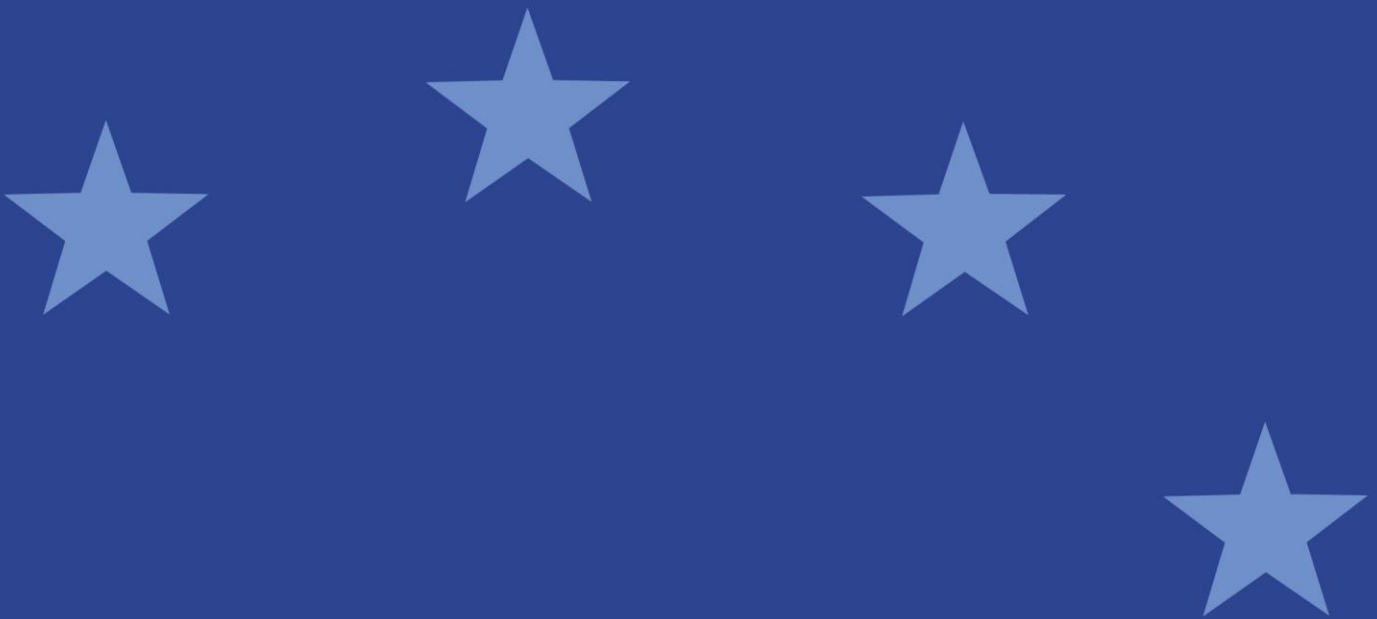




JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclosures





JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (hereinafter “RTS”) on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (hereinafter Sustainable Finance Disclosure Regulation “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:

- contain a clear rationale; and
- 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:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- 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.
- 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 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**.
- 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 12 May 2021.
- 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	
Activity	Insurance and Pension
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Netherlands

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

We welcome the opportunity to comment on these draft measures. We also applaud the effort of the ESAs to clarify the Level 1 provisions of both the SFDR and the Taxonomy Regulation (TR) through the letter of 7 January to the European Commission and the webinar of 29 April. We urge the European Commission to respond to outstanding interpretation questions addressed in the letter. At the moment, the entire framework remains difficult to understand and implement, with unclear definitions and overlap.

Moreover, both the SFDR and the TR apply to a wide range of financial market participants (FMP) and products. As a result, the same information has to be understood by very different types of audiences. While we are a strong supporter of the Taxonomy, we continue to believe that this harmonised approach to pre-contractual information is flawed. We also continue to believe that it is not in line with the mandate for the RTS in Level 1, which requires to “take into account the various types of financial products, their characteristics and the differences between them ...”.

Pension funds are both users and providers of information under the SFDR and Taxonomy Regulation . Dutch pension funds or their investment managers employ dedicated responsible investment teams that will greatly value detailed, comprehensive and comparable information. However, they also automatically enrol 90% of the Dutch employees with a completely different level of financial literacy, time and interest.

We feel that the combined information requirements of the SFDR and TR will lead to an overflow of information for pension funds participants and retail clients. We recommend a balanced approach to information requirements in order to find a compromise between the information needs of different users.

As such we recommend:

- Removing Article 16a (1) a (ii): we would caution against these ‘negative’ explanations, because they require an understanding of the difference between ‘promotion’ and ‘sustainable investments’.
- Removing or reducing (or putting at the bottom) of the entire section on the classification of the financial product as being Article 8/9 SFDR, making sustainable investments according to Art. 2(17) SFDR, and doing so in environmental objectives that may or may not fall within the Taxonomy. This type of information is meaningless for pension fund participants, or retail clients more generally.
- Introducing different templates for different financial products. The templates seem to be intended for financial products such as AIF and UCITS funds. The templates are not comprehensible for pension participants. In addition, for Dutch employees participation in pension schemes is compulsory. They do not have a freedom of choice in respect of which pension fund they want to join. In our view it should be possible to exclude certain questions and information for different types of financial products, based on the information needs of different types of audiences. For example, the information that should be accessible for individually managed portfolios and pension participants should be more succinct than information accessible for investors of collective investment funds. To support our view: article 8 (4), 9 (6) and 11 (5) SFDR require the ESA’s, when developing the templates, to take into account the various types of financial products, their characteristics and objectives and differences between them.

- Introduction of the option to scale down the reporting templates for some financial products. In line with the previous recommendation, for some financial products the template should allow reporting less information. This should depend on the type of public of the disclosures e.g. pension participants, clients for which individual portfolios are managed or professional investors.
- Managing expectations of FMPs in view of approaching deadlines. The expectations of financial market participants in view of disclosure obligations in 2022 are unclear (art. 8,9 and 11). Also up until this day, the questions of the ESAs in this regard have not been answered. To provide an example of the consequences: the periodical disclosure templates seem to allow the inclusion of the PAI indicators to reflect the sustainability indicators. However, disclosure of the PAI indicators is only required as of 2023 (art. 4 SFDR). Therefore it is now already clear that the data needed to comply with these disclosures will not be available in time.

Although we are aware that the present consultation focuses on the TR RTS, we would like to make the following remarks about the original SFDR RTS.

- In respect of article 6 of the SFDR RTS (Description of principal adverse sustainability impacts section) we are not in favour of the obligation as laid down in par. 2 for a FMP to provide for a description of his “actions planned”, as this could lead to a disclosure of confidential business information. In addition, it should be clarified that the “at least five previous reference periods” as mentioned in par. 4 in respect of a historical comparison of adverse impacts will not consist of reference periods before January 1st 2022 as this would mean retroaction of obligation.
- In respect article 36 (a description of the policy to assess good governance practices of the investee companies referred to in Article 15c), although we have certain sympathy for the concept of decent tax compliance by companies, we have serious doubts about the obligation to describe the tax compliance. It is not at all clear for us how a FMP should do this (e.g. will he get access to all the information needed from the investee company, e.g. taking into consideration the confidential character of tax matters of a company?). And from a principal point of view we doubt whether the Level 1 text of the SFDR provides for a proper legal basis for such obligation, as art. 10 (1) SFDR only prescribes a description of the environmental and social characteristics. This could only be considered if and when in the CSDR would oblige investee companies to provide relevant data to enable this.

Furthermore, following the webinar on 29 April, we believe that for pension funds it will be unclear how to exactly comply with the requirement to report the ‘minimum taxonomy alignment’. This minimum alignment was presented in the webinar as a target. Even pension funds that are in scope of Article 6 as they make environmental sustainable investments, currently (and potentially going forward) do not set explicit targets for Taxonomy-alignment. The percentage of taxonomy alignment of the whole portfolio can vary significantly due to factors unrelated to the policy regarding investments in these assets. For example, a drop of the interest rate can increase the value of bonds and thereby decrease the relative share of equity investment and therefore also automatically the value of taxonomy-aligned equity investments. Should a pension fund face a supervisory inquiry or penalties as it ‘misinformed’ its automatically enrolled participants due to unexpected movements of the interest rate?

<ESA_COMMENT_ESG_1>

Q1 : Do you have any views regarding the ESAs' proposed approach to amend the existing SFDR RTS instead of drafting a new set of draft RTS?

<ESA_QUESTION_ESG_1>

We believe that it makes sense to have one Level 2 measure that covers both SFDR and Taxonomy disclosure requirements for financial market participants offering Article 8 or 9 products. We therefore support the approach chosen.

At the same time, the entire SFDR and Taxonomy implementation process has been marred by inadequate implementation timelines, as well as lack of clarity about definitions and rules. Amending the SFDR RTS during the implementation process is creating a moving target for the combined set of disclosure rules. Therefore both European and national supervisors should take into account these implementation challenges, particularly in the immediate post-implementation phase in 2022. The publication of the non-binding consolidated version does help, if only a little bit.

Moreover, we believe that more clarity is required on the terminology of 'sustainable investments'. Recital 19 of the Taxonomy Regulation suggests that sustainable investments include taxonomy-aligned investments. However, the difference between 'sustainable investments' and 'investments with other E/S characteristics' as in the templates is not clear. <ESA_QUESTION_ESG_1>

Q2 : Do you have any views on the KPI for the disclosure of the extent to which investments are aligned with the taxonomy, which is based on the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies? Do you agree with that the same approach should apply to all investments made by a given financial product?

<ESA_QUESTION_ESG_2>

We see revenue and capital expenditures (CAPEX) alignment as the most important metrics. We understand that most data providers will start with revenue as the main KPI. Some Dutch funds currently map their investments against the SDGs and use revenue to do so.

We agree that a same approach should be taken for all investments in the product as the taxonomy-alignment figure would be meaningless if revenue, CAPEX and OPEX metrics would be combined into one calculation. Having FMPs report different metrics can be a challenge for pension funds as end-users. Ideally, pension funds would combine the reported KPIs of the financial products they invest in, which are typically multiple investment mandates or investment funds. If asset managers choose different metrics, it will become impossible to combine these disclosures.

As explained in question 3, the clear IFRS definitions of revenue and CAPEX support the comparability of these KPIs.

EBA has suggested that banks publish their green asset ratio (GAR) as the main taxonomy KPI. However, including GAR into the KPI-calculation of an investment fund is questionable as this would create a mixture of revenue-aligned figures for non-financials and asset-aligned figures for financials.

<ESA_QUESTION_ESG_2>

Q3 : Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?

<ESA_QUESTION_ESG_3>

We see limited value in operational expenses (OPEX) alignment disclosures and regard revenue and CAPEX disclosures as sufficient (we assume that in this consultation 'operational expenditures' refers to 'operating expenses' as described in the Technical Report of the Technical Expert Group from March 2020). A drawback of OPEX is that there is no definition of OPEX in IFRS and US GAAP. This means that there may be differences between investee companies with respect to the cost categories that are included in their reported OPEX figure. In addition, different depreciation and amortization policies between investee companies could make OPEX figures less comparable.

An advantage of reporting OPEX would be that investors get a clearer picture of the future taxonomy alignment of a company as it may be incurring costs that do not yet show up in revenue figures. However, we believe that CAPEX sufficiently reflects the plans of companies in this respect.

<ESA_QUESTION_ESG_3>

Q4: The proposed KPI includes equity and debt instruments issued by financial and non-financial undertakings and real estate assets, do you agree that this could also be extended to derivatives such as contracts for differences?

<ESA_QUESTION_ESG_4>

Derivatives should generally be excluded from the KPI calculation as it increases complexity of calculation and could therefore be difficult to interpret. We have no strong opinion on contract for differences (CFDs), but generally see no reason to treat them differently from other types of derivatives.

Financial market participants (FMPs) could be offered the option to provide comments on the use of derivatives in the template. For example, FMPs could explain how the use of derivatives could alter the Taxonomy alignment of the product if the impact of derivatives were taken into account into the KPI calculation.

Pension funds only use derivatives for hedging purposes, mainly interest rate risk and to a lesser degree currency risk.

<ESA_QUESTION_ESG_4>

Q5: Is the use of "equities" and "debt instruments" sufficiently clear to capture relevant instruments issued by investee companies? If not, how could that be clarified? Are any specific valuation criteria necessary to ensure that the disclosures are comparable?

<ESA_QUESTION_ESG_5>

No. We suggest using the ESMA terminology in its Article 8 TR draft advice for equity investments (ESMA30-379-325). ESMA uses the term 'public and private equity', which is a clearer term than 'equities' as the latter may suggest that only listed equities are in scope of the KPI calculation, which is not the case. The terminology 'debt instruments' is sufficiently clear, in our view.

<ESA_QUESTION_ESG_5>

Q6: Do you have any views about including all investments, including sovereign bonds and other assets that cannot be assessed for taxonomy-alignment, of the financial product in the denominator for the KPI?

<ESA_QUESTION_ESG_6>

There are advantages and disadvantages to including all assets in the denominator.

Allowing the exclusion of non-eligible assets could make financial products less comparable for end-investors if it is not crystal clear what qualifies as 'assets that cannot be assessed for taxonomy-

compliance'. It is clear that some types of assets cannot be assessed at all, but for some other this may depend on whether data is available or not. If FMPs are allowed to make judgement calls on what to include in the denominator, this will reduce the comparability of the Taxonomy disclosure.

On the other hand, inclusion of all assets can send the wrong message for investors, as for example, green financial products with investments in one of the four environmental objectives for which no methodologies exist yet, are not visible for investors. This also applies for green investments for which no data is available yet.. In addition, a 'grey' pension fund with an older population of participants will have a much higher allocation towards government bonds than a 'green' fund with a young population. If the funds use the same investment strategy for investment in companies, the green fund will still have a higher Taxonomy-alignment and therefore may seem more ambitious. Similarly, comparing pension funds with retail investment funds that only invest in equity could lead to the misleading notion that the equity fund is more ambitious in terms of its responsible investment policy. Moreover, events unrelated to the responsible investment policy (e.g. strong moves in the interest rate) can have an impact on the percentage of taxonomy alignment. For example, a drop of the interest rate can increase the value of government bonds and thereby decrease the relative share of equity investment and therefore also automatically the value of taxonomy-aligned equity investments.

We would therefore highly recommend the option to include all assets in the denominator, but allow FMPs to report an additional metric showing only the assets in the denominator that can be assessed.

<ESA_QUESTION_ESG_6>

Q7 : Do you have any views on the statement of taxonomy compliance of the activities the financial product invests in and whether those statements should be subject to assessment by external or third parties?

<ESA_QUESTION_ESG_7>

We are strong advocates of ensuring that companies report reliable data on non-financial issues. It should be assured that the data reported by companies is correct, as is the intention with the proposed Corporate Sustainability Reporting Directive. This is more efficient than assuring data during every step of the investment process.

Data that cannot be obtained from companies directly will be provided by data providers. The quality of Taxonomy reporting will rely to a large extent on the quality of data provided by these organisations. A first step towards ensuring data quality here is supervision of these organisations.

National competent authorities should be responsible for supervising compliance of FMPs with the Taxonomy Regulation. We are strongly against requiring external assurance by third parties of the compliance by the FMP, as this would not entail the assurance of the underlying data and would only lead to additional costs for FMP's such as pension funds. Moreover, there is no legal mandate in Level 1 of the TR and it should not be introduced in a Level 2 measure.

<ESA_QUESTION_ESG_7>

Q8 : Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?

<ESA_QUESTION_ESG_8>

We welcome the ‘mirroring’ of the pre-contractual and periodic reporting templates as it enables users/end investors to more easily compare ex-ante and ex-post reporting of a financial product.

However as explained in our introduction and in question 9, we have some recommendations to amend the templates.

<ESA_QUESTION_ESG_8>

Q9 : Do you have any views on the amended pre-contractual and periodic templates?

<ESA_QUESTION_ESG_9>

In general, we strongly doubt whether the entire package of information required by the Level 2 measures will help participants understand the sustainability aspects of their pension savings. The information points that are required are legalistic and very technical.

Both the SFDR and the Taxonomy apply to a wide range of FMPs and products. As a result, the same information has to be understood by very different types of audiences. While we are a strong supporter of the Taxonomy, we continue to believe that this harmonised approach to pre-contractual information is flawed. We also continue to believe that it is not in line with the mandate for the RTS in Level 1, which requires to “take into account the various types of financial products, their characteristics and the differences between them ...”. As such we do recommend (i) introducing different templates for different financial products and (ii) to scale down the reporting templates, as proposed in our recommendations.

Moreover, the difference between Article 8 and 9 products is not clearly defined and currently we are still waiting for more clarity of the European Commission on this matter.

We also believe that more clarity is required on the terminology of ‘sustainable investments’. Recital 19 of the Taxonomy Regulation suggests that sustainable investments include taxonomy-aligned investments. However, the difference between ‘sustainable investments’ and ‘investments with other E/S characteristics’ as in the templates is not clear (see also question 1).

<ESA_QUESTION_ESG_9>

Q10 : The draft RTS propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products (including Article 5 and 6 TR products which are a sub-set of Article 8 and 9 SFDR products). Do you believe it would be preferable to have separate pre-contractual and periodic templates for Article 5-6 TR products, instead of using the same template for all Article 8-9 SFDR products?

<ESA_QUESTION_ESG_10>

No, the SFDR makes a distinction between Article 8, Article 9 products and products that do not consider sustainability risks relevant or do not consider principal adverse impacts. Adding additional product categories and/or more templates would be confusing to pension participants or end investors while not providing additional insights. It would be sufficient to clearly articulate the ESG characteristics that are promoted (Article 8) by the product or the investment objective (Article 9).

Generally, we believe the templates and SFDR product information to be of limited value for automatically enrolled participants, as the information is too technical to understand. Adding more complexity or templates will further exacerbate this problem.

<ESA_QUESTION_ESG_10>

Q11 : The draft RTS propose in the amended templates to identify whether products making sustainable investments do so according to the EU taxonomy. While this is done to clearly indicate whether Article 5 and 6 TR products (that make sustainable investments with environmental objectives) use the taxonomy, arguably this would have the effect of requiring Article 8 and 9 SFDR products making sustainable investments with social objectives to indicate that too. Do you agree with this proposal?

<ESA_QUESTION_ESG_11>

We do note that the proposal conflicts with Article 5 and Article 6 of the Taxonomy Regulation, which only requires Taxonomy disclosures for products that contribute to an environmental objective. It therefore seem to put an additional burden on pension funds that only focus on social issues with their sustainable investments. Given the social partner governance model of Dutch pension funds, there are many pension funds that focus on social issues.

<ESA_QUESTION_ESG_11>

Q12 : 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_12>

TYPE YOUR TEXT HERE

<ESA_QUESTION_ESG_12>