**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 | FIA European Principal Traders Association (FIA EPTA) |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Europe |

**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>

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<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>

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<ESMA\_QUESTION\_SFDR\_3>

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

<ESMA\_QUESTION\_SFDR\_4>

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<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>

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<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>

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<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>

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<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>

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<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>

FIA EPTA members welcome the review of the ESAs on the treatment of derivatives in the SFDR, the objectives of the ESAs to give tools to investors to compare and give clarity around direct investments are important and welcomed. However, FIA EPTA members believe that the role of exchange-traded derivatives (ETDs) in the development of sustainable investments is not recognised by the ESAs. ETDs are part of the broader market infrastructure and are important for the uptake and trust in the financial markets; e.g. used to hedge a portfolio’s risks. ETDs are used by all kinds of FMPs and are needed for the financial ecosystem to function well. FIA EPTA members believe that ETDs should be viewed comprehensively, i.e. also with respect to their positive contributions to risk management and for the uptake of sustainable products and the green transition.

The proposed approach by the ESAs would unduly disincentivise the use of derivatives in the affected financial products since any exposures to derivatives could not be counted toward the Taxonomy-alignment ratio. This would make it more difficult for end-users to use ETDs for managing their financial risks and in the process undermine the goal of having safe, liquid, and efficient markets that can support the green transition.

FIA EPTA members believe that the ESAs have a too narrow view of the use case and benefits of ETDs for market participants and we believe that the ratios around derivatives in sustainable investment should be viewed in an equal manner and by including derivatives in both the numerator and the denominator of the relevant ratios in which they are recognised as contributing to taxonomy aligned investments.

In addition, FIA EPTA members believe that the ESAs should not focus only on ‘net long positions’ to be included in the ratios, both net- long and short positions are used by FMPs to risk manage their positions and are part of a healthy financial market ecosystem. FIA EPTA members would suggest consulting further with market participants on this as netting is complex, and FMPs would need more time distinguishing between long and short positions. Portfolio managers have a critical role in the economic transition. Their core fiduciary duty is to achieve appropriate returns for their end-beneficiaries. Effective risk management is key for asset managers to deliver on these objectives. Introducing maximum turnover ratios or minimum holding periods would artificially reduce their ability to manage risks.

In addition, we would point to the critical information function financial markets play in providing transparency on asset pricing and risk. An effective price formation process inherently brings together market participants with different investment horizons and risk-return expectations (e.g., long vs. short). A market where investors were to be subject to minimum holding periods or maximum turnover ratios will likely be less efficient and liquidity will be rare.

FIA EPTA members recognise that the ESAs have greenwashing concerns, however, it is important to acknowledge that investing creates risk; investing in sustainability/social objectives may bring additional risk. If policymakers want to enable investors to pursue non-financial investing objectives, funds must be allowed to simultaneously address financial and risk-management objectives. Ultimately, a healthy ETD market contributes to the broader financial ecosystem and can help mature the developing SFDR fund industry. In addition, physical ownership does not necessarily demonstrate sustainable impacts and should, therefore, not be considered as the criterion for inclusion/exclusion.

Hence, FIA EPTA members believe that derivatives should be included in the PAI indicators, both in the numerator and the denominator if ETDs are recognised as contributing to taxonomy-aligned investments. Otherwise, FIA EPTA members believe it preferable to exclude ETDs from both the numerator and the denominator. Considering that ETDs have a limited positive (or negative) direct impact on those specific non-financial objectives we believe, that in that case, it would be appropriate to exclude ETDs from the ratios. When the ESAs would continue to include ETDs in the ratios, FIA EPTA members would recommend pursuing an exemption from the ratios for ETD positions that are specifically designed to hedge the underlying portfolio of the fund; making sure investors can continue to use ETDs as a risk management tool.

In addition, FIA EPTA members believe that if to the extent the above recommendations are not adopted, ETD positions are to be converted into an equivalent position in the underlying in order to calculate the ratios. The positions should certainly be delta-weighted so as to not give a false sense of the ETD's contribution to the ratio.

<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>

FIA EPTA members believe listed exchange-traded derivatives (ETDs) are a key component of mature secondary markets. The recent growth in demand for listed ESG derivatives demonstrates that these products are a core component of sustainable investment strategies, especially since the availability of liquid and transparent derivatives significantly reduces funding and financing costs for equity and bond issuers in primary markets. In addition, derivatives products enable asset holders to manage their financial risks, which is crucial for discharging their fiduciary duty and for appropriately managing their long-term investments. This makes listed and cleared derivatives an important component of long-termism in financial markets.

FIA EPTA members believe that ETDs and net long/short positions are part of a healthy secondary market ecosystem. FIA EPTA members believe that there should not be made a distinction between net long or short positions as both contribute to transparency and risk management in capital markets. This is also echoed by the European Securities and Markets Authority[[2]](#footnote-2) (ESMA), stating that short selling is key to price discovery and market liquidity. Short selling assists with the incorporation of negative information into market prices more quickly, reducing the risk of price bubbles. The evidence suggests that restricting short selling reduces liquidity as well as significantly increases the costs of liquidity which in turn will delay and make the transition more costly.

FIA EPTA members believe that including only net long positions or both net long or short positions of derivatives into the numerators of sustainable investment ratios should be further scrutinized and tested. Once, a conclusion is reached, ideally, the same approach should be reflected for both PAIs, taxonomy-alignment ratios and sustainable investment ratios for harmonization and equal treatment. Hence, the current artificial gap created between the approaches taken towards the negatively and positively contributing derivatives could be closed.

This would mean that under the ESAs proposal, ETDs would not be recognised as contributing to Taxonomy-aligned investment activities, and yet would still need to be included in the denominator as part of the total assets of the product or portfolio. This proposed approach would unduly disincentivise the use of derivatives in the affected financial products since any exposures to derivatives could only ever contribute negatively to the Taxonomyalignment ratio. This would make it more difficult for end-users to use ETDs for managing their financial risks and in the process undermine the goal of having safe, liquid, and efficient markets that can support the green transition.

<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>

As also mentioned in our response to questions 14 and 15; FIA EPTA members believe that ETDs and net long/short positions are part of a healthy secondary market ecosystem. FIA EPTA members believe that there should not be made a distinction between net long or short positions as both contribute to transparency and risk management in capital markets. This is also echoed by the European Securities and Markets Authority[[3]](#footnote-3) (ESMA), stating that short selling is key to price discovery and market liquidity. Short selling assists with the incorporation of negative information into market prices more quickly, reducing the risk of price bubbles. The evidence suggests that restricting short selling reduces liquidity as well as significantly increases the costs of liquidity which in turn will delay and make the transition more costly.

Provisions of point g of paragraph 1 of Article 17 of the SFDR Delegated Regulation is cross-referencing the Short-Selling Regulation ((EU) 236/2012) where netting methodologies for short positions are laid out. Before determining the appropriate legal cross-references to the Short Selling Regulation, FIA EPTA members would suggest first focusing on deciding on the final netting methodology once more details have been clarified. Once it has crystallized which direction on netting to take, it then makes sense to refer to the appropriate laws and regulations.

FIA EPTA members believe that the SFDR-aligned fund market should be developed and treated equally to established products as artificial barriers will create less trust and liquidity in the market.

<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>

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<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

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<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)
2. ESMA (2019), [Report on undue short-term pressure on corporations](https://www.esma.europa.eu/sites/default/files/library/esma30-22-762_report_on_undue_short-term_pressure_on_corporations_from_the_financial_sector.pdf) ESMA30-22-762, para. 308. [↑](#footnote-ref-2)
3. ESMA (2019), [Report on undue short-term pressure on corporations](https://www.esma.europa.eu/sites/default/files/library/esma30-22-762_report_on_undue_short-term_pressure_on_corporations_from_the_financial_sector.pdf) ESMA30-22-762, para. 308. [↑](#footnote-ref-3)