

Joint Consultation Paper on Taxonomy-related Sustainability Disclosures

About NFU

NFU – Nordic Financial Unions is an organization that promotes the interests of the Nordic financial trade unions in Europe. Through a high level of competence and dialogue, NFU contributes to shaping a sustainable financial sector, fundamental for job creation. Currently, NFU represents eight trade unions in the bank, finance and insurance sector in Denmark, Finland, Iceland, Norway and Sweden.

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Consultation replies:

Question 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?

NFU appreciates the opportunity to answer to this consultation, in addition to our earlier response concerning the existing SFDR RTS. The approach to amend the existing RTS as opposed to creating a new set could be seen as helpful, both having in mind the long and complex process leading to the existing SFDR RTS that might be repeated if new RTS are to be proposed, as well as the idea of having one reference when it comes to all relevant disclosures.

However, for the approach to function in full, we see several challenges that need to be addressed and remedied. They are in connection to the social objectives/investments as well as other items such as the need for defining some of the terms mentioned

throughout the document to the benefit of consumers, suggestions for the template and more (reflected in the remaining questions).

On a general note, we would like to raise again the overall issue of how the Joint ESAs Committee has approached the formulation of the initial social indicators regarding principle adverse impact (i.e in the field of social and employee matters, respect for human rights, anti-corruption and anti-bribery matters) and the misalignment with the Taxonomy, which affects the application times and quality of disclosures overall. According to the SFDR, Article 4 (7), the draft RTS concerning the social indicators should be developed by the ESAs latest by 30 December 2021 as part of the phased-out approach. At the same time, the Taxonomy Regulation Article 26 (2)(b) refers to expanding the scope of the Taxonomy Regulation to include, among other, social objectives, in the same timeframe, by 31 December 2021 (the latter is something that the Platform on Sustainable Finance is currently working on, concerning both social and governance objectives).

The ESAs' decision to deliver on the social indicators one year earlier, while well-intended, is a missed opportunity for better coherence between the SFDR and the Taxonomy. It is also a missed opportunity to establish a proper space for dialogue and benefit from the expertise of stakeholders with social competence in the development of the indicators, as it was done on the environmental side. We find that the ESAs need to consider this gap in the current and future work.

Question 2: 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?

While it would be easier for comparability, there are challenges given the availability of data, the treatment of the alignment with goals that are not climate-related or social objectives, but also the difference in climate change mitigation and climate change adaptation themselves. One reasoning for the latter could be the Technical Expert Group (TEG) Final Report on the Taxonomy (page 30), where the TEG states that in their view only enabling activities (from an adaptation perspective) can count their turnover. Turnover is therefore not recognized for adapted activities, and the TEG has proposed that the Platform on Sustainable Finance takes the further development of the consideration of turnover as one of its future tasks. This difference in treatment between the climate change adaptation and mitigation could affect both the reporting and disclosure, for both financial and non-financial investee companies.

Question 4: 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?

As this concerns Article 16 in the proposed RTS, we will use the space to raise another question related to the same Article. Item (2) refers to the narrative explanation on the planned asset allocation, where then (b) states that the explanation shall explain ‘the purpose of the remaining proportion of the investments, including the description of any minimum environmental and social safeguards’. We find that the term ‘minimum social safeguards’, if related to the one in the Taxonomy Regulation, should be defined in Article 1 – Definitions. However, the term ‘minimum environmental safeguards’ seems to have not been defined or referred to before and given the lack of such safeguards in the Taxonomy, additional clarification is needed.

Question 7: 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?

As presented right now, there is a possibility to disclose whether external or third parties have made an assessment, but it is not clear what is the meaning behind such disclosure and whether, except for additional transparency, it makes any visible difference to the consumer or to the treatment of the financial product.

In fact, the need for assessment could be strengthened for two reasons – to ensure data quality, which will be much needed given significant data gaps, but also because the newly proposed Corporate Sustainability Reporting Directive (reviewed NFRD) prescribes an obligation for a limited assurance engagement by a statutory auditor or a third party. Accordingly, those entities that need to report under the NFRD could already disclose based on assurance.

Question 9: Do you have any views on the amended pre-contractual and periodic templates?

Concerning the templates, it is positive that they include a visual/graphical representation and several explanations along the way that would make it easier for consumers to understand the details.

On the other hand, since the templates refer to alignment of the investments with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, it could be useful to include a short overview on these two instruments, rather than to have them as a passing reference. This would help consumers better understand the full features of the product.

Additionally, given that only the two climate-related objectives from the Taxonomy can be addressed with the templates, a consideration to have is how to approach products related to the other four objectives, as well as the social objectives, and if they should

be Article 5 or Article 6 products. Products with these features cannot be meaningfully assessed against the Taxonomy as there are no technical screening criteria for the remaining four objectives and no social objectives yet – they are both in development. During the period January 2022 (application of the proposed RTS) and January 2023 (when the technical standards for the remaining four objectives should apply) it is not clear how to treat products related to the remaining four objectives within that one-year period – and this gap is much wider in the context of the social. While this is partially a Level 1 issue, it deserves to be considered and further guidance to be prepared by the ESAs, as well, through preparing further guidance in the templates, separately or through other means.

Lastly, we would also like to reflect on the process with the consumer testing of the reports. Given that at the last testing, the template was not tested together with other pre-contractual documents, for example, prospectus, as well as the high and limited profile of the chosen target group, there could be an opportunity to address testing again. We find that including finance sector employees, who in fact will use the templates in their daily work, is essential for a successful testing process.

Question 10: 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?

This is another area that could be challenging. There is a definition of ‘sustainable investments’ in the SFDR and the same for environmentally sustainable activities in the Taxonomy Regulation. With the templates, the ESAs are representing Article 5 and 6 Taxonomy Regulation – products as subsets of Article 9 and 8 SFDR – products. As consumers are increasingly interested in making meaningful contribution to the

sustainability agenda, it could be challenging to understand the difference between ‘sustainability’ in SFDR and ‘sustainability’ in the Taxonomy Regulation – meaning that their product, based on the rationale in the template, could be a sustainable investment while not being Taxonomy-aligned. It can be confusing for the customers and challenging for financial advisers to address these differences - further guidance might be needed, especially if the same templates are to be used.

Question 11: 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?

This is likely the major challenge with the interaction between the Taxonomy Regulation and SFDR and the way the process with the RTS has been handled, as described in the earlier answers. Having the KPIs from the Taxonomy Regulation as part of the disclosures would shift the attention away from social objectives, opportunities, and challenges. If Article 8 and Article 9 products need to disclose alignment with the Taxonomy now, given that there are no social objectives defined, the alignment with the Taxonomy would be 0%. As reflected in our answer to question 9, this needs to be addressed in more detail by the ESAs.

Question 12: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

In addition to the reflections regarding the templates in question 9, the proposed impact assessment should also consider the other half of the consumer experience – the views of finance sector employees. Therefore, the resources needed to develop competence in the area and understanding the new and complex requirements for compliance need to be taken into account. Even more so, how employees would need to address in practice the challenges that the ESAs themselves identify or wait for guidance from the Commission on, is also an angle to consider.