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

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 | Irish Funds |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Ireland |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

The Irish Funds Industry Association (“Irish Funds”) is the representative body for the international investment fund community in Ireland. Irish Funds represents fund managers, administrators, depositaries, transfer agents, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. Net assets of Irish domiciled investment funds stand at EUR 3,376 billion (source: Central Bank of Ireland, February 2021), representing over 17% of total net assets of European investment funds (source: EFAMA, Q4 2020). Irish Funds looks forward to the continued implementation of the EU sustainable finance regime and we welcome the opportunity to respond to this consultation. We would like to make a number of key observations:

Timing and implementation challenges

The prospect of the delayed finalisation of the SFDR RTS in their entirety or the subsequent amendment of these RTS to allow for additional Taxonomy-related disclosure requirements (as proposed under this consultation) creates the potential for significant timing and practical implementation challenges. A significant operational investment will be required to provide the completed templates on a fund-by-fund basis. The ESAs published their Final Report on the RTS in February 2021 but these RTS may still be subject to change and have not yet been adopted, while this most recent consultation adds further uncertainty around the final outcome of the RTS and related pre-contractual and periodic templates. Financial market participants (“FMPs”) need complete certainty around the final shape of the RTS and templates, as well as sufficient lead-in time, in order to effectively prepare for implementation. In our response to Question 1, we support the ESAs’ view that there should be a single rulebook and one set of RTS, however, we do not see how a single unified set of RTS could be finalised in sufficient time at this stage to enable an orderly implementation for 1 January 2021.

Therefore, our suggestion is for the Commission to endorse the RTS submitted by the ESAs in February and to amend these RTS later during the year with a delayed application of the Taxonomy-related disclosure amendments, potentially aligning the effective date of these amendments with the application date of the principal adverse impact (“PAI”) reporting on a fund-by-fund basis under Article 7 of the SFDR (30 December 2022). This will limit the number of times pre-contractual documents will need to be updated and will also be close enough to the effective date of when Taxonomy alignment disclosures will be required for the last four environmental objectives. Therefore, following this approach, precontractual documents could be updated at the same time to take account of (i) the subsequent Taxonomy-related disclosure amendments to the SFDR RTS, (ii) to meet compliance requirements under Article 7 of the SFDR and (iii) to reflect alignment with the last four environmental objectives under the Taxonomy. We see this as necessary to provide a manageable process for updating precontractual documents for NCAs and FMPs and consequently to ensure an orderly implementation.

Furthermore, while the Taxonomy will be effective from 1 January 2022 in respect of the first two environmental objectives of climate change mitigation and climate change adaptation, there will be a lack of sufficient information upon which to assess the Taxonomy alignment of underlying investee companies until the reporting under the Taxonomy is up and running. This arises because there is a timing mismatch between the entry into effect of these product disclosures and the timing of reporting by the investee companies under the Taxonomy Regulation. In particular, we note that in the draft Delegated Acts for corporate reporting under Article 8 of the Taxonomy, the European Commission is proposing that companies will only be required to disclose the percentage of activities that are Taxonomy-eligible in 2022 and only report their Taxonomy KPIs from 2023. A large part of the investment universe, including non-EU and smaller companies will also not be subject to Taxonomy reporting. The situation can be expected to improve with the implementation of the newly proposed Corporate Sustainability Reporting Directive (“CSRD”) as well as international initiatives in the field of sustainability reporting. The first Taxonomy Delegated Acts have only recently been published and while FMPs can undertake best endeavours to model data on Taxonomy alignment, significant data gaps will exist. Therefore, we would urge the European Commission and the ESAs to adopt a best-efforts, transitional approach to implementation until such time as companies have reported Taxonomy-aligned KPIs (expected to be in the course of 2023, as per the most recently proposed Delegated Acts).

In light of the challenges noted above, we suggest that a transitional period of up to 30 December 2022 is provided for in relation to the Taxonomy alignment disclosures under the SRDR RTS, while FMPs should proceed with updating their pre-contractual disclosures by 1 January 2022 to address (i) the “original” SFTR RTS and (ii) Article 5/Article 6 of the Taxonomy Regulation. The transitional period in respect of the Taxonomy alignment disclosures should enable a high-level principles-based approach to compliance based on the Level 1 text with the possibility of qualitative disclosures and disclosures on the estimated range of Taxonomy alignment in the absence of reliable data. We see such a transitional period as essential to ensuring investor and broader stakeholder confidence in the Taxonomy alignment disclosures. This is also consistent with the Commission’s approach to Level 1 compliance under the SFDR in the absence of final RTS and with the ESAs’ approach to the phasing in of reporting on the principal adverse impact indicators. Please see below our related response to Question 1 for further details.

Consistency across the EU sustainable finance regulatory framework

Consistency of approach is critical to the coherence and success of the EU sustainable finance regulatory framework and in that regard, we propose further alignment of these proposals with the envisaged approach on “green” alignment reporting for investee companies under Article 8 of the Taxonomy Regulation, as well as with the work on the proposed Ecolabel and relevant recommendations provided by the TEG and the Platform on Sustainable Finance.

Disclosure for consumers

We understand that the ESAs are firstly constrained by the Level 1 text and their mandate, and secondly seeking to strike a balance with the proposed pre-contractual and periodic reporting templates in order to ensure an appropriate level of consistency and comparability in disclosures. However, we would query the usefulness of some of these disclosures for retail investors, while at the same time, the level of detail in the templates will not be sufficient for professional investors’ due diligence. In particular, the templates contain a number of check boxes at the start that may not be well understood by consumers. We note that the results of the consumer testing undertaken by the ESAs, as presented at the open hearing on 29 April, revealed challenges relating to consumer understanding and we would encourage the ESAs to address those challenges. We have made some suggestions regarding wording changes in our response to Question 9.

Scope-related challenges and associated disclosures

We generally agree with the approach the ESAs have taken to the scope of products that should be required to comply with these additional Taxonomy-related disclosures. However, we believe that some of the proposed wording is too heavily focused on the Taxonomy as the sole tool or framework to pursue sustainable investment when this is not the case. In this context it should be noted that it is clear from the wording of Article 5 of the Taxonomy Regulation that the Taxonomy is not intended to apply to funds that invest in sustainable investments pursuing a social objective while investors are likely to use other frameworks, such as the UN sustainable development goals (“SDGs”), in terms of defining their sustainable investments. Therefore, we think that some of the wording needs to be amended in various parts to allow for these other valid approaches in addition to Taxonomy alignment so as not to undermine these approaches in the eyes of investors.

<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 internal cohesion of the requirements and timeframes within the SFDR, as well as under the EU sustainable finance framework more generally, is critical to a successful and orderly implementation. Therefore, we fully support the ESAs’ aim to have the original RTS under the SFDR and the additional RTS added under the Taxonomy Regulation function as a single rulebook.

Operationalising these disclosure templates will be a very significant undertaking, requiring an appropriate lead-in time. However, the timeframe for implementation of the pre-contractual template is already very tight. Industry needs final, adopted text to begin preparing effectively for the roll-out of these templates. There is now very significant uncertainty as to how to approach implementation, given the Commission’s plan to adopt the SFDR RTS based on the ESAs’ Final Report of February 2021 (with the attendant question of how to approach Taxonomy alignment disclosure for 1 January 2022) while this consultation is ongoing and the related RTS may not be adopted until as late as October/November 2021, just prior to the compliance deadline. The adoption of the amended RTS so close to 1 January 2022 does not allow sufficient time for planning and preparation in order to be able to meet the new disclosure requirements. Under such circumstances, we would urge ESMA and the Commission to work together to find a practical solution that allows for an orderly implementation.

As outlined above, our suggested approach is for the Commission to endorse the RTS submitted by the ESAs in February and to amend these RTS later during the year to incorporate the relevant Taxonomy-related disclosures with a delayed application of such amendments, potentially aligning the effective date of these amendments with the application date of Article 7 of SFDR (30 December 2022), thus limiting the number of times pre-contractual documents will need to be updated as this date will also be close enough to the effective date of when the Taxonomy alignment disclosures will be required for the last four environmental objectives (1 January 2023). By simply amending the RTS already endorsed, the ESAs aim of a single rulebook will still be achieved. In light of this, we recommend a transitional period of up to 30 December 2022 regarding compliance with the requirements to disclose Level 2 Taxonomy alignment, enabling high-level principles-based compliance in accordance with the Level 1 text from 1 January 2011 with the possibility of qualitative disclosures and disclosures on the estimated range of Taxonomy alignment in the absence of reliable data. Such an approach is necessary in order to ensure an orderly implementation. We note that this is consistent with the Level 1 approach to compliance the Commission took to the 10 March 2021 deadline in light of implementation and timing challenges. The ESAs have taken a similar approach with regard to the phasing in of the reporting of the principal adverse impact indicators under the SFDR Principal Adverse Impact Statement template.

<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>

We acknowledge the need for a consistent approach in respect of the methodology but this must also be balanced with the need for relevance to investment strategy. It is likely that investment strategies being pursued will use a combination of turnover and expenditure as relevant to the underlying investee companies. Therefore, relying on the reporting of only one single indicator could present an inaccurate profile of Taxonomy alignment within the portfolio.

For example, turnover is more likely to be used as the measure in companies that already have a strong revenue stream from commercialising green technologies whereas capital expenditure (“CapEx”) is more relevant for companies that are looking to transition business lines to a more sustainable path but have yet to generate significant revenues from these activities. While turnover captures revenue from existing “green” business activities, CapEx is also crucial, as it captures new green investment. Each of these methods is equally valid depending on the specifics of the respective company and both should be allowed within the same portfolio in order to present the most accurate picture of Taxonomy alignment.

Taking this approach would also ensure greater consistency with the advice of the TEG, the proposed approach under the Taxonomy Regulation Article 8 disclosures for investee companies and asset managers, the proposed approach under the Ecolabel as well as with the advice of the Platform on Sustainable Finance. Mandating turnover as the only relevant indicator would run contrary to the TEG Final Report, which stated that revenue cannot be counted towards climate adaptation, as this is a continuing process. The choice of indicators should be aligned with the Delegated Act under Article 8 of the Taxonomy Regulation, which will determine the calculation methods, eligible assets in the denominators, and the role of CapEx in deriving the green asset ratio of financial undertakings. Under the Ecolabel, the envisaged approach involves a combination of both turnover and CapEx to determine eligibility. Furthermore, the recent [recommendations](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210319-eu-platform-transition-finance-report_en.pdf) of the Platform on Sustainable Finance on forward-looking metrics stated that product developers can choose whether to weight a company in a fund portfolio based on either the share of Taxonomy aligned turnover, or the Taxonomy aligned CapEx. We agree with this approach. We would therefore suggest that the ESAs align with the Ecolabel methodology for calculating Taxonomy alignment or allow product providers show a combination of KPIs, perhaps in tabular form.

We would also suggest that clarity is provided with respect to whether Taxonomy alignment should only cover the environmental objective to which the product contributes, or whether the KPI is designed to cover all Taxonomy aligned investments? For example, should a fund that targets only climate change be reporting only on the extent to which the underlying investments meet the Taxonomy criteria for climate change mitigation or adaptation or should it be reporting a total number of Taxonomy alignment across all 6 environmental objectives? This will be relevant in instances whereby an investee company contributes towards multiple environmental objectives and not just a single one such as climate change. If the ESAs’ intention is that Taxonomy alignment should only be based on the specific environmental objective of the product, we suggest that this is clarified in the RTS and that FMPs are given an opportunity to disclose the fact that there are investee companies within the product that also contribute towards other environmental objectives but have not been captured in the Taxonomy alignment.

<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>

The disclosure of operational expenditure (“OpEx”) is likely to be challenging for many investee companies given the adjustment to internal accounts that would be required to allocate OpEx across NACE codes. Given this challenge, we think that it would be disproportionate to mandate disclosure of OpEx, rather it could be provided where relevant and available.

We consider that OpEx would give an extra level of information to the turnover data, specifically how much cost is used to have sustainable assets. This could be valuable information, especially when comparing existing projects with future spend using CapEx, for example comparing the cost of maintaining brownfield sustainable projects versus investing in greenfield ones. However, given the significant complications around requiring companies to calculate and disclose these costs, we suggest that mandating OpEx could be considered at a later stage as the situation evolves.

<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>

Given the diversity in the types of derivatives and the different purposes that they are used for (e.g. trading versus hedging), there would be many complexities in seeking to include them within the KPIs on Taxonomy alignment. Consequently, detailed guidance would be required to specify the scope of derivatives to be included as well as on the methodologies for different classes of derivatives. Without such guidance, the market would struggle to appropriately reflect derivatives usage and a diversity of approaches could proliferate. This could serve to skew reporting and undermine the consistency of reported Taxonomy alignment. Derivatives can represent exposure to green activities but the investor does not have an actual shareholding in the company. Given the complications and the need to devise (and consult on) a subset of guidance particularly for this area, we suggest excluding derivatives at least for the time being, with a view to the 1 January 2022 compliance timeframe. Derivatives could be included in scope at a later stage once detailed guidance is available, at which point we think it is also worth considering splitting the KPI into direct and indirect exposures.

<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>

We consider that the terms are largely clear to capture the relevant instruments. The term ‘market value’ is widely understood and applied consistently in the industry and we do not believe that there is a need for additional valuation criteria to be established at this point in time.

However, we would recommend adding the list of instruments under scope to each relevant category to avoid any misinterpretation. For example, do we consider rights and warrants as equities even though they are optional instruments? Should loans be included under debt? A complete classification would be beneficial in that regard.<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>

We suggest that in order to address the challenge of non-assessable assets, this proportion of assets could be disclosed in the template, either as a portion of the pie chart or in an accompanying narrative. This would ensure that investors can understand to what extent the Taxonomy-alignment KPI relates to assets that can be assessed against the Taxonomy and ensure consistency with the disclosure obligations to be made by asset managers and investee companies under Article 8 of the Taxonomy Regulation. It should be noted that the challenge of non-assessable assets relates not just to sovereign bonds but also to equities and corporate bonds. As things stand, only a small proportion of activities have been assessed and have technical screening criteria developed for Taxonomy assessment. While this proportion of assets can be expected to increase over time, it is to be expected that a significant proportion of assets will be non-assessable, particularly in the earlier stages.

Specifically in relation to the calculation of the KPI denominator, the draft RTS contain different terminology (AUM vs total assets vs all investments – each leading to different outcomes). In order to achieve full consistency, we suggest that terms and methodology for this calculation be very clearly set out such that comparability is not undermined.

<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>

It should be noted that the assurance framework regarding sustainability reporting will be developed under the newly proposed Corporate Sustainability Reporting Directive and the supporting European Sustainability Reporting Standards that are to be elaborated. This framework will also address the scope and level of assurance that can be provided (reasonable versus limited). We do not think that the ESAs should pre-empt these developments.

It should be noted that much of the information used to make the Taxonomy alignment assessment will be reported from the investee companies themselves that will be subject to the European Sustainability Reporting Standards or similar, which reduces the need for assurance. FMPs are already providing confirmation of whether products are aligned with the Taxonomy, so are taking the responsibility (and associated liability) for these statements themselves. The cost of assurance and the potentially disproportionate impact on smaller FMPs of mandating assurance should be also borne in mind, as these product providers will already be facing very significantly increased costs in sourcing ESG data from vendors in order to comply with the regulatory obligations.

At least in the earlier stages, product providers will likely base much of their Taxonomy alignment assessment of the underlying holdings and related disclosure of data that is available on a best-efforts basis, which will likely involve the use of modelled data. In that regard, we propose that where modelled data is used, this should be disclosed and information on the methodology should be published on a website and a link provided to this information in the template.

<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>

For consistency, we agree that it makes sense to mirror the pre-contractual disclosures as laid down in the proposed RTS for the periodic disclosures. That way, it will be clear that FMPs are reporting on their ESG performance relative to the pre-contractual disclosures that they have made. This is subject to the changes we are proposing to both templates in our response to Question 9.

As noted at the recent public hearing in relation to the consumer testing undertaken, the presentation of the templates could be further simplified and enhanced to make them more consumer friendly. In terms of simplification, we would also request that the RTS allow use of cross-referencing to other sections of the annual report (or the firm’s website) to avoid duplication and minimise the risk of information overload for consumers.

We are also aware of ongoing discussions relating to the application of the Level 2 requirements to periodic reporting published in 2022. As companies begin to report their Taxonomy alignment only in 2022, the Level 2 requirements relating to periodic reports should apply in 2023 (for reference periods beginning on or after 1 January 2022), given that investors will not yet have the data available for periodic disclosures in 2022.

<ESA\_QUESTION\_ESG\_8>

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

<ESA\_QUESTION\_ESG\_9>

The templates contain a number of check boxes at the start, which may not be well understood by consumers. For example, a retail investor could be presented with an ESG fund which (i) promotes ESG characteristics but does not have as its objective a sustainable investment, (ii) invests partially in sustainable investments but (iii) with activities that are both Taxonomy aligned and non-Taxonomy aligned. We understand from the public hearing that FMPs will have to check both boxes (Taxonomy aligned and non-Taxonomy aligned) to reflect that the financial product is not wholly invested in Taxonomy aligned activities. We believe that having to check both boxes will be confusing for consumers and recommend that the statements are reframed in a way that will better facilitate consumer understanding.

In light of the above, an option is to replace the proposed wording with the following check box statements: *(a) has a proportion of activities aligned with the EU Taxonomy* and *(b) does not have any activities aligned with the EU Taxonomy*. We suggest that some further explanation of what these statements mean is necessary but also, as noted in our introductory remarks, there is a risk with this wording of undermining legitimate approaches to sustainable investment that are not Taxonomy-based, particularly in relation to financial products invested in activities that have purely social objectives. In this regard, we are recommending an additional option to reflect Article 8 and 9 SFDR products that are not in scope of Articles 5 and 6 of the Taxonomy Regulation by virtue of having sustainable investments focussing only on social objectives. Therefore, a third option should be: *(c) is not required to disclose Taxonomy alignment as sustainable activities only contribute towards social objectives*. A concise introductory explanation of the product relative to applicable EU regulatory requirements might also work better.

As currently drafted, it would seem that any Article 8 or Article 9 fund which invests in “sustainable investments” as defined under Article 2(17) of the SFDR will be required to complete the Taxonomy-related question of “why does the financial product invest in economic activities that are not environmentally sustainable?”. Furthermore, because of the indentation of the “taxonomy-related” icons in the draft template pre-contractual disclosures, it could be read that all of the Taxonomy-related questions should be completed by any fund which invests in sustainable investments, i.e. “*what is the minimum share of investments aligned with the EU Taxonomy?*”, “*what is the minimum share of sustainable investments that are not aligned with the EU taxonomy*?” and “*why does the financial product invest in economic activities that are not environmentally sustainable?*”.

If this is the intention, Article 8 products or Article 9 products which invest in economic activities promoting social objectives would be required to complete these sections notwithstanding that they do not make any environmental claims in their offering documents.

However, this approach would appear to contradict both Article 5 of the Taxonomy Regulation and Article 16a and Article 23a of the draft RTS, the subject of this consultation paper.

Article 5 of the Taxonomy Regulation states that the disclosure obligations thereunder arise (emphasis added) “*where a financial product as referred to in Article 9(1), (2) or (3) of Regulation (EU) 2019/2088 invests in an economic activity* **that contributes to an environmental objective** *within the meaning of point (17) of Article 2 of that Regulation*”.

Article 16a of the draft RTS, the subject of this consultation paper, makes clear that the relevant disclosures contained therein only apply to products falling within the scope of Article 6 of the Taxonomy Regulation. It provides as follows (emphasis added):

“*The section referred to in point (cc) of Article 13(3) shall contain the following information:*

*(a)* ***for financial products referred to in Article 6 of Regulation (EU) 2020/852****:*

*(i) a graphical representation in the form of a pie chart of the minimum taxonomy alignment of investments calculated in accordance with Article 16b;*

*(ii) where the financial product invests in economic activities that are not environmentally*

*sustainable economic activities, a clear explanation of the reasons for doing so; and*

*(iii) a description of the investments underlying the financial product that are in environmentally sustainable economic activities;*

As a result, it would appear that the proposal to require Article 8 or Article 9 products which promote or contribute to a social objective and which invests in “sustainable investments” to complete this section of the template extends beyond the scope of the Level 1 text and the draft Level 2 text.

We also think that this question: “Why does the financial product invest in economic activities that are not environmentally sustainable?” is likely to create confusion for investors. This question would appear to undermine the legitimacy of the Article 8 / Light Green product category as provided for under SFDR and which has a role in facilitating the transition to sustainability. An Article 9 / Dark Green product that has a purely social objective will also not be Taxonomy aligned. Furthermore, even a Dark Green product with an environmental objective that is Taxonomy aligned will still likely have some non-Taxonomy related investments. This may be due to investee companies having multiple business lines or because the investee companies are outside the EU and therefore may not adhere to the EU Taxonomy. Consequently, we would propose that the aforementioned question is reframed to state: “*Explanation of the financial product’s level of alignment with economic activities that are environmentally sustainable in accordance with the EU Taxonomy Regulation*”.

Separately, as required by Level 1 measures, the following narrative should be reflected in the template for all Article 8 products: “*The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities*.”

It would be helpful if the ESAs could also confirm whether such disclaimer should be included in the disclosures relating to any Article 9 fund which invests a portion of its investments in non-taxonomy aligned investments.

Likewise, in the main section of the template relating to the Taxonomy disclosures, we propose that the question “*What is the minimum share of investments aligned with the EU Taxonomy?*” should be limited in scope to products that consider the Taxonomy as part of their investment process, i.e. products referred to in Article 5 and 6 of the Taxonomy Regulation with sustainable investments in environmentally sustainable economic activities.

For simplification, we would also suggest that details relating to the calculation methodology for the Taxonomy should be moved to the website disclosures rather than forming part of the template itself.

<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>

In keeping with the single rulebook approach, we agree that it makes sense to have a single template for all products but with sufficient flexibility for product providers to only complete those sections that are relevant to a particular product.

<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>

As per our introductory remarks and response under Question 9, we think that some of the proposed wording goes beyond the scope of the Taxonomy Regulation and is too heavily focused on the Taxonomy as the sole tool to guide sustainable investing when this is not the case. We do not think that such negative disclosure regarding Taxonomy alignment is appropriate in cases where sustainable investments as defined under the SFDR will not be Taxonomy aligned. We believe that more neutral language around sustainable investments, including environmental investments that are not Taxonomy-aligned or indeed social investments would address this issue.

<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>

TYPE YOUR TEXT HERE

<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)