**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-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**

|  |  |
| --- | --- |
| Name of the company / organisation | Institutional Shareholder Services Inc. (ISS) |
| 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>

 The additional social and governance related PAI indicators proposed by the ESAs would be pertinent to sustainability-oriented investors who wish to understand the impacts of the companies to which they have exposure through investment products.

Nevertheless, we believe that the ESAs should only introduce additional social indicators as optional rather than mandatory. Particularly in view of the first set of draft European Sustainability Reporting Standards (ESRS) proposed by the European Commission, according to which reporting against PAIs will be subject to a materiality assessment for companies. Alignment between the PAIs and the information that companies subject to the Corporate Sustainability Reporting Directive (CSRD) will be required to disclose under the ESRS is an important prerequisite for FMPs to be able to report. Alternatively, the PAI indicators could correspond to commonly collected data points or metrics. However, this is not universally the case for the additional PAIs proposed by the ESAs.

For instance, the amount of accumulated earnings in non-cooperative tax jurisdictions for undertakings whose turnover exceeds EUR 750 million. Accordingly, this information may be difficult for FMPs to obtain.

More broadly, we understand that the ESAs’ proposals fulfill the mandate received from the European Commission in May 2022. However, since then, the latter has committed to review the Level 1 of the SFDR. The review process may imply significant changes to the SFDR framework and, accordingly, we believe that introducing too many changes, albeit of a technical nature, at this juncture will create further implementation challenges for FMPs and may create inconsistencies with the framework as applied until now.

<ESMA\_QUESTION\_SFDR\_1>

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

<ESMA\_QUESTION\_SFDR\_2>

 With respect to interference in the formation of trade unions or election of worker representatives, the proposed PAIs would better align with existing PAIs if it asked about investments in companies without a policy rather than without a commitment.

<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>

 The proposed opt-in social indicators could be reported by companies subject to the CSRD, and, as such, used by FMPs for the purposes of their disclosures. Accordingly, we believe they could be included in Annex I, Table III.

<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>

We have encountered major challenges due to the misalignment in the timing of the various assessments required under Article 4 of SFDR.

For instance, “enterprise value” must be calculated at Fiscal Year-end while the value of positions in the portfolio should be an average of each quarter end, and the assessment of principal adverse impact should be based on “latest available information”.

This results in 3 assessments being carried out at different points in time, rendering the aggregation of information on PAIs at entity level technically challenging. It also creates inconsistency as to the information reported on a portfolio holding at a specific point in time depending on whether it is based on “latest available information” rather than the point at which an investor was exposed to the portfolio. In our experience, this has proven particularly challenging for FMPs in the context of controversy-based assessments.

In our view, it would be more practicable to have all three assessments carried out together at a single point in time. However, we would like to highlight that we anticipate this amendment to the Delegated Regulation alone would imply significant cost and disruption to the established pattern of disclosures. Nevertheless, it would improve the quality, accuracy and comprehensibility of disclosures.

<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>

The development of new formulae is helpful in view of the forthcoming review of the SFDR. However, we believe that the ESAs should carefully consider whether the benefits of introducing new formulae at this juncture would outweigh the costs. If the new formulae are adopted FMPs will be required to adapt to the changes and the new formulae could create inconsistencies with the PAIs as applied and reported to date. As a result, we would encourage the ESAs to await the review of the SFDR before introducing the proposed changes.

In the interim we would encourage the ESAs to develop examples of how the new formulae would be applied to ensure a common understanding across the market.

In addition, we believe that the formulae could be improved if they were better able to reflect and/or account for limited data availability. For instance, where a weighted average is calculated, the denominator should reflect data coverage and should, ideally, be limited to positions with data. This would align with common market practice and avoid dilution of reported principal adverse impact due to the inclusion of non-eligible assets and assets (for which data is lacking) in the denominator.

Finally, almost all formulae propose using ‘all investments’ in the denominator except for those concerning real estate assets and debt securities not issued under Union legislation. The same approach could be taken for other PAIs.

<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>

In our experience, the persistent uncertainty around how to apply the term ‘all investments’ has been a significant challenge to FMPs. We welcome the ESAs’ efforts to provide clarity and would like to highlight that different approaches are currently applied across the market.

In addition, as is well known by the ESAs, there is limited data available on certain PAIs and the materiality of the various PAIs can differ considerably depending on the investment.

<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>

In general, we believe that the ESAs should refrain from introducing too many additional mandatory requirements for FMPs at this juncture, in view of the forthcoming review of SFDR. As a result, any changes introduced to the SFDR Delegated Regulation should be largely optional for FMPs. More broadly, they should avoid creating inconsistencies with the framework as applied until now.

At present, the availability of data on PAIs is limited, with companies under no legal obligation to disclose said information. This situation is likely to persist if the first set of draft ESRS proposed by the European Commission are enacted; as they envisage making reporting against the PAIs largely voluntary for companies in scope of the CSRD.

As a result, “information directly from investee companies” may continue to be difficult for FMPs to obtain. Disclosure of the limited availability of data “directly from investee companies” may undermine the confidence of investors in the reliability of the PAI reporting. It would also represent a departure from how Taxonomy-alignment data is treated according to the European Commission’s response to the ESAs’ queries (published 14/04/23), whereby FMPs are prohibited from indicating a lack of data to explain low alignment lest it undermine the confidence of investors.

Accordingly, it may be more appropriate to allow FMPs the option of disclosing the proportion of companies for which data on the PAI indicators is available. This could be expressed in the form of a ‘coverage figure’.

However, there would have to be clarity as to how to calculate the ‘coverage figure’. For instance, it should be clear whether the numerator includes only positions for which PAI data has been reported or whether it also includes estimated data. Additionally, it should be clear whether the denominator includes all assets or only those eligible to PAI reporting in general or eligible to the specific PAIs in view of their materiality.

Finally, as a complement, it may be worth considering a further optional disclosure that would allow FMPs to highlight the materiality of different PAIs or their applicability to certain sectors.

<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>

Based on our experience, both approaches have their own advantages and disadvantages, and each approach has its own proponents in the market.

The current interpretation of ‘all investments’ makes sense in the context of PAI calculations when asking for a ‘share of investments in . . . ‘, but is not appropriate for calculating weighted averages. With the current interpretation, adverse impact can be reduced year-on-year by shifting portfolios away from assets with data (either eligible assets for which no data is available or assets which are not eligible for the PAI indicators).

In either case, the numbers can only be fully understood in combination with the eligibility ratio (which share of the portfolio is eligible for the PAI calculation and proportion of the investments for which there is PAI data).

<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>

We believe that FMPs would benefit from greater flexibility to avail of reasonable estimates to address gaps in corporate reporting. Such estimates may still be valuable to end investors in assessing the sustainability of investment products and need not rely on information reported by investee companies.

<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>

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<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>

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<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>

We generally agree with the ESAs’ assessment of the DNSH framework under SFDR.

Overcoming the challenges associated with applying the SFDR DNSH will be crucial to enhancing the usability of the EU sustainable finance framework. As the ESAs have outlined, the SFDR DNSH is a key element in qualifying ‘sustainable investments’ under Article 2(17) and thus, in the absence of a clear framework to determine ‘significant harm’, the concept of ‘sustainable investment’ itself cannot be considered robust.

We share the ESAs’ view that solutions for fundamental issues in SFDR will only be delivered by a Level 1 review. Accordingly, we welcome the announcement by the European Commission that it would be undertaking a public consultation later this year to prepare such a review.

While the current SFDR DNSH framework has its limitations, we believe that intervention by the ESAs at this juncture may create additional implementation hurdles for the market without adequately addressing the framework’s shortcomings.

Accordingly, we believe that any changes introduced by the ESAs in the form of additional disclosures should be largely optional for FMPs.

<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>

In view of the forthcoming review of SFDR, we do not believe it would be appropriate for the ESAs to make the disclosure of quantitative thresholds, linked to PAI indicators, (for the assessment of DNSH) mandatory at this juncture.

As outlined in the consultation paper, FMPs would ultimately still have discretion as to the PAI indicators they consider and the quantitative thresholds they set for them. Moreover, in most instances, the thresholds introduced by FMPs are likely to be sector-agnostic and thus inadequate to reflect sectoral specificities. This may lead, inadvertently, to incoherences with the technical screening criteria (TSC) of the EU Taxonomy and undermine the usability or comprehensibility of the EU sustainable finance framework.

In addition, while mandating the disclosure of quantitative thresholds may provide greater insight into the approaches applied by FMPs in assessing DNSH, it would also create a superficial comparability between products that may actually heighten the risk of end-investors believing certain concepts in SFDR are being applied uniformly across the market.

Ultimately, we believe that the ESAs should maintain the status quo and avoid the risk of further disruption as the market adapts to the new requirements pending the review of SFDR.

<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>

We believe that the ESAs should refrain from introducing an optional “safe harbour” for Taxonomy-aligned activities at this juncture. The definition of “sustainable investment” under SFDR is likely to be addressed in the forthcoming review of SFDR level 1 and we believe that such a fundamental question should be reserved for the European Commission and the co-legislators.

Furthermore, if introduced as an element of the current SFDR framework, we believe that an optional “safe harbour”, whereby Taxonomy-aligned investments would not be subject to an environmental DNSH assessment, would increase complexity and create further inconsistencies across the market.

We recognize that Taxonomy-aligned activities already satisfy rigorous, sector specific DNSH criteria in accordance with the Technical Screening Criteria (TSC). Accordingly, subjecting Taxonomy-aligned investments to another, potentially divergent environmental DNSH assessment under SFDR is duplicative and unnecessary. However, leaving the application of a “safe harbour” to the discretion of FMPs will result in divergent approaches being adopted across the market, rendering it less navigable for end-investors.

Moreover, the proportion of Taxonomy-aligned investments in a portfolio should be reflected in the Green Asset Ratio (GAR). According to our understanding of existing requirements, the GAR would not be reduced in cases where divergent environmental DNSH criteria under SFDR were applied to Taxonomy-aligned investments.

The ”safe harbour” would thus appear more relevant in cases where Taxonomy-aligned investments were to be treated as a subcategory of “sustainable investments” within the meaning of Article 2(17). In such instances, the “safe harbour” would avoid divergences between the environmental DNSH in SFDR and the TSC resulting in Taxonomy-aligned investments being disqualified as “sustainable investments”.

However, for practical reasons, the “safe harbour” would not fully address potential inconsistencies between how the environmental DNSH is applied by the Taxonomy and SFDR for the purposes of qualifying “sustainable investments”. This is primarily due to the fact that, while the Taxonomy carries out an assessment at the level of economic activities, qualifying ‘sustainable investments’ typically involves assessing an entity in its entirety. As a result, while the “safe harbour” may prevent Taxonomy-aligned investments from being disqualified as “sustainable investments” it will not prevent other activities carried out by the same entity from being subject to the environmental DNSH under SFDR and potentially disqualified as a ‘sustainable investment’ on that basis (despite the entity also carrying out Taxonomy-aligned activities).

We would also like to highlight that, in a recent FAQ document published on 13th June 2023, the European Commission stated that exposures to Taxonomy-aligned investments could be considered as ‘sustainable investments’ within the meaning of Article 2(17). The Commission specifies that the social elements of the DNSH principle under SFDR are considered to be adhered to at entity level for an undertaking that discloses activities as “environmentally sustainable” under the EU Taxonomy. In effect, the European Commission has clarified that satisfying Article 18(1) of the Taxonomy Regulation on Minimum Safeguards automatically qualifies an exposure as a ‘sustainable investment’ pursuant to Article 2(17).

The European Commission’s clarifications as to the interaction between Taxonomy-aligned activities and ‘sustainable investments’ appear to create a form of “safe harbour” insofar as SFDR DNSH is satisfied with respect to social and governance matters at entity level by any entity with Taxonomy-aligned activities. However, the FAQ does not state that other activities carried out by an entity would not be subject to environmental DNSH under SFDR.

<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>

We believe that a hyperlink to benchmark disclosures for Article 9(3) products would be sufficient to achieve the goal of ensuring transparency. We believe that additional, specific disclosures being applied to Article 9(3) products would be duplicative and may risk confusing end-investors.

<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>

We believe that the ESAs have identified a key difference in the approaches applied by FMPs at product-level to achieve carbon emission reductions. The distinction is important and end-investors should be duly informed of the approaches available to FMPs and the extent to which they pursue them. However, the disclosures should not be designed in such a way that FMPs have to commit to rigidly adhere to one of these strategies.

Financial markets are highly dynamic in nature and the rigid distinction between the two approaches identified by the ESAs is rarely reflected in the market.

For instance, FMPs may have committed to engage in stewardship and actively encourage investee companies to reduce their carbon emissions. However, FMPs may also envisage divesting from investee companies that are unresponsive to their engagement efforts. In such instances, the financed emissions of the portfolio may fluctuate or be reduced through rebalancing that occurs due to divestments.

Accordingly, FMPs should be given flexibility as to the approach(es) and any additional disclosures should merely require FMPs to explain, in simple terms, how the portfolio has achieved emission reductions, whether said reductions are attributable to portfolio rebalancing or the due to reductions made by the underlying investee companies.

<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>

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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>

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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>

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<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>

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<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>

We welcome the recognition that FMPs need to complement reported data with estimates if the Taxonomy is to serve as a meaningful assessment and steering tool. Permitting the use of estimates of Taxonomy-alignment also allows for a wider investment universe to be considered by FMPs by accounting for SMEs and non-EU companies.

With respect to the criteria proposed by the ESAs, we would like to emphasize that it should be possible for estimates to be based on proxy information related to the activity-specific criteria and not dependent on reporting on key environmental metrics by companies.

<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>

The market would benefit from greater clarity as to how the proportion of sustainable investments of financial products should be calculated. In addition, end-investors would benefit from greater consistency in the approaches applied by FMPs across the market.

As mentioned earlier, it is a widespread market practice for FMPs to assess ‘sustainable investment’ at entity level, taking into consideration the entirety of an investee company’s operations and activities. This approach is appropriate in cases where the FMP holds general equity or debt in their portfolio.

However, it also results in the entire value of an equity or debt holding in a company being counted as a ‘sustainable investment’, regardless of how the three qualifying criteria (contribution, DNSH & good governance practices) have been applied.

By contrast to the entity-level approach, the activity-level approach typically results in a certain proportion of a holding qualifying as a ‘sustainable investment’ as opposed to the holding in its entirety. Logically, this typically leads to the portfolio having a lower share of ‘sustainable investments’.

The entity-level approach has recently been validated in the European Commission’s response to the ESAs’ queries of 9th September 2022. As per the answer to the first of the ESAs’ questions; “. . . *the notion of sustainable investments’ can therefore also be measured at the level of a company and not only at the level of a specified activity*”. The European Commission has thus indicated that both the entity-level approach and an activity-level approach are permissible.

Nevertheless, according to Article 2(17), a sustainable investment is “*an investment in an economic activity that contributes to an environmental objective, . . . or . . a social objective*” provided those activities avoid significant harm and the investment is in investee companies that follow ‘*good governance practices*’.

Two of these criteria appear to apply at the level of economic activities; (i) the need for an activity to contribute to a sustainability objective and, (ii) do no significant harm to others. The third and final criteria, that investee companies follow good governance practices’, appears to apply at the entity level, to investee companies as a whole.

Accordingly, the ESAs could consider whether it is necessary to clarify how the three qualifying criteria should apply in the context of the entity-level approach. For instance, the ESAs’ could consider whether a threshold linked to activities contributing to a sustainability objective should be introduced. Under this approach, for example, if a company derived 15% or 20% of its revenues from activities contributing to a sustainability objective then the entirety of the holding in that company could qualify as a ‘sustainable investment’ provided none of its activities caused significant harm and the company followed good governance practices.

Alternatively, it should be clarified whether “sustainable investments” should be calculated at the level of activities. However, we would highlight that if the assessment of sustainability is carried out at the level of economic activities, then only individual activities that make a contribution to sustainability objectives and avoid significant harm would be counted. This approach may result in, for example, fossil fuel companies with significant operations in renewables, being eligible for inclusion in the calculation of ‘sustainable investments’.

The ESA should carefully consider which of these approaches adheres to the spirit of Art. 2(17) and how the SFDR framework could be reformed in future to ensure greater consistency across the market when it comes to calculating ‘sustainable investment’.

<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>

TYPE YOUR TEXT HERE

<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-2)