**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 | BEUC, the European Consumer Organisation |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Belgium |

**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>

We support the addition of mandatory social indicators because this strengthens the social dimension in the SFDR. In particular, we support that the ESAs have let themselves be inspired by disclosure requirements from the draft European Sustainability Reporting Standards (ESRS). The long-term political goal must be to integrate the various pillars of the EU corporate sustainability and sustainable finance framework to coalesce into a coherent and mutually reinforcing system of sustainable business activities, financial products and sustainability-related information, and improving the consistency between ESRS and SFDR disclosures is an important element of that.

<ESMA\_QUESTION\_SFDR\_1>

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

<ESMA\_QUESTION\_SFDR\_2>

**(1) Adequate wage:** The suggested indicator only refers to an investee company's employees, but that does not cover workers who effectively work for the company but are not in a legal employment relationship with it. ESRS S1 refers to them as 'non-employee workers in the own workforce', which includes individual contractors who provide labour to the company (“self-employed workers”) and workers provided by undertakings primarily engaged in “employment activities” (NACE Code N78). The delegated act through which ESRS will become law has not been finalised yet, and we note with concern that the Commission has replaced the term 'own workforce' with 'employees' in the disclosure requirement ESRS S1 DR S1-10, which corresponds to the proposed additional PAI. It is hard to hit a moving target, but, for now, we urge the ESAs to enlarge the scope of the 'adequate wage' indicator to a company's own workforce as defined in ESRS. This will be in line with the more ambitious draft ESRS S1 which the European Financial Reporting Advisory Group (EFRAG) has submitted to the Commission in November 2022, and it would avoid the obvious problem that some of the worst working conditions are endured by those workers who are not formally employed by a company.

In the longer term, and especially if the Social Taxonomy never materialises, the SFDR social PAIs should be expanded even further to capture impacts on workers in the value chain. Otherwise the most material part of production is left out in high-risk sectors that source goods from low-wage countries. For example, an apparel company like H&M would get a 0% ratio despite having most of its products made by suppliers with underpaid workers who cannot cover their basic needs because the legal minimum wage is too low.

**(2) Social protection and collective bargaining coverage:** DRs S1-8 (Collective bargaining coverage and social dialogue) and S1-11 (Social protection) in ESRS S1 should also be turned into mandatory social PAIs. They are important for understanding the social sustainability performance of investee companies and they are suitable for being turned into indicators because they can be quantified.

**(3) Exposure to controversial weapons:** The ESAs should use the opportunity of the review of the SFDR delegated act to expand the 'controversial weapons' indicator (currently indicator 14 in Table 1 of Annex I) as follows:

* Add nuclear weapons and autonomous weapons systems to the list of controversial weapons, as they contravene fundamental principles of distinction and proportionality in international humanitarian law and because the development of nuclear weapons violates the disarmament principle of the Non-Proliferation Treaty.
* Add the term 'development' to the arms indicator as follows: 'Share of investments in investee companies involved in the *development*, manufacture or selling of controversial weapons'.
* Add a new indicator on exposure to controversial arms trading that violates any of the eight human rights and social principles of the EU Common Position on Arms Exports and/or the Arms Trade Treaty. The provision of conventional arms that do not align with these principles risk contributing to human rights violations, armed repression and fuel conflicts leading to humanitarian crises. Recommended text: 'Exposure to companies involved in arms trading that violates any of the eight criteria in the EU Common position on Arms Exports and/or the Arms Trade Treaty.'

**(4) PAI 10:** Specify the term 'involved' to avoid a major loophole since most investors apply unreasonable criteria to conclude if a company is involved or not (commonly used criteria are: convicted in court, company admittance, or a public institution confirming the company’s responsibility – all of which rarely happens). The Norwegian Government Pension Fund has a best-practice approach where its Ethical Guidelines states that if there is 'an unacceptable risk' that the company contributes to or is responsible for severe violations, the company can be excluded. Consider also changing the term 'involved' to 'have caused or contributed to' as expressed in the UNGPs.

<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>

Yes, we agree with the addition of these indicators, but we fear that making them voluntary will mean that they will never be used. We concede that it can make pragmatic sense to leave an indicator as voluntary, but at least the following should be made mandatory: (i) Excessive use of non-guaranteed-hour employees in investee companies; (ii) Excessive use of temporary contract employees in investee companies; (iii) Excessive use of non-employee workers in investee companies.

<ESMA\_QUESTION\_SFDR\_3>

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

<ESMA\_QUESTION\_SFDR\_4>

Please see response to question 3.

<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>

Yes, we agree with the proposed changes.

<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>

Yes, we agree with this proposal.

<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>

We tend to agree with the ESAs’ position: share of all investments is better than per asset type. There are weaknesses in this approach, as correctly described in the ESAs consultation paper, but ultimately it is preferable because it makes comparability easier.

<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>

This question requires a nuanced response, not just yes or no. We agree in principle with the ESAs' goal of aligning disclosure requirements for investee companies under ESRS and disclosure requirements for FMPs under SFDR. In an ideal world, FMPs would get almost all the information they need from investee companies' ESRS reports, and therefore would only rarely need to resort to purchasing data from third-party providers or conducting their own research through questionnaires and the like. Sadly, however, the ESRS drafts have been weakened and there are now reasons to assume that ESRS reports will not provide FMPs with the complete and comparable information that they need for their PAI analysis. Therefore, we believe that FMPs still bear some responsibility for obtaining that data in case the ESRS reports are not sufficient in that regard.

In principle, wherever the PAI indicator in question requires it to become meaningful, the whole value chain should be covered since the most severe impacts happen further down the supply chain. This is in particular the case for social PAIs. ESAs should therefore stress that a financial market participant should make every reasonable effort to obtain the information through other sources, such as direct data requests to investee companies, or through well-founded estimates. This goes beyond the ESAs' proposal that FMPs should only include value chain information if it is 'readily available', e.g. through data providers.

<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 support the ESAs' approach to treating derivatives, both with regard to their inclusion in PAI indicators and there exclusion when it comes to calculating the share(s) of sustainable and taxonomy-aligned investment. We share the ESAs' view that these rules are necessary to avoid greenwashing.

<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>

As stated in our response to question 14, we agree generally with the ESAs’ proposed treatment of derivatives in SFDR. However, we have no opinion on the netting provision.

<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>

Yes, we agree with the ESAs that the DNSH regime in the SFDR suffers from the vagueness of its core concept and, consequently, leaves too much discretion to financial market participants about how to conduct their assessment of PAIs. This creates inconsistencies and makes the resulting disclosures less comparable. We also agree that, in the case of environmental impacts, this problem is compounded by inconsistencies between how the DNSH principle is operationalised in SFDR and the Taxonomy Regulation. The existence of two diverging DNSH regimes also adds confusion and complexity for retail investors and everybody else.

Unfortunately, we do not see how this discrepancy can be remedied through supervisory measures that must remain within the constraints set by the legal text of the SFDR. A future review of the latter should converge the DNSH regime in SFDR towards that of the Taxonomy regulation, wherever possible and inasmuch as work on the Taxonomy itself progresses. The obvious issue is that there is no social Taxonomy (yet), and until such time as there is, the SFDR DNSH regime must continue to apply for social PAIs.

<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>

There is indeed a high risk of methodological inconsistency between financial market participants, but we do not believe that more transparency about something as technical as quantitative thresholds related to principal adverse impact indicators (PAIs) would be useful for retail investors, especially since that information would also not be included in pre-contractual information. It would be difficult to interpret, even for a knowledgeable and diligent retail investor. However, that does not mean that we oppose this proposal. As long as no minimum requirements for the consideration of PAIs exist, the additional online transparency could still be useful to compare how funds are considering PAIs and maybe to incentivise asset managers to apply stricter thresholds.

<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 are sceptical about the 'safe harbour' proposal because it would add considerable complexity and we do not see much of a benefit. If, in the end, this option is allowed, financial market participants should at least have to be transparent about the use of that clause.

<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>

We agree with the ESAs that the simultaneous existence of two different DNSH regime and approaches to sustainability is not ideal. It creates complexity and confusion, certainly for retail investors, but probably also for more sophisticated users and producers of sustainability disclosures. We also agree that, should both regimes nonetheless persist, alignment between them should go in the direction of the Taxonomy as much as possible and reasonable (one of the main problems being the Taxonomy's incomplete coverage of economic activities and the absence of a social taxonomy). Ultimately, however, this alignment must happen in the level 1 text of the SFDR, more specifically: in the definition of what constitutes a sustainable investment.

<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>

We have no additional suggestions how the do-no-significant-harm (DNSH) disclosures under the SFDR Delegated Regulation could be improved to reduce the risk of greenwashing and increase comparability. We appreciate and applaud the ESAs efforts to make improvements as much as possible under the current mandate, but what we ultimately need is a genuine product standard. What makes comparability difficult in the case of DNSH disclosures is not the number or nature of PAIs, but the vagueness of phrases like 'taking PAIs into account', but this vagueness is in the level 1 text and must ultimately be remedied there.

<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>

Yes, as much as is possible within the mandate set by the SFDR level 1. There are ways in which the information could be improved to make it more decision-useful for investors, because many of the required narrative explanations are relatively vague and leave too much discretion to the product providers. However, this vagueness is largely the result of the level 1 text.

<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>

Providing a hyperlink is good, but not sufficient on its own. The EU Paris-aligned and Climate transition benchmarks differ with regard to their goals and levels of ambition. The Paris-aligned benchmark is basically the stricter one, and retail investors should be informed about this in pre-contractual disclosures through a short and understandable paragraph. This should be followed by the hyperlink for more information.

The ESAs' proposal does not appear to address products that have an emissions reduction target, but do not designate an EU Climate Transition Benchmark or EU Paris‐Aligned Benchmark. In principle they should be treated exactly the same, i.e. they should provide a link to the non-EU-regulated benchmark used and a short explanation of what that benchmark does and what its ambition level is with regard to decarbonisation and/or Paris-alignment. If no benchmark at all is used, there should be an explanation that fulfils the requirement in Article 9(3) subparagraph 2 of the SFDR.

We do not believe that the introduction of GHG emissions reduction target disclosures will cause confusion.

<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>

Yes, we find the distinction between these three approaches to achieving GHG emissions reductions and the requirement to include information about them in pre-contractual product-level disclosures useful for retail investors.

There is a confusing variety of different terms and approaches for investment products that claim to be low- or zero-carbon or to reduce emissions in some way. This includes, but it not limited to: negative screening, positive screening, value-based investing, exclusion/divestment, transition, impact investing (which can be further divided into company and investor impact), best-in-class, stewardship/engagement etc. Sometimes these are simply different terms for the same thing, as in the case of ‘exclusion‘, ‘negative screening‘ and ‘value-based investing‘. Ultimately, this variety seems to boil down to three principal strategies, which are the ones identified by the ESAs and which can be described as: (i) negative screening/exclusion, i.e. filtering out of assets that are associated with highly polluting or generally unsustainable business activities; (ii) positive screening/impact, i.e. positively selecting assets that are associated with business activities that contribute to some sustainability goal, such as carbon reduction; (iii) transition or stewardship strategies, i.e. positively selecting assets that are associated with *businesses*, not business activities, that are currently highly polluting or otherwise unsustainable, but have the potential to 'clean up' their business as a result of efforts by asset managers to move investee companies in that direction. It is therefore good that the ESAs want to require financial market participants to explain in clear language how their products are intended to achieve the stated reduction goal in terms of these three strategies. Ultimately, we need a genuine product standard that defines minimum standards for the three investment approaches to eliminate greenwashing and to give investors certainty about how the product(s) they consider buying intend to achieve emissions reductions or other sustainability effects. In the meantime, however, disclosures such as the one proposed by the ESAs have the potential to reduce the vagueness that is rife in the field of sustainable investment products.

We also have two points of constructive criticism. First, considering the plethora of commonly used terms, the ESAs might want to look into options of standardising the terms that financial market participants must use in these explanations more. This is because it may not always be clear to retail investors who try to compare different products that a product that, for example, claims to achieve emissions reductions through, say, ‘engaging with company boards’ and another one that claims to ‘put investee companies on a transition path through investor stewardship’ actually follow the same approach.

Second, we do not quite understand why the ESAs have chosen to use the distinction between the three sustainable investment strategies only in the context of information about emissions reductions targets. This helpful distinction applies to sustainable investment products generally. For example, a fund that focuses on ‘S’ aspects in ESG investing might decide either to exclude companies or sectors where human rights violations are frequent, or it might decide to invest in them to pressure management to clean up the supply chain, or it might focus on companies with a proven record of treating workers and other stakeholders fairly. The ESAs should therefore consider requiring such explanations for article 8 and article 9 products under SFDR more generally.

<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>

We support requiring a disclosure about the (degree of) Paris-alignment in pre-contractual information of products that have a GHG emissions reduction target because it helps retail investors understand how meaningful or ambitious the product's reduction target is. The Paris agreement is the obvious reference here because it is the globally agreed yardstick against which reduction targets must be measured.

<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>

We agree with the ESAs intention of, and arguments for, aligning the emissions-related disclosures under SFDR with the those required under CSRD/ESRS. The use of carbon credits in particular is a method of corporate greenwashing, and it is therefore correct that carbon credits should not be considered as means to achieve emissions reduction targets.

<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>

For the time being, we are sceptical about requiring or permitting explanations about the connection or alleged consistency between product targets and entity targets. However, this scepticism is mainly pragmatic, not a matter of principle.

First, retail investors buy products, not entities, and they are primarily interested in the sustainability performance of the former, not the latter. There is a clear difference here between the financial and the non-financial sector. When buying physical products, consumers are very interested in company-level targets because the main emissions typically lie in the production or transport of goods and the value chain. In the investment industry, on the other hand, the emissions that count are the financed ones and those are connected to the investment products. We are not saying that this type of information is irrelevant, but there is already a lot of information to digest at product level alone. Second, there is a concern about the quality of this kind of information. Many entity-level decarbonisation pledges, such as those that are made in the context of the various 'Net Zero' alliances, are not very serious, which would make any information about them useless or, worse, misleading. In short, this could be a loophole for greenwashing.

However, something that could be useful in the future is to include information about the consistency between product level targets and the entity's transition plan for climate change mitigation as reported under disclosure requirement ESRS E1-1. In other words, once the robustness and reliability of determining and reporting about product-level and entity-level climate change mitigation targets has improved, and once there are solid methods for relating one to the other, it could become useful for investors to know whether the fund manager whose product they consider buying has a general strategy for decarbonisation or whether they merely react to demand for sustainable products while continuing to do a much of their business in tradtional investment products (Article 6 products). Websites and periodic reports could then contain this information in a specific section, while pre-contractual product-level disclosures should only contain a link to the website section and a neutral-sounding sentence (e.g. 'More information about the connection between the GHG emissions reduction target of this product and our company's climate transition plan can be found online here: ...').

<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>

The dashboard is a good idea in principle, but it can be improved to make sure that retail investors who compare different products can really understand quickly the characteristics and peculiarities of a specific product. (This is most important for pre-contractual disclosures, but also applies to periodic disclosures.)

Above all, we suggest starting from the realistic assumption that the dashboard is all that most retail investors will look at. It should not become a stand-alone document, but it should contain just enough information so that a retail investor who reads nothing else will still get a reasonably good understanding of the sustainability features, or absence thereof, of the product in question that enables him or her to compare it meaningfully with other products. That means that the dashboard should contain the most basic information about the product and summarise the must-know sections of the disclosure template in a concise and understandable manner. The dashboard must also avoid creating a misleading ‘green’ impression, which is why colours must be used only with the greatest caution. Approaching the dashboard in this fashion has the advantage that we can be a little more relaxed about including technical information in the remainder of the template because the latter will be used mainly by readers who have a professional interest. Of course, it should still be as understandable as possible.

(1) **Difference between ‘sustainability characteristics’ and ‘sustainable investment objective’ should be clearer, especially for Article 8 products.** SFDR has introduced the distinction between financial products that promote environmental or social characteristics and those that have sustainable investment as their objective. Unfortunately, this distinction is neither intuitive nor logical. If the terms were used logically, ‘sustainability characteristics’ would be the generic term and ‘sustainable investment objective’ would be a specific type of ‘sustainability characteristic’ because pursuing a sustainable investment objective certainly lends sustainability characteristics to a product. Therefore, one cannot expect retail investors to understand what it means when the first sentence in the dashboard for Article 8 products states that the product ‘has some sustainability characteristics, but does not have sustainable investment as its objective’. Legally there is no obligation to use the same language in the consumer-facing information templates as in the level 1 legal text. Therefore, we suggest changing the wording to make it clear that sustainability is a secondary concern for Article 8 products. One possibility would be to say something like: *‘This product’s primary purpose is to generate a financial return, but it also considers sustainability to a certain extent.*’

With a view to a potential SFDR level 1 review, we would like to note that the EU is currently tightening its criteria for what constitutes misleading environmental claims in product marketing communication and what sellers need to do to substantiate such claims (Green Claims Directive). This represents a welcome evolution in the Union’s general thinking about sustainability and related claims and is part of the broader Union fight against greenwashing. Of course, the Green Claims Directive is not directly applicable to regulated pre-contractual or periodic disclosures under SFDR, but it would be an interesting exercise to think about whether the very term ‘sustainability characteristics’ would fall foul of the standards that are being developed in the Green Claims Directive, due to its vagueness and lack of proper substantiation. We sincerely hope that any future review of the Union’s sustainable investing framework will take this highly welcome evolution into account.

(2) **Colour coding for Article 8 products:** The use of colours in the dashboard only makes sense if they communicate information to retail investors that is useful, accurate and does not mislead. The general problem with using the green colour, whether dark or light, in the dashboard is that retail investors who only have the time to read the dashboard and nothing else will take it as kind of label that certifies the greenness of the product. The colour green must therefore be used only when a product or its specific features are genuinely sustainable. This rules out using green in the dashboard for Article 8 products. As a rule they should be required to use neutral colours like grey or black in the ‘Minimum Sustainable Investments’ box, the icon to the left of the ‘Minimum EU Taxonomy Investments’ box, the negative impact consideration box and the greenhouse gas emissions reduction targets box. In the last-mentioned box, this is particularly important because using the colour-green should be the privilege of those products whose reduction targets are science-based and in line with the Paris targets, but, by definition, this is not the case for an Article 8 product.

(By the way, the arrow that points upwards from the circular ‘r%’ icon to the right of the ‘Minimum EU Taxonomy Investments’ box to indicate that the ‘r%’ icon stands for a subset of the ‘q%’ icon on the right hand side of the ‘Minimum Sustainable Investments Box’ is not intuitive. Another symbol or explanation should be found to symbolise the relationship between ‘r%’ and ‘q%’. This also applies to the dashboard for Article 9 products.)

(3) **Colour coding for Article 9 products:** The Commission Q&A V.1 on page 27-28 of the [consolidated Q&A document](https://www.esma.europa.eu/sites/default/files/2023-05/JC_2023_18_-_Consolidated_JC_SFDR_QAs.pdf) clarifies that an Article 9 product should only contain sustainable investments under Article 2(17) SFDR, save for some investments for hedging and liquidity purposes. The 'Minimum sustainable investments' box in the dashboard should clarify that only those products that comply with this recommendation can use the green icons to the left and to the right of the box. Others should have to use a grey or black icon. The 'Minimum EU taxonomy investments' box requires the use of a grey icon to the left of the box when a product's minimum content of EU taxonomy investments is 0. A green icon is to be used when the respective minimum content is >0%, which is not exactly a strict or ambitious threshold. The grey icons will therefore probably hardly ever be used which means that the colour coding will not carry useful information for retail investors when they compare different products. Either the grey icon should have to be used regardless of the minimum content, or the dashboard should set an ambitious minimum threshold for the minimum taxonomy content that makes use of the green icon permissible. The 'r%' icon to the right of that box could possibly retain its green colour because taxonomy-aligned product content is the only thing that can be determined with reasonable certainty. There should be no icon, whether green or grey, next to the 'negative impacts' box because, unfortunately, the SFDR concept of 'considering' negative impacts is not robust enough to warrant the use of green. Instead, products that do not consider those impacts should have to state that, as already required in the dashboard, but the words 'does not consider' should have to be in bold type and in red. Using the green icon next to the 'emissions reductions target' box should only be permitted if the product's target is science-based and Paris-aligned.

(4) **Non-sustainable investments in the product:** The dashboard should give readers a concise, yet comprehensive, understanding of what a particular investment product contains. Therefore, the dashboard should also include a box or section with concise information about the investments that are not sustainable in either the SFDR or the Taxonomy sense. Otherwise, retail investors will be left wondering what the other investments are, especially if the reported figures in the sustainable/Taxonomy investments categories are low. The template already requires this information in the section 'What investments do not promote the product's environmental or social characteristics...?' for Article 8 products, and the section 'What investments are not sustainable...?' for Article 9 products. A shorter version of that information should be in the dashboard.

It would also be good for retail investors to know whether any of the non-sustainable investments are harmful, i.e. actively unsustainable, since the negative impact consideration is not a particularly robust test. There is no bad taxonomy and, to our knowledge, no other comprehensive list of unsustainable businesses and business activities, a second-best solution in the meantime could be to require a disclosure of whether the product contains investments into companies that are excluded from EU Paris-Aligned Benchmarks in accordance with Commission Delegated Regulation (EU) 2020/1818 Article 12(1) and 12(2). If the product indeed contains such investments a sentence should be required in the ‘non-sustainable investments’ box or section that lists the sectors in which these investee companies operate, e.g. aviation, power generation through coal/fossil fuels etc.

(5) **Sustainable investing approaches:** In the template section 'Does this product have a greenhouse gas emissions reduction target?', financial market participants are required to describe whether the target, if the product has one, is to be achieved through (a) exclusion/divestment, (b) positive screening or (c) stewardship for transition to sustainability. We feel that this threefold typology of sustainable investment approaches – which roughly corresponds to the three labels for sustainable investment products suggested by the UK Financial Conduct Authority in its October 2022 [consultation](https://www.fca.org.uk/publication/consultation/cp22-20.pdf) – is useful for categorising sustainable investment in general, not just with regard to emissions reduction targets. We also see no legal reason for such a restrictive use. The dashboard section where the financial market participants must describe either the sustainability characteristics (Article 8) or the sustainable investment objective (Article 9) should therefore contain a **one-sentence description of the sustainable investment approach adopted by the product**, if it uses one of these approaches. Otherwise this could be ignored. The character limit might have to be increased accordingly to accommodate this, say by 100-150 characters.

(6) **Distinguish between sustainable investments with a social and those with an environmental objective for Article 9 products.** In the current version of the disclosure templates, the box right at the beginning asks financial market participants to break the sustainable investments of Article 9 products down by social and environmental objective. This breakdown is not required in the new templates, but it is useful and could be replicated relatively easily for Article 9 products in the dashboard section that asks for the minimum sustainable investment content by adding the sentence *‘Of these sustainable investments X% are investments with a social objective, and X% with an environmental objective*’.

(7) **Clear visual separation of dashboard from the rest of the templates.** The purpose of the dashboard is to give retail investors the minimum information that they absolutely need to know. Therefore, it relates to the rest of the template like a summary relates to the summarised text. However, this intention is not obvious to the retail investor who will see the dashboard as merely the first section of a much longer document. Layout and other visual markers should be used to make it clear to retail investors that the dashboard summarises the content of the remainder of the document, at least its most important parts, and can therefore, if necessary, be read in isolation to get the bare-bones information, which is what retail investors are very likely to do anyway.

<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>

(1) The **language in the templates is often needlessly complicated and hard to understand for people outside a small bubble of financial professionals and policy makers.** One reason is that many sentences are written in a rather round-about and indirect way, often using the passive voice where that is neither necessary nor helpful. They could easily be rewritten in a clearer and more direct way without loss of content. For example, the sentence 'How is it assessed whether the companies which are invested in, follow good governance practices, such as tax compliance or employee matters?' could be rewritten as follows: 'How do we verify/check whether companies that we invest in are well-governed, for example with regard to tax compliance and workers' issues?'. Using 'we' + active voice instead of the passive voice makes this sentence easier to read and makes it more obvious to readers that there are people who make these decisions.

Another reason why the text boxes in the templates are difficult to understand for readers, especially retail investors, is that they often use financial jargon (e.g. ‘investments *underlying* a product’) and what could be called ‘Brussels Bubble English’, a sociolect of the English language that is used in the EU institutions and surrounding organisations, but diverges significantly from standard British/American English, usually not in a way that makes things easier to understand. An example is the excessive use of the present participle – verb + suffix ‘-ing’ – as in ‘products *having* a sustainable investment objective’ instead of ‘products *that have* a sustainable investment objective’, or saying ‘*where*’ where *‘if*’ would be better. Excessive use of the passive voice (see above) is also a hallmark of Brussels Bubble English.

**We urgently recommend using the services of an external linguistic consultant – not a lawyer-linguist! – to conduct a ‘plain English check’** and suggests changes to the text boxes in the templates. We know that these will ultimately be translated into all EU languages and that our comments may not apply to all versions equally. However, the English version will be the model for the others, so it is useful to identify linguistic shortcomings in it.

(2) **Use typology of sustainable investment approaches more systematically in templates.** As we have argued in point (5) of our response to question 30, the threefold typology of sustainable investment approaches – exclusion, positive screening, pushing for transition through stewardship – should be used more systematically, and not just in the context of GHG emissions reduction targets. There are three locations in the templates where it should be used:

* As a one-sentence description of the sustainable investment approach adopted by the product **in the dashboard** section where the financial market participants must describe either the sustainability characteristics (Article 8) or the sustainable investment objective (Article 9) (see point (5) of our response to question 30).
* **In the GHG emissions reduction target section**, as already foreseen by the ESAs’ proposal. However, we suggest that, instead of requiring a narrative description by the financial market participants, there should be a **field with three tick-boxes that list the three investment approaches** and out of which the FMP must choose the one, or the ones, that apply. This can be complemented optionally by a narrative explainer at the discretion of the FMP. Including the tickboxes, rather than only an explanation, immediately makes it obvious to the reader that there are alternatives and therefore makes it easier to compare products. (It would thus even be a small contribution to financial education about sustainable investing.)
* **In the investment strategy section**. Apart from narrative explanations, this section should include a **field with four tickboxes that list the three investment approaches plus a ‘none of the above’ option** in case a product does not use any of these approaches.

<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>

See our responses to questions 30 and 31.

<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 asset allocation tree may not be necessary, but it is still useful to have in the asset allocation section because it visualises the decisions made by the investment fund in an intuitive way.

<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>

Yes, we agree.

<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>

We have no objections to this proposal, as long as displaying the information in extendable fashion does not violate the general principles concerning the presentation of information in Article 2(1) of the SFDR delegated act.

<ESMA\_QUESTION\_SFDR\_35>

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

<ESMA\_QUESTION\_SFDR\_36>

TYPE YOUR TEXT HERE

<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>

We also see the risk of greenwashing, but at the moment we have no suggestions for improving the definition of ‘key environmental metrics’.

<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>

Yes, the vagueness of the term 'sustainable investment' in the SFDR makes it prone to being understood and applied in very disparate ways by financial market participants, which makes comparisons of the resulting disclosures somewhat meaningless. At the very least the ESAs should require that only the sustainable activities of a company are counted, not the whole company.

<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>

No, this puts more burden on consumers who will have to seek information in various documents. Financial market participants should be responsible for aggregating and presenting the requisite information in a well-organised and understandable manner when offering such products.

<ESMA\_QUESTION\_SFDR\_39>

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

<ESMA\_QUESTION\_SFDR\_40>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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-1)