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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 | AFG |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2020 more than €4,200 billions in assets, i.e. a quarter of continental Europe’s assets under management.

We welcome this highly important consultation and we raise some issues in our answer.

We would recommend to simplify as much as possible the requested information, hence a single-rule book. Let’s also keep in mind that data is at the heart of Taxonomy. As long as we cannot access reliable, quality, standardised and audited data, we will face high challenges answering all our legal obligations.

On top of that, the calculation of the green asset ratio is of utmost importance. Numerator and denominator should use the same methodology. Some assets should be excluded from the calculation because of their nature.

We are also concerned with the ex-ante Taxonomy alignment ratio the ESAs suggest we should commit to. We do not believe it is appropriate for asset managers to make a firm contractual commitment on a minimum level of taxonomy alignment in the pre-contractual disclosure, in particular for the first years of reporting. Indeed, the level of taxonomy alignment on Year ‘n’ will by definition be based on backward looking data that can no longer be influenced (e.g. year ‘n-1’ turnover of investee companies). We cannot be expected to commit to a future minimum level of taxonomy alignment in a contractual document when we do not have a clear view of what the Taxonomy investable universe is. The exact green asset ratio can only be a ratio we report on from an ex-post point of view.

Furthermore, the harmonisation of concepts between all pieces of the regulation is also very important. And it should be stressed in all regulatory work.

<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>

We agree with the “single rulebook” approach, as we need as much convergence as possible in approaches, definitions, and use of KPIs in order to ease the already very complex data availability and mining challenge we face today. External providers will be better equipped and able to provide services, data and a common language to end users. Time efficiency, resources availability and level of sophistication also support the maximum level of convergence.

We also remind that SFDR spirit is descriptive and not norm-based. Furthermore, the calendar impact must be taken into account.

At the same time horizon, 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 requirement for final adoption, probably these rules will not be validated and published in the Official Journal prior to end of Q3 2021, that will let very limited time to Financial Market Participants to adapt to this framework, in a context where availability of data is already a key issue. Further clarification should be provided on how this timeframe issue will be properly addressed by the European Commission, with consideration of a potential postponement for the effective entry into force of these new requirements. Hence, a transition period should be put into place, to allow sufficient time for market participants to calculate portfolio alignment. Given portfolio level calculation can only occur after corporate report, this transition periof should reflect and align with the implementation timeline of entity level taxonomy alignment reporting as proposed by the European commission in its draft delegated acts under art. 8 TR.

<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>

As already answered in the previous consultation, AFG thinks that it is important to let the asset managers choose which KPI is the most accurate regarding the sectors invested / the strategy of the portfolio, for ex-post reporting.

We agree that, when chosen, the same KPI should be applied to all investment made in one financial product for ex-post reporting. We should be able to publish all three KPI if relevant, and we should also be able to focus on specific sectors invested, and use CAPEX or OPEX for instance.

Turnover is an indicator that will be relatively easy to use, even if it might not be relevant for all sectors. Capex would be more relevant for transitional sectors for instance, even if we don’t have access to a standardised information and we don’t have access to this information for all sectors. Capex could be used, on top of turnover, in order to focus on specific sectors within the portfolio. The cons of such approach is that it won’t allow comparison between funds, between asset managers. The pros of such approach is that it gives an indication on how the portfolio manager invests and how he takes into account the transition. We suggest to use a best effort approach.

On top of that, we suggest to systematically add a disclaimer that would focus on limits of the chosen KPIs.

We would also like to highlight a major challenge regarding ex-ante pre-contractual disclosure, if such an indicator is to be used. Turnover is a past indicator, not a forward-looking one. A portfolio manager won’t be able to take a decision to invest/reinforce/divest from a company, thanks to the turnover that will be communicated by companies. Our main fear is to write a minimum threshold of indicator in the pre-contractual documentation, ie. to commit to a minimum threshold, while we don’t know how to control this indicator.

<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>

To us, it is essential to keep the possibility to use all 3 indicators.

Our preferred approach, as stated in the previous question, would be to use Capex on specific sectors, ie. on parts of the portfolio, to give an additional information.

Opex is an indicator not frequently used by issuers, and the breakdown of Opex is therefore not really an indicator used in financial analysis and for investment. We would prefer to have a focus on Capex and Opex only when available and relevant.

We would also like to highlight the importance of the data relevance, directly linked to data accessibility.

<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>

Considering the large scope of derivatives (future, forwards, options, Total Return Swaps, convertible bonds etc.), the nature of underlying (indices, interest rates, securities, currencies, cash etc.) and their potential usage (exposure, hedging, arbitrage), answering to this question in a simple and straightforward way is highly complicated.

Furthermore, given the complexity of derivative financial instruments, their potential inclusion in the KPI calculation would raise several technical questions (leverage or short positions, full exposure or residual exposure or delta equivalent exposure, collateral received or posted, etc.).

As a result, it should not be mandatory to include derivatives, but be authorised when the use of derivatives contribute to build the exposure of the financial product to ESG. This decision should remain at the discretion of the financial market participant.

Taking them into account may raise issues of valuation (nominal or mark-to-market). In addition, no standardised methods have been agreed today, including for aggregation at portfolio level. Moreover, it is needed to distinguish between "strategic" and "tactical" derivatives (held in the short term for a one-off de-risking of the solvency ratio for instance). In addition, we do not have or have less control over the application of sectoral and normative exclusions on certain derivatives (e.g. index-linked derivatives). As such, we strongly recommend not to impose their inclusion on a mandatory basis. They may be included on a discretionary basis only, depending on the deemed relevance in the context of the exposure to taxonomy-compliant activities of the portfolio.

<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>

To us, “equities” and “debt instruments” are too generic categories. We could imagine private placements, non-listed instruments where we get high challenges to access data. We strongly recommend to be more granular, in order to have the possibility to exclude some categories from the calculation.

Furthermore, even in “debt instruments” categories, we will have high difficulties to access the data. In particular it is important to recall that in case of sovereign bonds, they will not disclose any of the three KPIs, i.e. turnover, Capex nor Opex. As a result, it will not be possible to disclose their alignement with taxonomy whereas these instruments can represent a very significant proportion of some products.

On GBS, as long as the standards are not adopted, we recommend to introduce a grandfathering clause for green bonds applying the Green bonds principles.

Other green bonds should be allowed to use the corporate level disclosure on taxonomy alignement as a proxy when it is available.

<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>

As a general principle, it seems to us very important to have the same perimeter of calculation for the numerator and the denominator. At the same time, we disagree on taking all investments in the calculation. If the proposed methodology by ESAs is the one that we will need to apply on the denominator, not all assets can be analyzed, for instance sovereign bonds. As a direct consequence, it will highly dilute the percentage of alignment with the taxonomy. The proposal would completely skews the analysis. That would greatly influence the ability to pilot the indicator: driving with such low numbers is very discouraging. If we cannot define the percentage of alignment with the taxonomy of certain assets, we should not leave them in the denominator. Although we agree that it would truncate the full assets. But it would be much clearer and more relevant if we can compare like-for-like elements. As it is defined today, there are no common elements (the ability to align with taxonomy) in this denominator proposal.

In these conditions , we recommend the following approach: we suggest to calculate the denominator at two different levels :

* First with all the assets in the denominator,
* Second with only the assets in the scope of the taxonomy as currently determined. This second level should be calculated on a voluntary basis.

Indeed, as long as there is no full definition of eligibility criteria for taxonomy-alignment, this double level of reporting is preferred.

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We also strongly recommend to exclude from the second calculation instruments that are not consistent or that are lacking data on taxonomy-alignment. We would encourage to only use instruments on which we commit to assess taxonomy-alignment, cf. question 2 (? Je ne comprends pas cette reference, veut-on dire Q.5). As such, we strongly encourage to exclude, at least, the following: sovereign bonds, cash, some real assets, non European instruments not be submitted to the NFDR and the new CSRD, emerging market instruments.

On top of that, we also suggest to add a disclaimer for each method of calculation, in order to explain the methodological limits of each method.

Furthermore, we would like to raise the chalenge of double-counting. How to count when a fund holds an equity and a bond of the same company?

The most important element for asset managers is to get a comparable perimeter between numerator and denominator. In the list given in Art 16, lots of asset classes are put aside and not included. Does it mean that they cannot be considered as potentially taxonomy-eligible? The asset management industry is innovating a lot at the moment, in order to accompany the transition. It would greatly slow down the flow of savings towards a more sustainable economy, hence against the Sustainable Finance strategy of EU.

From a visual perspective, we suggest the following charts :

* One showing the breakdown between assets in the scope of the taxonomy and those out the scope of the taxonmy and the percentage of Taxonomy-aligned on total assets.
* One focusing only on assets in the scope of EU Taxonomy and the the percentage of taxonomy-aligned assets for this perimeter.



<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>

We strongly raise the following topic: the data that we receive from investee companies must be valid. We must be able to use reliable data. Reliable data automatically derives from audited data. Asset managers are not qualified to conduct such audit.

In other words, asset managers cannot check this statement but asset managers need such external-party verifier on the statement of taxonomy compliance from investee companies.

<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>

AFG is in favor of mirroring the periodic disclosures with the pre-contractual amendments.

But, AFG is not comfortable at all with the suggestion to set-up ex ante objectives on taxonomy alignments in pre-contractual documentation. We have the impression that there is a confusion between ex-ante and ex-post topics. Hence, we request a clear distinction between both:

* Ex ante: the best we can do is to give an estimation with a best effort approach. We could suggest an expected Taxonomy alignment threshold but not more, ie. not an official commitment to reach a dedicated threshold.
* Ex-post: we will report on what was done in the portfolio, ie. the real threshold reached, from a reporting perspective.

<ESA\_QUESTION\_ESG\_8>

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

<ESA\_QUESTION\_ESG\_9>

We have the following comments on this question.

As a general comment, as the usage of the EU Taxonomy is not compulsory, the obligation relies at the reporting level, AFG suggests to add “under the EU Taxonomy” each time, to prevent a mix.

In addition, we suggest that the first section of the template (where the FMP will tick its approach) is reviewed for sake of clarification. As the obligation to use Taxonomy is only at the reporting level and not at the usage level (cf. Level 1), we suggest not to highlight somes cases when taxonomy is not used. As such we suggest to add the following tick box at both Article 8 and Article 9 levels: “in activities not aligned, when covered or not covered, with the EU Taxonomy”. It would help preventing misleading interpretation. As lots of economic activities are currently not covered by the EU Taxonomy, we request that the ‘tick the box exercise’ is limited to the European Commission production in the EU taxonomy.

On the question “What is the minimum share of investments aligned with the EU Taxonomy?”:

As Taxonomy is not compulsory at the usage level (it is only compulsory at the reporting level – cf. Level 1), we would suggest removing this question when the box “not eligible to the EU taxonomy” has been ticked. Would it be maintained, we suggest adding “expected” in the question: “What is the expected minimum share of investments aligned with the EU Taxonomy?”

Indeed, we are not in favor of taking a strong commitment in the precontractual disclosures. If a product is not taxonomy-compliant by nature (for instance an Article 9 product with a Social objective), there won’t be a minimum of taxonomy-compliance. Legal departments of asset managers will remove such commitment from pre-con~~t~~ractual documentation. There is a strong legal risk if the product officially commits to reach a pourcentage while it is not written the in the objective of the fund.

In other words, we could answer this question (with the addition of “expected”) into two different ways:

* + Non applicable or not relevant;
	+ A figure.

Regarding the second possibility, we are not confident because we don”t have access to such data from investee companies at the moment.

Furthermore, in this question there is a suggested pie chart. We are not comfortable with such chart in a pre-contractual document. Indeed, such format to present the information is not a classic one. It would request lots of IT developments. We would rather suggest to use simple table charts to present this information.

On the question “What is the miminum share of sustainable investments that are not aligned with the EU Taxonomy?”:

The investment universe of Taxonomy-compliant activities is very reduced at the moment. It is impossible to base the construction of a portfolio only on Taxonomy-aligned activities. Official studies have proved such results. For instance the survey commissioned by the Federal Environment Ministry of Germany to assess major European firms against the EU Taxonomy (report [here](https://fra01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__eur01.safelinks.protection.outlook.com_-3Furl-3Dhttps-253A-252F-252Fsustainablefinancesurvey.de-252Fsites-252Fsustainablefinancesurvey.de-252Ffiles-252Fdocuments-252Feuropean-5Fsustainable-5Ffinance-5Fsurvey-5F2020-5F0.pdf-26data-3D02-257C01-257Cmg-2540iogp.org-257C8b4e4a4eaa87472dcd9b08d863c60dd5-257C59d477fbbf2b4c5bb6c273f15f5c75cb-257C0-257C0-257C637369049570468936-26sdata-3Dn8WD8xDYrQkvfCD6UymkahqA3TEXtb-252BTaMWvEO8JbJw-253D-26reserved-3D0%26d%3DDwMGaQ%26c%3DHdAUNv_EOZyljLc1cjbHCq-Eo7r1kRHoywhQbi81uaA%26r%3DJ5CX1j6P3QDPnXtpvOsYo5m8bYtwyUe-D_NZYN82HPgYeYnbGtQOarU7XO7wNU_Y%26m%3DblaYYtOf_PyXh7Vp5qnJP0HZSe38mcq1czacrrEip_4%26s%3D_zbTwZ-X5KfLBGdq7A-xX0bpORwbN-6Zdgf0W40dJDo%26e%3D&data=04%7C01%7Ca.faure%40afg.asso.fr%7C8d5359f030664ebc70ac08d9106f4e49%7C18570703cd134c8fa98760408f80fa42%7C1%7C0%7C637558892508835545%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=WNQ4BVvq9Cuck3jQ3NtylUPx4NhHgsYl900AExFmJ0A%3D&reserved=0)) concludes as follows:

* the survey found that European capital markets offer limited investment options that comply with the EU Taxonomy criteria
* the results are based on ISS ESG data and publicly available information on 75 European companies listed on three main European indices: EURO STOXX 50, DAX and CAC 40.
* less than third of the revenues stem from economic activities that are defined as Taxonomy-relevant activities in the final TEG report: 27% for DAX, 22% for CAC 40, and 20% for EURO STOXX 50.
* Small share of total revenues is estimated to be fully taxonomy-aligned (when the DNSH is also added into the assessment): 2% for EURO STOXX 50, slightly less than 2% for CAC 40, and 1% for DAX.
* 77% of analysed companies have an alignment level equal to or lower than 1%, while 13% of analysed companies have an alignment level equal to or above 5%.

As such, this question seems misleading for the investor. A product doesn’t always choose not to invest in taxonomy-aligned companies. Hence, it does not seem logical to us to shift the burden of proof in this way.

Furthermore, this question can be read with regards to the previous question. On top of that, there is not mandate in the Level 1 on such question.

To conclude, we suggest to remove this question.

<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>

We favor a single template.

It is simpler at the operational level. On the other hand, lots of questions won’t be answered and there will be few information that investors will be able to read.

Hence, we suggest the following: ticking the relevant box at the beginning of the suggestd templates would allow the FMP not answering some questions that are not relevant. It would allow a “reasoning tree”.

It would help efficiency and simplicity.

On top of that, we would like to raise the following challenge. 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 done.

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 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 support 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.

<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>

The new suggested templates are built thanks to the current state of the EU taxonomy, ie. a partial environmental taxonomy. We strongly insist on the fact that, while waiting for a more complete Taxonomy (6 objectives, a potential Social taxonomy), a product should be able to claim a social objective in a positive way, and not only in opposition to an Environmental Taxonomy. On top of that, a fund that doesn’t comply with the Taxonomy alignment should be able to fully and extensively explain it in these templates.

<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>

Access to data, combined with the quality of the data and the cost of this data are great challenges that we are currently facing.

We should be careful not to create a kind of indirect tax or license to operate, investors being obliged to buy data from external providers. It would certainly push for a higher level of cost. That would be detrimental for smaller and new players. It is crucial to keep in mind not to harm the competitiveness of the European players. A balance has to be found between transparency and burden.

<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)