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| Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclosures |
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| Date: 17 March 2021ESMA34-45-1218 |

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](https://www.esma.europa.eu/press-news/consultations) 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]](#footnote-2). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

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| Name of the company / organisation | The European Consumer Organisation - BEUC |
| Activity |   |
| Are you representing an association? |[x]
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

Consumers have begun changing their behaviour on financial markets in the past years. One aspect of this change is an increased awareness of sustainability issues that come with investment. The increasing demand for sustainable investments has revealed a severe shortage of reliable information on ESG products. This consultation is a part of the European Unions great efforts to solve this problem, and BEUC welcomes the initiative.

The Taxonomy Regulation will give consumers a framework to judge the sustainability of investments against. The rules set out in this consultation define, how taxonomy alignment should be disclosed to consumers. This is a vital aspect, because only an understandable information document can help consumers make sense and use of the available information.

Therefore, the questions of how key figures should be calculated and presented are vital for the success of the European Unions push toward more transparency on Sustainable Finance. The question of what information is truly vital and what should be further reading for the sake of a concise information will determine of user-friendly the information documents will be.

<ESA\_COMMENT\_ESG\_1>

1. : 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>

The proposal of amending the existing SFDR RTS instead of drawing up a new set is sensible. It offers two main advantages:

1. It will likely be a quicker process, which is relevant when considering the tight schedule the Taxonomy regulation must be made operational in.

2. A single rulebook will be easier to operate and provide greater clarity on the interaction of rules for industry, consumers and their advocates.

On a cautionary note, the merging of these two processes should not result in one being used to delay or obstruct the other.

<ESA\_QUESTION\_ESG\_1>

1. : 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>

The same approach to KPI calculation should apply to all investments made by a given financial product to avoid cherry-picking criteria. If a financial market provider were free to choose which criteria to apply to specific investments, the logical outcome would be to choose the one with the most positive report for each investment. This would lead to highly confusing results for consumers.

Ideally, there should be one, standardised approach to reporting KPI across all providers. Although, that may be difficult to achieve because of sectoral differences between banks and insurers for example, such standardization would greatly improve the comparability for consumers.

Furthermore, the reporting should be done as a weighted average of all criteria. For example it should not be possible to focus entirely on Capital expenditure when investing in equity, because such a measure could be deceptive. For example, a coal-energy company might not invest much in its established business, but could take small steps by investing in renewable energies. Such transition should of course be recognized but it should not be reported as shares in a sustainable business because of its CapEx.

<ESA\_QUESTION\_ESG\_2>

1. : 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>

Operational expenditure would be a reasonable metric, provided it is not used as the sole reporting metric and it is not an option that can be chosen or discarded at will. These considerations relate back to the response to question 2.

In general, operational expenditures are a relevant metric complementing capital expenditures. Not all enterprises can claim CapEx for sustainability, particularly if they are already operating a sustainable business that is not presently upscaling.

OpEx + CapEx are therefore a fair measure for effort for sustainability. After all, these measures are quite literally what it costs to act sustainably and to transition to sustainability respectively.

<ESA\_QUESTION\_ESG\_3>

1. : 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 purpose of reporting KPI is to inform consumers of the sustainability impact of their investments. Therefore, derivatives should only be reportable if they actively increase financing available to sustainable businesses. This may be the case in the use of some derivatives used to leverage the effect of an investment.

More often though, derivatives are used to hedge against the risks of another investment. It can be very difficult to identify the environmental performance associated with derivatives.

If the ESAs have the ability to judge which derivatives do have a positive impact and would be willing to implement a net reporting regime, then this would provide additional value to consumers. Under these circumstances, such reporting should be mandatory to financial market actors. However, if such a regime is out of scope, technically fraught or otherwise unrealistic, then derivatives should be excluded from KPI numerator calculations but not form the denominator. This would ensure that derivatives are not falsely or unverifiably reported as sustainable while maintaining comparability because the entirety of invested capital remains as the basis of the calculation. Please see question 6 for a full explanation of the importance of this aspect.

Contracts for difference do not impact the business of the underlying asset, so they should not be reportable as sustainable.

<ESA\_QUESTION\_ESG\_4>

1. : 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>

1. : 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>

Having all assets in the KPI denominator is necessary to ensure comparability for consumers. If assets that cannot be judged are left out of the calculation of the KPI, it would skew the results. Consumers want to know how much of their investment is going to sustainable purposes. If instruments are left out of the denominator because it is impossible to assess its taxonomy compliance, then taxonomy compliance will climb and the consumer will be misinformed about how compliant his or her investment actually is. In fact, a fund could heavily invest in these assets (on which there is no information about taxonomy alignment) in order to seem more sustainable. This would also be a significant disadvantage for “honest” sustainable funds which would not employ such tactics, potentially crowding them out.

This would be reasoning enough, but there is a political aspect as well. If “no information” assets are not part of the KPI calculation, then there would be no reason for the industry to want to extend the taxonomy – ever. Including these in the calculation reverses the incentive, hopefully leading to the industry to have a vested interest in further clarifications, which is what we need if consumers are to get full disclosure.

<ESA\_QUESTION\_ESG\_6>

1. : 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>

Assessment by a third party is additional security against fraud, negligence and simple errors. Having such an assurance would be a significant consumer benefit. Ideally, this would be done by a non-profit ESG rating agency, which would be exclusively beholden to providing the most accurate assessment possible. Sadly, such an agency does not exist. Therefore, a for profit ESG rating agency would still provide benefit for investor protection, the same way analogous institutions do for financial reporting.

If such an obligation is to be established, it would be relevant to find the correct wording. It should be made clear, that the purpose of such a review is not to check if the disclosure is compliant with the Taxonomy articles discussed in this consultation, meaning if the product has been filed in the correct product category. Instead, it would be much more relevant to check the veracity of the information provided. This would cover a check of the calculations, but also of the underlying data provided.

<ESA\_QUESTION\_ESG\_7>

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

<ESA\_QUESTION\_ESG\_8>

Periodic push information is a significant benefit to consumers. MiFID II has shown that providing ex-post information of this type to consumers was more effective to increase their awareness than ex-ante information. These documents should mirror the pre-contractual disclosures in formatting, language and content to allow for easier comparisons.

However, if more granular information is to be included, periodic information would be a better place to introduce the additional information. This is the case because consumers have more time, and experience, and less pressure while reading these documents, and therefore have a higher capacity for absorbing information provided in ex-post documents.

<ESA\_QUESTION\_ESG\_8>

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

<ESA\_QUESTION\_ESG\_9>

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<ESA\_QUESTION\_ESG\_9>

1. : 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>

It would be preferable to use the same template wherever this is possible. A unified information document would increase comparability. The different legal basis does not matter to consumers, but being handed differently formatted information would. Wherever information is unavailable or irrelevant, this should be explicitly stated, to maintain maximum alignment and therefore comparability. Ultimately these are instruments which exist solely for the consumers benefit and should be optimized for concise, relevant and comparable information.

<ESA\_QUESTION\_ESG\_10>

1. : 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>

Social sustainability is a vital aspect of ESG. Any contribution in this field should be reported to consumers to enable a well-informed investment decision. This should not be too difficult to achieve, because the SFDR has a wider scope on social sustainability than the taxonomy does in its current form. Such reporting is more of an opportunity than an obligation to the industry and should be enabled until the taxonomy clarifies its criteria on social sustainability.

It is essential however, that any claims of social sustainability made in this way, must be substantiated by a clear reasoning and the relevant data. And, preferably, should be reviewed by a third party as per the answer to Question 7.

<ESA\_QUESTION\_ESG\_11>

1. : 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>

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. [↑](#footnote-ref-2)