

Response form for the Joint Consultation Paper concerning ESG disclosures





Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter “SFDR”) and in particular on the specific questions summarised in Section 3 of the consultation paper under “Questions to stakeholders”.

Comments are most helpful if they:

1. contain a clear rationale; and
2. describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

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

- Q1** Insert your responses to the questions in the Consultation Paper in the present response form.
- Q2** Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- Q3** 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.
- Q4** When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.
- Q5** The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](#) under the heading ‘Your input - Consultations’ by **1 September 2020**.
- Q6** Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. 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 public 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 ESAs 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) 2018/1725¹. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

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.

General information about respondent

Name of the company / organisation	Eurosif
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

Eurosif is the leading pan European Sustainable and Responsible Investment membership association advocating for a more sustainable financial system and with membership drawn from over 500 organisations across Europe

Eurosif works as a partnership of Europe-based national Sustainable Investment Forums (SIFs) SIF members include institutional investors, asset managers, financial services, index providers and ESG research and analysis firms totalling over €8 trillion of assets under management. Eurosif is also a founding member of the Global Sustainable Investment Alliance, the alliance of the largest SIFs around the world. The main activities of Eurosif are public policy, research and creating platforms for nurturing sustainable investing best practices.

Eurosif and its members are committed to the growth and development of sustainable finance and support European policymakers' demonstration of global leadership. Eurosif welcome the Sustainable Finance Action Plan, the various legislative frameworks that the EU has adopted such as the Sustainable Finance Disclosure Regulation (SFDR), the EU Taxonomy and the Paris-Aligned and Climate Transition benchmarks and supports fully their objectives to a) reorient capital flows towards sustainable investments, b) manage financial risks stemming from ESG issues; and c) foster transparency and long-termism in the financial system and the overall economy.

General comments

Eurosif fully supports the aim of the SFDR to bring more transparency and comparability to the market for ESG/SRI financial products. Transparency around principal adverse impacts is required if the EU is to meet the ambition of the Paris Agreement, the EU Climate law and Green deal and the UN Sustainable Development Goals. We have however some comments and suggestions around the approach proposed by the European Supervisory Authorities (ESAs).

Indicators, availability of data and sequencing in entity and product level disclosure – While we agree with the overall direction, we believe that the proposal by the ESAs regarding the mandatory 32 indicators to measure principle adverse impacts of the investments on sustainability factors, and particularly quantitative indicators, is too ambitious in terms of timeline. For many indicators, data is currently either not available or not reliable enough to come with quantitative metrics. Furthermore, we believe that this data provides little context and too much information to investors which makes the analysis of which impacts to prioritise and focus on more difficult. Finally, we have doubts as to the usefulness of the indicators across all the portfolios of a financial market participant. Therefore, we propose a reduced set of mandatory indicators, with the other indicators either being voluntary or becoming mandatory at a later stage when data is reliable. Moreover, we would suggest that the entity level disclosure focusses on the policies, approach, investment strategies and philosophy of the financial market participant and that the quantitative indicators are kept for the product level principal impact disclosure that will become applicable as of the 30 December 2022. Keeping the quantitative indicators at product level would allow a better comparability between financial products.

Align ‘Do no significant harm’ (DNSH), sustainable investment (Article 2(17)) and the EU Taxonomy

– We have noted the conclusion of the ESAs that while the DNSH approach embedded in the definition of sustainable investment (Article 2(17) SFDR) and the definition of sustainable economic activity under the EU Taxonomy (Article 3) are close in substance, they are not identical. While we understand the ESAs conclusion, we are concerned that this creates significant uncertainty around the scope of the definition of sustainable investment. Many of the proposed pre-contractual, website and periodic disclosure requirements rely heavily on this definition, creating uncertainty for many financial market participants on the compliance with the proposed rules. While appreciating it is not in the remit of the ESAs, to solve this uncertainty we would strongly encourage an interpretation whereby a sustainable investment is deemed as an investment complying with the DNSH principle by virtue of being deemed an economically sustainable activity under the EU Taxonomy. That could be achieved by better aligning the reference and definitions between the SFDR and the EU Taxonomy in the future.

Remove reference to sustainable investment as defined in Article 2(17) from Article 8 products

– We do not understand the rationale for the ESAs in using the definition of sustainable investment (Article 2(17)SFDR) in the context of Article 8 products. The SFDR text makes clear this is a definition only used in the context of Article 9 for products which have as stated investment objective to pursue sustainable investments. Moreover, the modifications to the SFDR in the EU Taxonomy regulation makes clear that an Article 8 will apply the EU Taxonomy to identify the share of investments deemed a sustainable economic activity. No mention is made of sustainable investment. Therefore we urge the ESAs to remove in the RTS on Article 8 products all the references to sustainable investments. Instead, once the product disclosures under Article 7 SFDR are elaborated we would urge the ESAs to make use of the definition of environmentally sustainable economic activities (Article 3 EU Taxonomy). As a result, this will preserve also the distinction between Article 8 and Article 9 products as foreseen by the co-legislators. If the change is not made, this would have the unintended consequence that a financial market participant may incur additional regulatory obligations by inadvertently making an investment that may qualify as sustainable investments. This would imply that a financial market participant can, through no conscious decision of its own, incur additional regulatory obligations without being aware of these.

Investment that significantly harm the sustainable investment objective

– The ESAs have proposed in several RTS the notion of investment that significantly harms the sustainable investment objective. This concept does not appear in the Level 1 text and it is unclear how it relates to the definition of sustainable investment (Article 2(17) SFDR) that do no significant harm. This category of investments would be easier to define if a Taxonomy for economic activities doing significant harm had been agreed on by the co-legislators, something Eurosif supports. However, as long as this is not the case, we would suggest not using this concept as it will add complexity and confusion to financial market participants seeking to comply with the rules.

Interaction between Principle Adverse Impact indicators and Do No Significant Harm principle

– While we appreciate this may go beyond the scope of the current consultation, we would welcome some clarification on the interaction between the Principal Adverse Impact indicators, the principle of Do No Significant Harm and the process for identifying environmentally sustainable economic activities.

<ESA_COMMENT_ESG_1>

- **: Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an “opt-in” regime for disclosure??**

<ESA_QUESTION_ESG_1>

As mentioned in our general comment section, Eurosif fully supports the aim of the SFDR to bring more transparency and comparability to the market for ESG/SRI financial products. In general we also welcome a focus on sustainability impacts rather than mere financial impact, in line with the double materiality principle as reflected in the EU Non-Financial Reporting Directive.

However, we have strong reservations concerning the approach proposed. First, we believe this standardised and quantitative driven exercise will end providing a number of indicators without much context. It may actually make it harder for financial market participants and their clients to identify and prioritise principal adverse sustainability impacts as required under Article 4(2)(a) SFDR.

Second, and as we explain in more details in Q3 and Q5 below, there is a real challenge to identify, collect and report the data on the 32 indicators as proposed. For some indicators, the data is not available at all. For other indicators, the data is available only in a limited way and is not sufficiently reliable to be able to report in a mandatory and quantifiable way. Only for few indicators is there sufficiently reliable data available to be able to report.

Third, we support the identification of adverse impacts and requiring a narrative disclosure as to how firms address them. We do believe that aggregating data and numbers across all portfolios managed by a financial market participant may make little sense and be of limited value to investors who tends to invest in specific financial products.

We appreciate that Article 4 SFDR requires the ESAs to look at disclosure at entity level, as well as at product level (Article 7 SFDR) as of 30 December 2022.

Our suggestion would be to ensure that a robust qualitative disclosure is made at entity level, with a focus on the narrative and methodology a particular financial market participant is using as part of its investment approach and philosophy. The quantitative indicators would be used for the product level disclosure under Article 7 SFDR, which would allow investors to come financial products on their impact in a much more meaningful way than if done at entity level. The indicators would therefore be move to the Annex II, III, IV and V containing the future templates for pre-contractual and periodic disclosures for Article 8 and Article 9 products.

<ESA_QUESTION_ESG_1>

- **: Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?**

<ESA_QUESTION_ESG_2>

As pointed in Q1 and Q3, financial market participants are facing a significant challenge when it comes to accessing the necessary data to be able to report on the 32 mandatory indicators as proposed in the draft rules. The efforts required to comply imply significant costs which will inevitably be more challenging for smaller financial market participants to absorb. Therefore we do not believe this may be fully reflecting the proportionality principle as reflected in Article 4(1)(a) SFDR.

<ESA_QUESTION_ESG_2>

- **: If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?**

<ESA_QUESTION_ESG_3>

As mentioned above, our suggestion would be to ensure that a robust qualitative disclosure is made at entity level, with a focus on the narrative and methodology a particular financial market participant is using as part of its investment approach and philosophy. The quantitative indicators would be used for the product level disclosure under Article 7 SFDR, which would allow investors to come financial products on their impact in a much more meaningful way than if done at entity level. The indicators would therefore be move to the Annex II, III, IV and V containing the future templates for pre-contractual and periodic disclosures for Article 8 and Article 9 products.

<ESA_QUESTION_ESG_3>

- : Do you have any views on the reporting template provided in Table 1 of Annex I?

<ESA_QUESTION_ESG_4>

We have no specific comments, except regarding the choice of indicators as discussed in Q2, Q3 and Q5.

<ESA_QUESTION_ESG_4>

- : Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies' GHG emissions)?

<ESA_QUESTION_ESG_5>

As mentioned in Q1, Q2 and Q3, the availability of data for the proposed mandatory indicators is a major challenge for nearly all financial market participants. We have examined the list of indicators and looked at the availability of data in the table inserted below.

Overview of data availability for indicators proposed in Annex I Table 1

Green = Currently available in ESG data services, Amber = partial data coverage and insufficient for mandatory indicator reporting at this stage, Red = no data currently available in a systematic way

CLIMATE AND OTHER ENVIRONMENT-RELATED INDICATORS		Metric
Greenhouse Gas Emissions	1. Carbon emissions (broken down by scope 1, 2 and 3 carbon emissions - including agriculture, forestry and other land use (AFOLU) emissions - and in total)	
	2. Carbon footprint	
	3. Weighted average carbon intensity	
	4. Solid fossil fuel sector exposure	Share of investments in solid fossil fuel sectors
Energy Performance	5. Total energy consumption from non-renewable sources and share of non-renewable energy consumption	Total energy consumption of investee companies from non-renewable energy sources (in GWh), expressed as a weighted average
		Share of non-renewable energy consumption of investee companies from non-renewable energy sources compared to renewable energy sources, expressed as a percentage
	6. Breakdown of energy consumption by type of non-renewable sources of energy	Share of energy from non-renewable sources used by investee companies broken down by each non-renewable energy source

	7. Energy consumption intensity	Energy consumption of investee companies per million EUR of revenue of those companies (in GWh), expressed as a weighted average
	8. Energy consumption intensity per sector	Energy consumption intensity per million EUR of revenue of investee companies, per NACE sector (in GWh), expressed as a weighted average
Biodiversity	9. Biodiversity and ecosystem preservation practices	Share of all investments in investee companies that do not assess, monitor or control the pressures corresponding to the indirect and direct drivers of biodiversity and ecosystem change Share of all investee companies that do not assess, monitor or control the pressures corresponding to the indirect and direct drivers of biodiversity and ecosystem change
	10. Natural species and protected areas	Share of investments invested in investee companies whose operations affect IUCN Red List species and/or national conservation list species Share of investments in investee companies with operational sites owned, leased, managed in, or adjacent to, protected areas and areas of high biodiversity value outside protected area
	11. Deforestation	Share of investments in entities without a deforestation policy. Share of investee companies without a deforestation policy
Water	12. Water emissions	Weight in tonnes of water emissions generated by investee companies per million EUR invested, expressed as a weighted average
	13. Exposure to areas of high water stress	Share of investments in investee companies with sites located in areas of high water stress Share of investee companies with sites located in areas of high water stress
	14. Untreated discharged waste water	Total amount in cubic meters of untreated waste water discharged by the investee companies expressed as a weighted average
Waste	15. Hazardous waste ratio	Weight in tonnes of hazardous waste generated by investee companies per million EUR invested, expressed as a weighted average
	16. Non-recycled waste ratio	Weight in tonnes of non-recycled waste generated by investee companies per million EUR invested, expressed as a weighted average
SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS		
Social and	17. Implementation of fundamental ILO Conventions	Share of investments in entities without due diligence policies on issues addressed by the fundamental ILO Conventions 1 to 8 Share of investee companies without due diligence policies on issues addressed by the fundamental ILO Conventions 1 to 8

employee	18. Gender pay gap	Average gender pay gap of investee companies
	19. Excessive CEO pay ratio	Average ratio within investee companies of the annual total compensation for the highest compensated individual to the median annual total compensation for all employees (excluding the highest-compensated individual)
	20. Board gender diversity	Average ratio of female to male board members in investee companies
	21. Insufficient whistleblower protection	Share of investments in entities without policies on the protection of whistle-blowers Share of investee companies without policies on the protection of whistle-blowers
	22. Investment in investee companies without workplace accident prevention policies	Share of investments in investee companies without a workplace accident prevention policy Share of investee companies without a workplace accident prevention policy
	Human Rights	23. Human rights policy
24. Due diligence		Share of investments in entities without a due diligence process to identify, prevent, mitigate and address adverse human rights impacts Share of investee companies without a due diligence process to identify, prevent, mitigate and address adverse human rights impacts
25. Processes and measures for preventing trafficking in human beings		Share of investments in investee companies without policies against trafficking in human beings Share of all investments exposed to entities without international framework agreements combating trafficking in human beings
26. Operations and suppliers at significant risk of incidents of child labour		Share of the investments in investee companies exposed to operations and suppliers at significant risk of incidents of child labour exposed to hazardous work in terms of geographic areas or type of operation. Share of investee companies exposed to operations and suppliers at significant risk for incidents of child labour exposed to hazardous work in terms of geographic areas or type of operation

	27. Operations and suppliers at significant risk of incidents of forced or compulsory labour	Share of the investments in investee companies exposed to operations and suppliers at significant risk of incidents of forced or compulsory labour in terms in terms of geographic areas and/or the type of operation Share of investee companies exposed to operations and suppliers at significant risk of incidents of forced or compulsory labour in terms in terms of geographic areas and/or the type of operation
	28. Number and nature of identified cases of severe human rights issues and incidents	Number and nature of cases of severe human rights issues and incidents connected to investee companies
	29. Exposure to controversial weapons (land mines and cluster bombs)	Any investment in entities involved in the manufacture or selling of controversial weapons (land mines and cluster bombs)
Anti- corruption and anti-bribery	30. Anti-corruption and anti-bribery policies	Share of investments in entities without policies on anti-corruption and anti- bribery consistent with the United Nations Convention against Corruption Share of investee companies without policies on anti-corruption and bribery consistent with the United Nations Convention against Corruption
	31. Cases of insufficient action taken to address breaches of standards of anti-corruption and anti- bribery	Share of investments in investee companies with identified insufficiencies in actions taken to address breaches in procedures and standards of anti- corruption and anti- bribery Share of investee companies with insufficiencies in actions taken to address breaches in procedures and standards of anti- corruption and anti-bribery
	32. Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws	Numbers of convictions and amount of fines for violations of anti- corruption and anti-bribery laws by investee companies

We are supportive of the direction of overall direction the proposal is taking. However, to deal practically with the data challenge we would propose starting with a set of mandated criteria with a view to more expanded set at a later stage in the future as more data and higher levels of corporate disclosure emerge after the review of the EU Non-Financial Reporting Directive (NFRD). Therefore we would recommend keeping the following indicators as mandatory indicators at this stage. We would include though an indicator on the share of investments in companies that are doing Climate Scenario Analysis, have set Science Based Targets or have made publicly binding pledges on aligning their businesses with the objectives of the Paris Climate Agreement.

Environmental

Greenhouse Gas Emissions	1. Carbon emissions (broken down by scope 1, and 2 carbon emissions (<i>not scope 3</i>) including agriculture, forestry and other land use (AFOLU) emissions - and in total)
	2. Carbon footprint 3. Weighted average carbon intensity 4. Solid <i>and non solid</i> fossil fuel sector exposure
Propose: share of investments in companies with Climate Scenario Analysis – Paris Agreement alignment – Science Based Targets	

Energy Performance	5. Total energy consumption from non-renewable sources and share of non-renewable energy consumption
Biodiversity	9. Biodiversity and ecosystem preservation practices 11. Deforestation
Water	12. Water Emissions 13. Exposure to areas of high water stress

Social

Social and Employee	17. Implementation of fundamental ILO Conventions 20. Board gender diversity CEO Pay Ratio
Human Rights	23. Human rights policy 26. Operations and suppliers at significant risk of incidents of child labour 27. Operations and suppliers at significant risk of incidents of forced or compulsory labour 28. Exposure to controversial weapons
Bribery & Corruption	30. Anti-corruption and anti-bribery policies 32. Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws

Finally, forward-looking science based indicators, or targets, are emerging as a part of asset managers' views of the long term risks and value at risk of portfolios. We would support the voluntary disclosure of such information along with a caveat statement that the models currently used are imperfect and not ready for standardised mandatory disclosure. However, we are not sure how these indicators would be integrated in the Principle Adverse Impact disclosure as its forward looking information analysis whereas the current disclosure seem to be backward looking.

<ESA_QUESTION_ESG_5>

- **: In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?**

<ESA_QUESTION_ESG_6>

While we believe in the medium- to long-term disclosure of carbon emissions relative to long-term Green House Gases (GHG) in line with the Paris Agreement commitments could be helpful in measuring principle adverse impacts, we believe that current existing calculation methodologies existing are not at a stage of development yet where it would be feasible. Therefore we do not believe that indicators (a) or (b) could be integrated into the list of mandatory indicators of Annex I.

Moreover, for the proposed indicator (a), since carbon emissions would relate to the economic activities performed by investee companies, taking the EU 2030 climate and energy framework target as benchmark would be of limited practical value if the investment portfolio has a significant share of its portfolio in investee companies located outside the EU and hence not taken into account in the setting of the said targets. Many UCITS and AIF funds in the scope of the SFDR will tend to have a significant share of investments outside the EU for risk-diversification purposes. Overtime, reporting by Article 8 and 9 products on how their portfolio aligns with the EU Taxonomy is likely to yield similar and probably more interesting information.

Finally, for the proposed indicator (b), we are not sure whether this would be a useful indicator at entity-wide or portfolio-wide level. The indicator would probably be more valuable to highlight the exposure of a

financial market participant or of a specific financial product to investee companies which are heavily exposed to price fluctuations in the carbon price. Therefore we are not sure why it would be part of the PAI reporting.

<ESA_QUESTION_ESG_6>

- **: The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?**

<ESA_QUESTION_ESG_7>

We understood these indicators in Annex I as (1) being the share of the investment portfolio or invested capital in investee companies and 2) the absolute number of investee companies, not weighted through the capital allocation.

A key objective of the EU Sustainable Finance Strategy and the SFDR is to ensuring that increasingly, capital is allocated to investee companies that are improving the sustainability of their economic activities and gradual aligning them with the Paris Agreement and the 2030 and 2050 EU Climate targets. If that is the case, we believe that indicator (1) would capture that sufficiently and indicator (2) would be of limited or no value.

We would however caution again that indicators (1) and (2), in isolation, give little opportunity for example to reflect whether the capital has been allocated to investee companies which, for example, have committed themselves to binding targets on the Paris Agreement objectives or not. As such, the indicator is of limited value without context. And if financial market participants use the 'Explanation' column of Annex I, there is a risk that this template will become a much too lengthy document.

<ESA_QUESTION_ESG_7>

- **: Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?**

<ESA_QUESTION_ESG_8>

In the future, it would indeed be helpful to have indicators that track in how far a financial market participant or financial product is exposed to investee companies which for example have entered into commitments to align their business model with the Paris Agreement objectives and the IPCC scenarios. However, at this stage it is not entirely clear which indicators would be best or which methodology should be used. However, a possible indicator might be the share of investment in companies that have entered into specific and binding commitments to align with the Paris Agreement objectives.

<ESA_QUESTION_ESG_8>

- **: Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?**

<ESA_QUESTION_ESG_9>

We are overall supportive of the approach. Equally, we believe that the challenge to obtain accurate data for indicators in the PAI report may be the most significant for these indicators. Moreover, the qualitative indicators proposed in this area will probably provide little valuable information to investors. A detailed description of the qualitative approaches used by the financial market participant on these issues would be probably of much greater value to investors. Finally, it will be necessary to closely monitor the development of a social Taxonomy by the European Commission to ensure indicators and metrics align.

<ESA_QUESTION_ESG_9>

- **: Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?**

<ESA_QUESTION_ESG_10>

Assuming our understanding of Article 6(2) of the proposed RTS is that the disclosure would always be the shortest of period since the date of application, the date at which the financial market participant starts monitoring for PAI or 10 years, we would not have strong objections.

However, we would point out that for most investors, research shows that 5 years is already deemed a long-term horizon.

<ESA_QUESTION_ESG_10>

- **: Are there any ways to discourage potential “window dressing” techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?**

<ESA_QUESTION_ESG_11>

We do not believe that ‘window dressing’ would be a serious threat here. A financial market participant seeking to understate his PAI would have to reduce its exposure to investee companies right before the dates at which the composition of investments must be measured. This would pose a significant economic risk for this entity and its clients, from a market movement, liquidity and volatility perspective.

Moreover, a financial market participant engaging in such trading activity would probably be in breach of the investment objectives and limits of its clients. This would be a breach of its fiduciary duty and would be misleading existing and potential investors. This would be a tremendous reputation risk for any asset manager.

However, it would be helpful if timing and calculation methodologies can be provided through Guidelines or Q&As to ensure comparability across products.

<ESA_QUESTION_ESG_11>

- **: Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?**

<ESA_QUESTION_ESG_12>

Eurosif supports the aim of improving the comparability between products promoting environmental and/or social characteristics through more consistent and meaningful disclosures.

However, the universe of products in the scope of the SFDR is very diverse and standardised, rigid templates may enhance comparability on some issues but reduce the ability of distinguish between specific features of different investment strategies.

<ESA_QUESTION_ESG_12>

- **: If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?**

<ESA_QUESTION_ESG_13>

We would encourage the ESAs to ensure that the templates are fitting into the already existing requirements for pre-contractual disclosure, for example for UCITS prospectus and PEPP KID documents. Also,

the framework should be adapted to modern technology to ensure it can also easily be used in a digital environment. Finally, we would need to see the templates before we are able to provide meaningful comments on the design.

<ESA_QUESTION_ESG_13>

- **: If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.**

<ESA_QUESTION_ESG_14>

TYPE YOUR TEXT HERE

<ESA_QUESTION_ESG_14>

- **: Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?**

<ESA_QUESTION_ESG_15>

Overall, we agree with the balance of information between pre-contractual and website information requirements as proposed in the draft RTS.

However, we do not understand why the notion of sustainable investment is introduced in the context of Article 8 products in the RTS on pre-contractual disclosure, website disclosure and periodic reports.

Products having as objective to invest in sustainable investments will automatically be in the scope of Article 9 SFDR and therefore covered by the RTS relevant to these products. Article 8 does not apply to these products.

This is for example particularly problematic In the current drafting of Article 16, it suggests that if an Article 8 product inadvertently makes investment which could qualify as Sustainable Investment, then it would be required to apply the Do No Significant Harm (DNSH) analysis across its entire portfolio. This would have the unintended consequence that a financial market participant may incur additional regulatory obligations by inadvertently making an investment that may qualify as sustainable investments. We believe that the co-legislators, through a distinction between Article 8 and 9 products, made clear that Article 8 products would not have sustainable investments as their objective. Therefore references to the notion of sustainable investment in the context of Article 8 should be removed, and in particular Article 16(2) should be deleted.

Second, we do not understand the notion of ‘investments that significantly harm’ introduced across the RTS. The principle of DNSH laid down in Article 2(17) SFDR is already challenging to apply by itself (see our introductory comments). This concept is entirely new to the SFDR and would add confusion to financial market participant seeking to comply with the rules. If nevertheless the concept is used, it would necessary to clarify that an investment not meeting the threshold of the DNSH principle should not automatically be deemed to be causing ‘significant harm’ per se.

<ESA_QUESTION_ESG_15>

- **: Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.**

<ESA_QUESTION_ESG_16>

As mentioned previously, Article 8 SFDR makes no reference to the definition of sustainable investment (Article 2(17) SFDR). Therefore we would suggest to avoid unnecessary confusion by removing the reference to ‘sustainable investment’ in the draft rules on pre-contractual disclosure, website disclosure and

periodic reports. While it is possible that an Article 8 product might have in its portfolio an investment which does meet the definition of a sustainable investment, this is not the primary objective of the product nor is it advertised as such to customers.

<ESA_QUESTION_ESG_16>

- **: Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?**

<ESA_QUESTION_ESG_17>

While we understand the attractiveness of having graphical representations for the share of sustainable investments for pre-contractual disclosure and periodic reports, we believe that currently the definition of sustainable investment (Article 2(17) SFDR) is not sufficiently clear to be able to precisely determine this for each and every investments. If the definition of sustainable investments were to be interpreted or understood as covering only investments that are aligned with the EU Taxonomy Regulation, that would already enhance the certainty around the scope of investments concerned.

Regarding the notion of indirect investments, we would suggest some form of 'look-through' approach whereby investments are measured as the economic exposure to a particular investee company and its economic activity, whether through direct or indirect holdings or derivative exposures.

<ESA_QUESTION_ESG_17>

- **: The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?**

<ESA_QUESTION_ESG_18>

We believe indeed that for Article 8 products it will be challenging to come up with one graphical representation that is harmonised across the wide range of ESG/SRI products and investment strategies. Furthermore, as highlighted above, as long as the scope of the definition of 'sustainable investment' is not more clearly delineated, it will be difficult to perform the calculations and have comparable graphical representations across products.

We would rather advocate for a flexible approach where a financial market participant can make use of graphical representations if it can guarantee the accuracy of the representation.<ESA_QUESTION_ESG_18>

- **: Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?**

<ESA_QUESTION_ESG_19>

We agree with the requirement to always disclose the exposure to solid fossil-fuel sectors. We understood that indicator (6) of the list of mandatory indicators of Annex I would require a financial market participant to provide of energy consumption by type of non-renewable energy sources. We would assume that this would also provide in practical terms a disclosure to other non-solid fossil fuel sectors.

<ESA_QUESTION_ESG_19>

- **: Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?**

<ESA_QUESTION_ESG_20>

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<ESA_QUESTION_ESG_20>

- **: While Article 8 SFDR suggests investee companies should have “good governance practices”, Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including “sound management structures, employee relations, remuneration of staff and tax compliance”. Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?**

<ESA_QUESTION_ESG_21>

As mentioned earlier, we believe that Article 8 SFDR makes no reference to the notion of sustainable investment and hence no formal link between Article 8 and Article 2(17) SFDR should be made in the draft rules.

However, we do believe that all types of financial products that either promote environmental and/or social characteristics or have a sustainable investment objective should apply the same scrutiny when it comes to screening investee companies on having sound management structures, employee relations, remuneration of staff and tax compliance. Therefore on this point no distinction should be made between Article 8 and Article 9 products.

<ESA_QUESTION_ESG_21>

- **: What are your views on the preliminary proposals on “do not significantly harm” principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?**

<ESA_QUESTION_ESG_22>

While Eurosif is very supportive of the aim of the SFDR to bring more transparency and comparability to the ESG/SRI market and we support the Do No Significant Harm principle and the EU Taxonomy, we have some reservations regarding the proposals on the integration of the DNSH in the RTS.

Article 6 of the EU Taxonomy regulation which deals with the disclosure by Article 8 products on their alignment with the taxonomy clearly states that these products are not expected to apply the DNSH across their entire portfolio. However, if Article 8 products have to identify the share of sustainable investments (Article 2(17) SFDR), it would require applying the DNSH across the entire portfolio. This does not seem to be the intent of the co-legislators. Therefore, we do not believe that recital (33) is accurate. The disclosure expected in the future will be the share of investment in economic activities deemed sustainable under Article 3 of the EU Taxonomy, and not the share of sustainable investments as defined in Article 2(17) SFDR. Therefore, and as mentioned earlier, we believe the reference to sustainable investments for Article 8 products, to be found in Article 16(2), 34(3) and 38 should be removed.

For Article 9 products, as noted in Q15, we do not understand the notion of ‘investments that significantly harms’. While we appreciate that it is difficult to define this category of investments without an EU taxonomy seeking to precisely scope these types of economic activities, we would be grateful for a clarification that an investment not meeting the DNSH principle, does not automatically fall into the category of ‘significantly harm’.

<ESA_QUESTION_ESG_22>

- **: Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?**

<ESA_QUESTION_ESG_23>

We agree that it can be confusing for investors to understand and appreciate the wide range of sustainable and responsible investment approaches that currently exist. However, we believe that instead of seeking to define the different strategies again, the ESAs could make use of acceptable industry standards that have emerged such as in the Eurosif Transparency Code and the classification of Sustainable and Responsible Investment Strategies.

<ESA_QUESTION_ESG_23>

- : **Do you agree with the approach on the disclosure of financial products' top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?**

<ESA_QUESTION_ESG_24>

We understand the rationale for the proposal to disclose the top investments as a way to avoid 'window dressing' risks by financial market participants. However, we are not sure how it would align with the existing rules in UCITS and AIFMD to disclose top investment holdings in periodic disclosures already.

It is also unclear how this would work with financial products with a very diverse set of holdings, where the top 25 securities held may represent less than the greatest proportion (50%+) of the holding. Also, as mentioned above in Q11, we do not think that 'window dressing' is a serious risk when bearing in mind the fiduciary duty owed by asset managers to their clients.

<ESA_QUESTION_ESG_24>

- : **For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.**
1. **an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);**
 2. **a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);**
 3. **a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and**
 4. **a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.**

<ESA_QUESTION_ESG_25>

We agree with proposal (a) as we believe that any applied reduction in the investable universe through screens or other techniques is a material piece of information that investors should have in pre-contractual disclosure. Therefore we agree with the proposed Article 17(b) and 26(b).

We also agree with (b), with the emphasis that it should be a short description around the key principles of the policy. A more detailed description should be available through the website.

We agree with proposal (c) to have descriptions of limitations to methodologies and data sources explained in more details on the website and not in pre-contractual information, bearing in mind that for some products these disclosures are limited in length.

While we understand the suggestion in (d), we believe this is closely linked to (c) and probably is therefore better included on the website, bearing in mind the limited length of some pre-contractual disclosure documents for certain products.

<ESA_QUESTION_ESG_25>

- **: Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?**

<ESA_QUESTION_ESG_26>

We are not sure what the purpose of Article 19 and 28 is regarding the use of derivatives. Financial products such as UCITS and AIF are already subject to clear rules on the use of derivatives.

While ESG/SRI funds are focussing on environmental and social characteristics and goals in their investment process, like any other fund products they need to manage traditional forms of risk such as credit, counterparty, interest rate, FX and liquidity risks. Therefore they need to use derivatives to hedge those risks as part of their fiduciary duty to clients which is entirely legitimate.

We are therefore not sure what additional information might be sought with Article 19 and 28.

As mentioned above, we are cautious about using graphic representations as long as for example the concept of Sustainable Investment is not more precisely determined. Therefore, we would not support a further layer of complexity in the graphic representations.

We would however recommend on including descriptions about how the use of derivatives is used to get exposure to economic activities or investee companies, and how that may be contributing to the attainment of environmental or social characteristics and the sustainable investment objectives of the fund.

<ESA_QUESTION_ESG_26>

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

<ESA_QUESTION_ESG_27>

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