicate efforts for developing them and making them available to investors.

<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>

We recommend the same approach as the one suggested in response to Q.9 and Q.10. By ticking the relevant box, it should be made clear that investments of this product are not taxonomy-eligible and as a

result cannot disclose their alignment with taxonomy. The case of social investments is part of this scenario.

<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>

TYPE YOUR TEXT HERE

<ESA_QUESTION_ESG_12>