**Reply form**

**on the Joint Consultation Paper on the review of SFDR Delegated Regulation regarding PAI and financial product disclosures**

 12 April 2023ESMA34-45-1218

**Responding to this paper**

The ESAs invite comments on all matters in the Joint Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives the ESAs should consider.

ESMA will consider all comments received by **4 July 2023.**

**Instructions**

In order to facilitate analysis of responses to the Joint Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Joint Consultation Paper in this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_SFDR\_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 responses, save the reply form according to the following convention: ESMA\_CP SFDR Review\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP SFDR Review\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. 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 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 ESMA’s 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-1). 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**

|  |  |
| --- | --- |
| Name of the company / organisation | Institut der Wirtschaftsprüfer in Deutschland e.V. [Institute of Public Auditors in Germany, Incorporated Association] (IDW) |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |[x]
| Country/Region | Germany |

**Questions**

1. : Do you agree with the newly proposed mandatory social indicators in Annex I, Table I (amount of accumulated earnings in non-cooperative tax jurisdictions for undertakings whose turnover exceeds € 750 million, exposure to companies involved in the cultivation and production of tobacco, interference with the formation of trade unions or election worker representatives, share of employees earning less than the adequate wage)?

<ESMA\_QUESTION\_SFDR\_1>

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<ESMA\_QUESTION\_SFDR\_1>

1. : Would you recommend any other mandatory social indicator or adjust any of the ones proposed?

<ESMA\_QUESTION\_SFDR\_2>

All mandatory social indicators under the SFDR should correspond with disclosure requirements under ESRS. Provided that social indicators are subject to materiality, they should not be mandatory for the PAI reporting. Otherwise, guidance is needed on how to generate the required input data. The reduction of the mandatory disclosures proposed in the ESRS-Draft may lead to the situation that information required by financial market participants for reporting under the SFDR is not reported by companies because companies have classified it as non-material in their materiality analysis. This is in contradiction to Art. 29b para. 1 subpara. 2 Directive (EU) 2013/34/EU (“[…] which shall at least include the information that financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088 need in order to comply with those obligations”). Therefore, clear rules in the SFDR must be created for financial market participants on how to report under the SFDR in such cases. Further, we encourage the European Commission to publish a comparison of the data points required under the SFDR with the disclosure requirements, as was done in EFRAG's November document "Appendix III - Datapoints in accordance with EU laws in the ESRS". Without such a comparison, ensuring the completeness of the information will become more complex and challenging.

In general, an increase in the number of indicators leads to additional reporting requirements and work. Therefore, the selection of KPI’s should focus on principal adverse indicators. Indicators should only be added if they provide significant additional benefit to the addressees.

<ESMA\_QUESTION\_SFDR\_2>

1. : Do you agree with the newly proposed opt-in social indicators in Annex I, Table III (excessive use of non-guaranteed-hour employees in investee companies, excessive use of temporary contract employees in investee companies, excessive use of non-employee workers in investee companies, insufficient employment of persons with disabilities in the workforce, lack of grievance/complaints handling mechanism for stakeholders materially affected by the operations of investee companies, lack of grievance/complaints handling mechanism for consumers/ end-users of the investee companies)?

<ESMA\_QUESTION\_SFDR\_3>

Any newly proposed (opt-in) social indicators shall be aligned with the European Sustainable Finance Legislation already in place (Taxonomy Regulation (TR), regarding social indicators especially with the Minimum Safeguards mentioned in Art. 18 (1) TR, the Accounting Directive as amended by CSRD, the Benchmark Regulation (BMR) and the upcoming Corporate Sustainability Due Diligence Directive).

Additional indicators shall only be introduced into SFDR RTS once investee companies were obliged to publish mandatorily the relevant data and once there is a stable, trusted and accountable database (e.g. ESAP) which can be used by the financial market participants as a data source. The Commission’s Draft Delegated Act published on 7 June 2023 for consultation introduced significant changes to EFRAG’s Draft on ESRS 1st set: An undertaking may omit all disclosure requirements in a topical standard if it assessed that the topic in question is not material. Furthermore, an additional phasing-in is proposed for (investee) companies with less than 750 employees and this threshold is not reflected in SFDR RTS at all.

<ESMA\_QUESTION\_SFDR\_3>

1. : Would you recommend any other social indicator or adjust any of the ones proposed?

<ESMA\_QUESTION\_SFDR\_4>

All mandatory social indicators under the SFDR should correspond with disclosure requirements under ESRS. Provided that ESRS social indicators are subject to materiality, they should not be mandatory for the PAI reporting. Otherwise, guidance is needed how to generate required input data.

<ESMA\_QUESTION\_SFDR\_4>

1. : Do you agree with the changes proposed to the existing mandatory and opt-in social indicators in Annex I, Table I and III (i.e. replacing the UN Global Compact Principles with the UN Guiding Principles and ILO Declaration on Fundamental Principles and Rights at Work)? Do you have any additional suggestions for changes to other indicators not considered by the ESAs?

<ESMA\_QUESTION\_SFDR\_5>

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<ESMA\_QUESTION\_SFDR\_5>

1. : For real estate assets, do you consider relevant to apply any PAI indicator related to social matters to the entity in charge of the management of the real estate assets the FMP invested in?

<ESMA\_QUESTION\_SFDR\_6>

On the one hand, the introduction of this indicator for real estate assets would also be helpful to answer good governance related questions. In our opinion, the managing company rather than the financial market participant is subject of this disclosure. On the other hand, this would represent a change of the reporting perspective compared to other PAI indicators. In this case, the fact that various companies may be involved in the management of real estate assets should be taken into consideration. Therefore, clear regulation would be needed about which companies have to be taken into account and how to proceed in case one or more of the management companies do not report the information needed (due to its size).

<ESMA\_QUESTION\_SFDR\_6>

1. : For real estate assets, do you see any merit in adjusting the definition of PAI indicator 22 of Table 1 in order to align it with the EU Taxonomy criteria applicable to the DNSH of the climate change mitigation objective under the climate change adaptation objective?

<ESMA\_QUESTION\_SFDR\_7>

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<ESMA\_QUESTION\_SFDR\_7>

1. : Do you see any challenges in the interaction between the definition ‘enterprise value’ and ‘current value of investment’ for the calculation of the PAI indicators?

<ESMA\_QUESTION\_SFDR\_8>

According to point (4) of Annex I of the SFDR Delegated Regulation ‘enterprise value’ means the sum, at fiscal year-end, of the market capitalisation of ordinary shares, the market capitalisation of preferred shares, and the book value of total debt and non-controlling interests, without the deduction of cash or cash equivalents.

As an investee company is not necessarily a publicly traded company, we propose to include a clarification in the SFDR Delegated Regulation about how the enterprise value is to be determined in case an investee company is not a publicly traded company.

In addition, we would like to point out that the denominator and numerator should be determined on a consistent basis to lead to reasonable results. This may not be the case if market values are used in the numerator and book values (i.e. for total debt) in the denominator.

<ESMA\_QUESTION\_SFDR\_8>

1. : Do you have any comments or proposed adjustments to the new formulae suggested in Annex I?

<ESMA\_QUESTION\_SFDR\_9>

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<ESMA\_QUESTION\_SFDR\_9>

1. : Do you have any comments on the further clarifications or technical changes to the current list of indicators? Did you encounter any issues in the calculation of the adverse impact for any of the other existing indicators in Annex I?

<ESMA\_QUESTION\_SFDR\_10>

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<ESMA\_QUESTION\_SFDR\_10>

1. : Do you agree with the proposal to require the disclosure of the share of information for the PAI indicators for which the financial market participant relies on information directly from investee companies?

<ESMA\_QUESTION\_SFDR\_11>

We agree with the proposal. The disclosure of the share of information for the PAI indicators for which the financial market participant relies on information directly from investee companies provides useful information for the addressees about the sources of the disclosures.

<ESMA\_QUESTION\_SFDR\_11>

1. : What is your view on the approach taken in this consultation paper to define ‘all investments’? What are the advantages and drawbacks you identify? Would a change in the approach adopted for the treatment of ‘all investments’ be necessary in your view?

<ESMA\_QUESTION\_SFDR\_12>

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<ESMA\_QUESTION\_SFDR\_12>

1. : Do you agree with the ESAs’ proposal to only require the inclusion of information on investee companies’ value chains in the PAI calculations where the investee company reports them? If not, what would you propose as an alternative?

<ESMA\_QUESTION\_SFDR\_13>

From an audit perspective, we welcome the approach to only require the inclusion of information on investee companies’ value chains in the PAI calculations where the investee company reports them.

However, we see a risk of information loss if, for example, small companies are omitted that are not in the scope of the CSRD. Therefore, we welcome the proposed approach that “If investee companies are not subject to the reporting required under that Directive, financial market participant should include information on those companies’ value chains where that information is readily available, for example by third party data providers”.

In both cases, however, it should be made clear that financial market participants must validate the reported data or the data from third-party data providers. An adoption of the information without validation procedures performed by the financial market participants should not be allowed. When no information on the investee companies’ value chains in the PAI calculations is included, the financial market participants should be required to demonstrate and document that no information is readily available. Such requirements are necessary for the audit of the disclosure. The auditor needs a reasonable basis for his assessment of whether all information has been fully and correctly included.

In addition, we recommend including a definition of "value chain" for financial market participants. Since different regulations require the consideration of "value chain" (SFDR; Taxonomy Regulation; EU Supply Chain Act/CSDDD; ESRS), a uniform definition for all regulations is desirable. Such a definition of "value chain" could be based on the clarification for a value chain for financial companies in the proposal for the CSDDD as adopted by the EU Parliament on June 1st, 2023, Amendment 22.

<ESMA\_QUESTION\_SFDR\_13>

1. : Do you agree with the proposed treatment of derivatives in the PAI indicators or would you suggest any other method?

<ESMA\_QUESTION\_SFDR\_14>

We recommend the ESAs to assess the effectiveness of their requirement that “FMPs can show that this derivative does not ultimately result in a physical investment in the underlying security by the counterparty or any other intermediary in the investment chain”.

We question if this requirement can be fulfilled by any FMPs without a high number of assumptions and any assessment is therefore highly subjective. This increases the risk for the auditor to verify the treatment of derivatives by FMPs.

The ESAs could consider to reference to the “physical settlement” of derivatives. We recommend analyzing the market volumes of “cash settled derivatives” vs. “physical settled derivatives” to assess the effectiveness of this method.

<ESMA\_QUESTION\_SFDR\_14>

1. : What are your views with regard to the treatment of derivatives in general (Taxonomy-alignment, share of sustainable investments and PAI calculations)? Should the netting provision of Article 17(1)(g) be applied to sustainable investment calculations?

<ESMA\_QUESTION\_SFDR\_15>

The treatment of the Taxonomy-alignment between the SFDR and the reporting under Article 8 Taxonomy would be inconsistent in the proposed approach. The Delegated Act on Article 8 Taxonomy ignores derivative exposure in the calculation while the SFDR would apply a netting provision. We recommend aligning the approaches between SFDR and Article 8 Taxonomy.

<ESMA\_QUESTION\_SFDR\_15>

1. : Do you see the need to extend the scope of the provisions of point g of paragraph 1 of Article 17 of the SFDR Delegated Regulation to asset classes other than equity and sovereign exposures?

<ESMA\_QUESTION\_SFDR\_16>

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<ESMA\_QUESTION\_SFDR\_16>

1. : Do you agree with the ESAs’ assessment of the DNSH framework under SFDR?

<ESMA\_QUESTION\_SFDR\_17>

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<ESMA\_QUESTION\_SFDR\_17>

1. : With regard to the DNSH disclosures in the SFDR Delegated Regulation, do you consider it relevant to make disclosures about the quantitative thresholds FMPs use to take into account the PAI indicators for DNSH purposes mandatory? Please explain your reasoning.

<ESMA\_QUESTION\_SFDR\_18>

We consider it relevant to make such disclosures. The increased transparency resulting from such a disclosure requirement does not only lead to a better information basis for the addressees of the SFDR reporting but is also an important starting point for auditing the disclosures.

<ESMA\_QUESTION\_SFDR\_18>

1. : Do you support the introduction of an optional “safe harbour” for environmental DNSH for taxonomy-aligned activities? Please explain your reasoning.

<ESMA\_QUESTION\_SFDR\_19>

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<ESMA\_QUESTION\_SFDR\_19>

1. : Do you agree with the longer term view of the ESAs that if two parallel concepts of sustainability are retained that the Taxonomy TSCs should form the basis of DNSH assessments? Please explain your reasoning.

<ESMA\_QUESTION\_SFDR\_20>

The he existence of parallel frameworks for reporting sustainability-related information necessitates harmonization of these frameworks. Only consistent and coordinated regulation will lead to acceptance of these reporting elements by reporting companies and addressees. But it should also be considered that an application of activity-based EU Taxonomy technical screening criteria for DNSH on an investee company could lead to a heavy reporting burden.

However, the purpose of the frameworks in particular should be made clearer. In our opinion, it must be made clear to the addressees of SFDR reporting (and thus also to the public) that SFDR disclosures are not a matter of “labelling” financial products, but - as the name of the regulation already implies - are pure disclosure obligations.

<ESMA\_QUESTION\_SFDR\_20>

1. : Are there other options for the SFDR Delegated Regulation DNSH disclosures to reduce the risk of greenwashing and increase comparability?

<ESMA\_QUESTION\_SFDR\_21>

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<ESMA\_QUESTION\_SFDR\_21>

1. : Do you agree that the proposed disclosures strike the right balance between the need for clear, reliable, decision-useful information for investors and the need to keep requirements feasible and proportional for FMPs? Please explain your answers.

<ESMA\_QUESTION\_SFDR\_22>

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<ESMA\_QUESTION\_SFDR\_22>

1. : Do you agree with the proposed approach of providing a hyperlink to the benchmark disclosures for products having GHG emissions reduction as their investment objective under Article 9(3) SFDR or would you prefer specific disclosures for such financial products? Do you believe the introduction of GHG emissions reduction target disclosures could lead to confusion between Article 9(3) and other Article 9 and 8 financial products? Please explain your answer.

<ESMA\_QUESTION\_SFDR\_23>

We support the introduction of hyperlinks as this prevents information overload. To ensure an auditor trail, requirements should be included that require FMPs to take organizational precautions so that updates or other changes in the linked documents are documented and archived.

<ESMA\_QUESTION\_SFDR\_23>

1. : The ESAs have introduced a distinction between a product-level commitment to achieve a reduction in financed emissions (through a strategy that possibly relies only on divestments and reallocations) and a commitment to achieve a reduction in investees’ emissions (through investment in companies that has adopted and duly executes a convincing transition plan or through active ownership). Do you find this distinction useful for investors and actionable for FMPs? Please explain your answer.

<ESMA\_QUESTION\_SFDR\_24>

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<ESMA\_QUESTION\_SFDR\_24>

1. : Do you find it useful to have a disclosure on the degree of Paris-Alignment of the Article 9 product’s target(s)? Do you think that existing methodologies can provide sufficiently robust assessments of that aspect? If yes, please specify which methodology (or methodologies) would be relevant for that purpose and what are their most critical features? Please explain your answer.

<ESMA\_QUESTION\_SFDR\_25>

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<ESMA\_QUESTION\_SFDR\_25>

1. : Do you agree with the proposed approach to require that the target is calculated for all investments of the financial product? Please explain your answer.

<ESMA\_QUESTION\_SFDR\_26>

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<ESMA\_QUESTION\_SFDR\_26>

1. : Do you agree with the proposed approach to require that, at product level, Financed GHG emissions reduction targets be set and disclosed based on the GHG accounting and reporting standard to be referenced in the forthcoming Delegated Act (DA) of the CSRD? Should the Global GHG Accounting and Reporting Standard for the Financial Industry developed by PCAF be required as the only standard to be used for the disclosures, or should any other standard be considered? Please justify your answer and provide the name of alternative standards you would suggest, if any.

<ESMA\_QUESTION\_SFDR\_27>

We support the approach to require that, at product level, Financed GHG emissions reduction targets be set and disclosed based on the GHG accounting and reporting standard to be referenced in the forthcoming Delegated Act (DA) of the CSRD. This approach promotes the consistency and establishes uniform criteria for the audit of the information. The Global GHG Accounting and Reporting Standard for the Financial Industry developed by PCAF is based on the GHG protocol and is going to become mandatory under ESRS (see ESRS E1) and ISSB Standards (see IFRS S2).

Regarding the impact on financial products with several investment layers, e.g. Umbrella Funds/Funds of funds or IBIPs: Most of the investment management companies managing UCITS and or AIF might be not in scope of ESRS 1st set whilst not PIE per se. The financial products referred to in Article 1 (4) Accounting Directive are also out of scope of CSRD and thus ESRS. Reporting on GHG emission reduction targets at product level financed GHG emissions will lead to the need to perform a total look through all investment layers: The financial product (Umbrella or fund of funds might be solely invested in other umbrellas, funds of funds etc and spread worldwide. Up to date such “waterfalls” were not reflected as an asset class in PCAF Part A and a separate PCAF for the asset management industry does currently not exist. PCAF Part C for insurers providing investment-based life insurance products does not cover such IBIP. Thus said, GHG Emissions target setting seams not feasible for multi-layer products unless the underlying asset managers by themselves also publish corresponding information according to PCAF.

<ESMA\_QUESTION\_SFDR\_27>

1. : Do you agree with the approach taken to removals and the use of carbon credits and the alignment the ESAs have sought to achieve with the EFRAG Draft ESRS E1? Please explain your answer.

<ESMA\_QUESTION\_SFDR\_28>

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<ESMA\_QUESTION\_SFDR\_28>

1. : Do you find it useful to ask for disclosures regarding the consistency between the product targets and the financial market participants entity-level targets and transition plan for climate change mitigation? What could be the benefits of and challenges to making such disclosures available? Please explain you answer.

<ESMA\_QUESTION\_SFDR\_29>

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<ESMA\_QUESTION\_SFDR\_29>

1. : What are your views on the inclusion of a dashboard at the top of Annexes II-V of the SFDR Delegated Regulation as summary of the key information to complement the more detailed information in the pre-contractual and periodic disclosures? Does it serve the purpose of helping consumers and less experienced retail investors understand the essential information in a simpler and more visual way?

<ESMA\_QUESTION\_SFDR\_30>

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<ESMA\_QUESTION\_SFDR\_30>

1. : Do you agree that the current version of the templates capture all the information needed for retail investors to understand the characteristics of the products? Do you have views on how to further simplify the language in the dashboard, or other sections of the templates, to make it more understandable to retail investors?

<ESMA\_QUESTION\_SFDR\_31>

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<ESMA\_QUESTION\_SFDR\_31>

1. : Do you have any suggestion on how to further simplify or enhance the legibility of the current templates?

<ESMA\_QUESTION\_SFDR\_32>

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<ESMA\_QUESTION\_SFDR\_32>

1. : Is the investment tree in the asset allocation section necessary if the dashboard shows the proportion of sustainable and taxonomy-aligned investments?

<ESMA\_QUESTION\_SFDR\_33>

The investment tree provides a visual representation of the investment approach that is easy to understand by investors. Especially the bucket “other” shows how many investments will not be aligned with the E/S characteristics and therefore provides useful information about the investment approach.

On the other hand, the investment tree needs clear rules or guidance to ensure a consistent and meaningful implementation across different FMPs.

<ESMA\_QUESTION\_SFDR\_33>

1. : Do you agree with this approach of ensuring consistency in the use of colours in Annex II to V in the templates?

<ESMA\_QUESTION\_SFDR\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_SFDR\_34>

1. : Do you agree with the approach to allow to display the pre-contractual and periodic disclosures in an extendable manner electronically?

<ESMA\_QUESTION\_SFDR\_35>

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<ESMA\_QUESTION\_SFDR\_35>

1. : Do you have any feedback with regard to the potential criteria for estimates?

<ESMA\_QUESTION\_SFDR\_36>

Where estimates are used by financial market participants disclosure of the methodology of any estimates should be required. Such disclosure is beneficial for the users and provides a basis for an audit.

<ESMA\_QUESTION\_SFDR\_36>

1. : Do you perceive the need for a more specific definition of the concept of “key environmental metrics” to prevent greenwashing? If so, how could those metrics be defined?

<ESMA\_QUESTION\_SFDR\_37>

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<ESMA\_QUESTION\_SFDR\_37>

1. : Do you see the need to set out specific rules on the calculation of the proportion of sustainable investments of financial products? Please elaborate.

<ESMA\_QUESTION\_SFDR\_38>

We support the approach to set out specific rules on the calculation of the proportion of sustainable investments of financial products. Setting specific calculation rules would not only lead to consistent and comparable information for the addressees of SFDR reporting but is also important for auditing the disclosures.

Further calculation methodology is required. E.g. there is a calculation methodology for taxonomy aligned assets but there are no clear rules for the calculation of sustainable investments.

<ESMA\_QUESTION\_SFDR\_38>

1. : Do you agree that cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload?

<ESMA\_QUESTION\_SFDR\_39>

Cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload. To ensure an auditor trail, requirements should be included that require FMPs to take organizational precautions so that changes to the cross-referenced information are documented and archived.

<ESMA\_QUESTION\_SFDR\_39>

1. : Do you agree with the proposed website disclosures for financial products with investment options?

<ESMA\_QUESTION\_SFDR\_40>

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<ESMA\_QUESTION\_SFDR\_40>

1. : What are your views on the proposal to require that any investment option with sustainability-related features that qualifies the financial product with investment options as a financial product that promotes environmental and/or social characteristics or as a financial product that has sustainable investment as its objective, should disclose the financial product templates, with the exception of those investment options that are financial instruments according to Annex I of Directive 2014/65/EU and are not units in collective investment undertakings? Should those investment options be covered in some other way?

<ESMA\_QUESTION\_SFDR\_41>

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<ESMA\_QUESTION\_SFDR\_41>

1. : What are the criteria the ESAs should consider when defining which information should be disclosed in a machine-readable format? Do you have any views at this stage as to which machine-readable format should be used? What challenges do you anticipate preparing and/or consuming such information in a machine-readable format?

<ESMA\_QUESTION\_SFDR\_42>

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<ESMA\_QUESTION\_SFDR\_42>

1. : Do you have any views on the preliminary impact assessments? Can you provide estimates of costs associated with each of the policy options?

<ESMA\_QUESTION\_SFDR\_43>

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<ESMA\_QUESTION\_SFDR\_43>

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-1)