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| 23 April 2020 |

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| Response form for the Joint Consultation Paper concerning ESG disclosures |
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| Date: 23 April 2020  ESMA 34-45-904 |

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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. 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.
3. 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.
4. 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.
5. 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](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 1 September 2020.
6. 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) 2018/1725[[1]](#footnote-2). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | AFG |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

AFG welcomes the opportunity to provide input to the consultation of the ESAs Joint Consultation Paper on ESG disclosures, Draft regulatory technical standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of Regulation (EU) 2019/2088, as published by the ESAs on 23 April 2020. AFG has always been a firm supporter of creating a strong framework for sustainable investing which facilitates the transition to a more sustainable European economy. We are however concerned with the direction this Consultation Paper is taking **:** while we recommend a high level of expectation for SRI in the interest of the end-investors and for the credibility of SRI, we would also recommend to make sure the expectations are consistent with the current trend on sustainable data innovation.

The products and their approaches to ESG vary significantly. Therefore, **a more flexible and principles-based approach is needed, as outlined in the Level 1 text**. Mandating the adverse impact across strategies will inevitably go against what is required at product level.

* AFG would like to raise the attention on the **insufficient availability of relevant data on investee companies**. We hope that changes to NFDR will bring about an improvement in the availability and reliability of ESG data, but until that moment, a qualitative assessment should be allowed.
* While consistency and comparability are helpful, we need to strike balance between **the level of comparability** and **providing meaningful disclosures to end-investors**. The aggregation of principal adverse impact indicators at entity level is not going to be helpful for end-investors and is actually misleading since it does not take into account the variety of impacts that investee companies can create. Aggregating those date would be against providing a clear, exact and not misleading information.
* As consequence of what just outlined, and developed throughout our response, **our suggestion would be to :**
  + **Provide at the entity level a qualitative presentation on how asset managers assess adverse impacts**. Standards such as the TCFD which have been adopted on an international basis allows to present the process among 4 pillars : strategy, governance, risk management and indicators. This framework is for instance consistent with the level 1 requirements on “content, methodologies and presentation of information”.
  + **Then, assess adverse impact only at product level on a qualitative or a quantitative basis, instead of disclosing rigid and granular quantitative indicators at the entity-level**. We suggest to establish an **optional** list of indicators, among which asset managers should focus on a **limited number of indicators**, allowing firms to use indicators from outside such list, based on materiality / appropriateness.

Against this background, our number one concern remain the extremely tight deadline to implement those changes. Ideally, **a symmetrical approach** **across the whole framework** should allow coherent timelines for disclosure requirements, including, inter alia, the implementation of the Taxonomy and Non-Financial Reporting rules.

AFG would also like to raise attention on the **sustainability risks:**

AFG acknowledges there is currently no mandate for ESAs to work on the sustainability risks as defined in Art 2 (22) of the SFDR, but only on PAIs. We think however very useful, that, in connexion with the Commission, ESAs acknowledge the current lack of data and the date misalignment between NFRD revision application and SFDR which leads to the reminder that any disclosure of sustainability risks may be done in qualitative or quantitative terms. There is an issue of responsibility to be asked to report on quantitative data, where there is not enough data, standardised or quality data to actually perform the duty.

Indeed, currently, the assessment of the sustainability risk, being defined through SFDR Art. 2 (22) as an actual or a potential material negative impact on the value of the investment, is not possible in practice in quantitative, monetary terms, in particular due to the lack of upfront compulsory standardized, certified, and therefore reliable data from issuers and even from external data providers.

As, according to SFDR Level 1, Recital 15, the disclosure of the extent to which sustainability risk might impact the performance of the financial product might be done also in qualitative terms, It would thus be consistent to consider that the assessment of the impact of sustainability risks itself can be done in qualitative terms too. We believe a hint to the issue in the resulting delegated acts would help the market participants in their compliance with the European set of sustainable regulations. For instance, the following sentence could be added:

*“The assessment of the ‘sustainability risk’ as defined in Art 2 (22) of the SFDR shall be based on reliable and comparable data from issuers, through the relevant standardized and certified sustainable indicators specifically disclosed by the issuers. In any case, by consistency with the SFDR Level 1 Recital 15, those sustainability risks might be assessed by asset managers either in qualitative or quantitative terms”.*

<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>

AFG doesn’t 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. AFG appreciates the hard effort ESAs have put to gather these indicators, however all proposed list of indicators should rather be seen as an **optional toolbox**. A **meaningful disclosure** is the first objective to be sought when materiality is proven; comparability will come in due course.

First of all, level 1 of SFDR doesn’t give any mandate to the ESAs to develop such a detailed and quantitative approach. As stated in Article 4 (6) and (7) of Regulation (EU) 2019/88, the mandate was given on “sustainability indicators”. There is neither a mention of quantitative indicators nor a mention of such a detailed and mandatory list of indicators.

AFG insists on the importance for the lists of PAI to be **optional**. Indeed, SFDR level 1 states that where market participants consider PAI, they :

* “take due account of their size, the nature and scale of their activities and the **types of financial products they make available”**
* consider them when this is **“material” or “likely to be material”**
* give “information about their policies on the **identification and prioritisation** of principal adverse sustainability impacts and indicators”;

The level 1 text does not give any room to consider that some indicators always give rise to PAI.

Furthermore, we find the proposed approach being too prescriptive. Any positive value for any adverse impact indicator will not automatically result in a ‘principal’ adverse impact. Some indicators listed in the different tables are not relevant for all sectors. Some themes may be missing for specific sectors to assess principal adverse impacts. And some indicators suggested by ESAs are not covered at all or not fully covered.

Then, the suggested list’s primary goal is to assess principal adverse impact at the entity level, as stated in Article 4 of Regulation (EU) 2019/88. We would rather suggest to assess them, at the entity level, with a qualitative bias rather than an automatic quantitative one.

Products complying with Article 8 or 9 of Regulation (EU) 2019/88 should also rely on this list. We would suggest to focus on limiting the number of KPIs, on leaving room for innovation (qualitative or quantitative assessment for instance).

Last, extra-financial data is not well covered at the moment, either by data providers, or by issuers themselves.

For all reasons, we would rather suggest a potential qualitative or quantitative assessment and an optional list of indicators (maximum 6) for quantitative assessment: 2 on climate, 1 on environment, 1 social, 1 human rights, 1 governance.

<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>

No, the approach laid out in Chapter II and Annex 1 doesn’t take sufficiently into account the size, nature and scale of financial market participants activities and the type of products they make available.

Not all financial market parties have the capacity and ability to perform a full due diligence on investee companies directly, and may have to rely on third party providers only. The suggested approach seems to favour scale (large asset managers) especially due to the insufficient availability of ESG data (and especially in terms of indicators) due to the cost of acquiring impact financial market participants and due to the costs linked to data crunching.

Some of the proposed indicators in this Consultation, the compulsory and optional ones, could be relevant for companies, ie. Equities and Corporate bonds. They are not relevant at all for other asset classes: Unlisted Real Estate, Govies, Money Market, Real Assets…

Regarding money market instruments, we would like to clarify that they should not be singled out in the disclosure and that “relate to money market instruments “ should be deleted. Indeed, it seems there is a confusion in the text regarding the money market instrument (MMI) itself, as money market instruments do have the capacity to contribute to the specific environmental or social characteristics promoted by the product as any other instrument. The French state SRI label recognises this and numerous money market funds (which invest in MMI in compliance with the European Money Market Fund Regulation) are SRI labelled.

All instruments have the ability to allocate capital to sustainable projects even though all don't have the same type of impact. It would be wrong and inefficient from an economic perspective to leave some of them aside as they all play a key role in financing a more sustainable economy. Diversification of instruments is of utmost importance in order to accompany transition. In the case of money market instruments, it should be reminded that they play a very important part to finance on long term the short end of the curve. It should be recognised that these instruments are held perpetually in the money market funds (through their continuous roll) so that they finance on a continuous basis the economy (corporates and banks for instance).

Finally, level 1 does not give a mandate to define which asset is supposed to be sustainable or not so this reference is not adequate in this text.

We propose to delete the reference to MMI which has been wrongly inserted in the following Articles and to replace it by “or are cash held as ancillary liquidity”:

Article 15

Environmental or social characteristics promoted by the financial product

Article 41

Proportion of sustainability-related investments

Article 49

Proportion of sustainability-related investments

The section referred to in point (f) of Article 43

As follows:

*(ii) a narrative explanation that explains:*

*(i) the proportions in point (a) distinguishing between direct holdings in investee companies and all other types of exposures to those companies; and*

*(ii) the purpose of the remainder of the investments during the reference period, including a description of any minimum environmental or social safeguards and whether those investments are used for hedging, ~~relate to money market instruments~~, or are cash held as ancillary liquidity, or are investments for which there is insufficient data; and*

*(iii) the proportion of investments during the reference period in different sectors and sub-sectors, including the fossil fuel sectors.*

The same deletion should be operated for the Recital 20:

*(20) Financial products with environmental or social characteristics can invest in a wide range of underlying assets, whether such assets qualify as sustainable investments, or contribute to the specific environmental or social characteristics promoted by the product. Underlying investments can also consist of assets that are not relevant to the environmental or social characteristics promoted by the product, such as hedging instruments, unscreened investments for diversification purposes or investments for which data is lacking, or are cash held as ancillary liquidity ~~or money market instruments~~. Financial market participants marketing such products should be fully transparent as regards the allocation of the underlying investments to those categories of investments.*

AFG would like to recall that SFDR level 1 states that where market participants consider PAI, they :

* “take due account of their size, the nature and scale of their activities and the **types of financial products they make available”**
* consider them when this is **“material” or “likely to be material”**
* give “information about their policies on the **identification and prioritisation** of principal adverse sustainability impacts and indicators”;

The level 1 text does not give any room to consider that some indicators always give rise to PAI.

<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>

In order to ensure sufficiently comparable disclosure against key indicators, the assessment should:

* Be qualitative or quantitative
* There should be no compulsory indicator but only a list of optional indicators, chosen by each financial market participants, depending on their assessment of principal adverse impacts. Within this list of optional indicators, financial market participants could be invited to choose 6 of them to report on. A small number of indicators would ease the comparability by the end-client.

Furthermore, as long as NFRD review is not finalised, it will be very challenging to report on non-normalised, unformatted, non-audited data. It would automatically lead to misleading the end-client.

In addition, SFDR level 1 states that where market participants consider PAI, they :

* “take due account of their size, the nature and scale of their activities and the **types of financial products they make available”**
* consider them when this is **“material” or “likely to be material”**
* give “information about their policies on the **identification and prioritisation** of principal adverse sustainability impacts and indicators”;

The level 1 text does not give any room to consider that some indicators always give rise to PAI.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

As mentioned above, the proposed approach would result in a box-ticking compliance and boilerplate disclosures, not in meaningful information to clients. Reporting is a dialogue with investors, where the ultimate goal should be to help them understand processes, not a standardised list to disclose against.

We also disagree with an obligation to use all of the proposed indicators to every direct and indirect holding and to use it for mandates as well as open-ended funds. In the case of mandates, the Regulation should not be applicable as transparency is between the client and its asset manager. Confidentiality with any other stakeholder is of primary importance.

In our view, entity level disclosure of adverse impact on sustainability factors should focus on the disclosure of FMPs policies and practices in relation to adverse impact, following a more principle-based approach.

<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 already stated, we disagree with the indicators for several reasons:

This list of indicators (compulsory and optional indicators) is not relevant to assess principal adverse impact at the entity level, especially once aggregated. This is particularly the case for indicators that take the form of an average (e.g. average gender pay gap of all investee companies aggregated at the level of a medium/large asset manager is likely to be close to the OECD gender pay gap, without providing any meaningful information to investors). Lots of them have no or few impacts, depending on the sectors or the geography in which the asset manager will invest. Furthermore, some investments in specific sectors may be done because it counterbalances another investments in another sector. Let’s take the renewable energy sector. Solar or wind companies have around the same carbon footprint (scope 1, 2 and 3) as a make-up company but when looking at the avoided emissions, solar or wind companies will have a much better carbon footprint. At the entity level, asset managers will aggregate all results for all their investments, sometimes hundreds and even thousands of lines. What will it mean?

Hence, we would rather suggest a qualitative assessment at the entity level. There should be no mandatory PAI at this stage.

The indicators fail to capture that, on certain issues a limited number of sectors account for the vast majority of adverse impact (e.g. biodiversity, ocean, forest preservation where having a relevant policy in these areas is only critical in certain sectors)

The indicators do not integrate any type of materiality or threshold consideration – therefore lacking the ‘principal’ element of PAI. This comes as a great contrast with the ambition of the EU Taxonomy to provide metrics for DNSH.

‘forward looking indicators’ like emission pathways or scope 4 emission, as suggested in the question, do not fit in the definition of principal adverse impact which, per se, precludes to negative environmental impact only

**We would suggest to provide at the entity level a qualitative presentation on how asset managers assess adverse impacts**. Standards such as the TCFD which has been adopted on an international basis allows to present the process among 4 pillars : strategy, governance, risk management and indicators. This framework is for instance consistent with level 1 requirements on “content, methodologies and presentation of information”.

* **At the product level, the assessment could also be made on a qualitative or quantitative basis**. When being done on a quantitative basis, and the choice should be left to the financial market participant, we suggest to define a list of optional indicators, among which the financial market participant will be able to choose a few of them, depending on its own assessment of principal adverse impact. In case of quantitative assessment, we also suggest to have qualitative comments to avoid the risks mentioned due to aggregations.

You’ll find below some comments on the proposed PAI indicators:

* Compulsory indicators

















* Optional indicators:











AFG insists on the importance for the lists of PAI to be **optional**. Indeed, SFDR level 1 states that where market participants consider PAI, they :

* “take due account of their size, the nature and scale of their activities and the **types of financial products they make available”**
* consider them when this is **“material” or “likely to be material”**
* give “information about their policies on the **identification and prioritisation** of principal adverse sustainability impacts and indicators”;

The level 1 text does not give any room to consider that some indicators always give rise to PAI.

Hence, we would recommend the following indicators to assess principal adverse impact at product level. We issued a [professional guide](https://www.afg.asso.fr/wp-content/uploads/2020/06/guidepro-esgeng-200825web.pdf) several weeks ago on this topic.

AFG’s list of essential extra-financial indicators:



* AFG’s list of transparency extra-financial indicators:



Forward looking indicators could be relevant in principal but not for the purpose of PAI.

<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>

The formula includes scope 3 emissions. Unfortunately, there is not much data reported by companies on scope 3 emissions. And when they do so, they don’t use the same methodology. Including scope 3 emission into the formula would result in flaws in the outcome. Rather than including a too restrictive formula, we strongly suggest to have a formula in place which refers to international market standards on the calculation of carbon footprint, such as TCFD, PCAF, etc., at least at the start of the SFRD. Where markets develops, a more tight formula for calculating carbon footprint may evolve.

<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>

This requirement is duplicating metrics on the same factors and ends up being not only burdensome but also misleading for end-investors.

We believe one measurement is sufficient depending on the indicators. As developed through answers to questions 1 to 6, the calculation for all investee companies or all investments is materially impossible.

We therefore recommend that the general rule to define the scope of analysis for indicators at firm-level is:

* Top investments that represent a significant share of equity investments (e.g. represent 70-80% of accrued total of stock positions) – and gradually increase the % if availability of data and the other hurdles are overcome - ; and,
* for all those investee companies held in a wide proportion e.g. consist in 1% or more of the company market capitalisation.

This will allow investors to concentrate on a smaller number of companies – but that they represent the gross of their portfolios and have a more “hands on” approach to those e.g. engaging with the companies, conducting thorough analysis etc. something unthinkable for an investment universe of more than 12,000 companies for example.

<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>

Given the insufficient availability of ESG data on investee companies which is necessary for disclosures by FMP against the indicators, it appears premature to mandate the use of more advanced indicators or metrics. We suggest to start with a few optional indicators for information that is more widely available (i.e., carbon footprint) and then wait on actual availability of more advanced metrics and innovation that could be made on such themes In the meantime, **qualitative assessment** is of utmost importance. Activities meant to reduce emissions do not fall in the definition of “adverse impact” – such indicators would therefore be irrelevant for the purpose of PAI.

Also, we believe that Article 7.2.b should be deleted : allowing assumptions and estimations made by the asset manager would lead to fairly misleading information, which would be against MIF principles. While we appreciate that this provision recognizes the difficulty of gathering data, we believe our proposition with a principle based approach at the entity level and reporting on some dedicated indicators at the product level would lead to a more accurate picture and be useful for the investor.

<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>

Yes we do agree in principle 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. Indeed social aspect of the transition is as important as the environmental aspect.

But as timeline is extremely short, and as data on issuers is largely unavailable, and as the social themes are not mature yet, such a concomitant push on timing is not realistic.

<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>

We question the timeframe for the historic comparison: every year for last ten years requirement goes far beyond the level 1 text and we challenge its usefulness. We are looking at performance of funds so it should be either 1(aligning with financial statements), and 3 years, except for older active controversies that should remain after 3 years. This would better reflect the ESG profile especially of companies in transition. Furthermore, some principal adverse impacts may not be principal several years later.

<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>

The primarily aim of any ESG investment funds is to generate financial performance, while combining with ESG performance.

Selling assets before the reporting date with the only aim to distort the content of PAI reporting would go against every legal, commercial and ethical principles underpinning our industry. Asset managers have an overarching regulatory and fiduciary obligation to act in the best interest of their clients. We do not believe the idea that asset managers could engage in so-called ‘window dressing’ for the sole purpose of altering their PAI reporting to be plausible. Moreover, doing so would already constitute a reprehensible offence under several existing EU legislative and regulatory requirements.

We would suggest to report on principal adverse impact as of end of fiscal year, as for any other financial indicator, ie. a picture at this date and not an average on a given period (most probably 1Y). This is of utmost importance to ensure that the framework is workable and proportionate for market participants.

<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>

Yes we do agree in principle with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products. But as they have not been developed yet, we cannot really answer. Having standardised templated would help harmonising information, transparency and it would facilitate the exercise and ease the comparability between products.

<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>

As explained in question 12, we would agree on such development, in order to facilitate the reporting. Lots of information could be standardised with the use of examples of pre-determined statements.

Such templates should rely on existing reporting frameworks, such as TCFD or Eurosif transparency codes in order to bring consistency in the documentation provided to the investor.

<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>

We do agree with harmonised reporting templates for financial products, in order to facilitate the reporting and its associated format operational costs.

<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>

The main challenge of asset management companies is to produce the requested information, either on the website or in the prospectus.

The main point of attention would be to get information that will frequently outdate in the website as it would be too long to update them regularly.

<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>

Before answering on whether the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions, we highlight the fact that definitions of Article 8 and 9 are not clear enough. What does ‘where a financial product has sustainable investment as its objective” mean? Is it the whole product, a major part of the product that will have this sustainable investment objective, as defined in Article 2 (17) of Regulation (EU) 2019/2088?

To us, Regulation (EU) 2019/2088 doesn’t give enough details. At the same time, it didn’t give any mandate to ESAs to develop details in Disclosures RTS. ESAs could develop such details in recitals but they haven’t fully taken the chance of it, except in 4 recitals. Recitals 30 to 33 bring confusion because they introduce the “Level Playing Field” concept between Article 8 (ESG characteristics) and Article 9 (sustainable objectives) financial products. However, these products do not correspond to the same legal reality. Each category of product (Articles 8 and 9) is autonomous and each of them matches with clients’ objectives. Hence, we suggest to remove any ‘Level Playing Field’ vocabulary between both articles.

In addition, recital 31 seems to suggest that there are some investments that can be considered as “sustainable investment” *per se*. However, we find that the definition of a sustainable investment revolves around the definition of, and the contribution to, an environmental or social objective. In the absence of a clear definition of what is, in essence and by itself, a sustainable investment, or what “contributing to an objective” means in practice, it is confusing to require article 8 products to assess and disclose (in abstracto, without any link to an pre-definite E or S objective) a share of ‘per se’ sustainable investments.

The concept of intentionality is anchored in Regulation (EU) 2019/2088. And this concept should clearly differentiate both products. Article 8 products have for primary objective to maximise a risk-return profile while promoting ESG characteristics. Article 9 products have for primary objective to create sustainable impact (cf. Article 2(17) of Regulation (EU) 2019/2088). We suggest that ESAs explore in the recitals the notion of objective which is at the heart of the definition of article 2(17) and 9 of Regulation (EU) 2019/2088.

We also suggest that ESAs clearly acknowledge that the Article 8 products’ category is very large and encompasses various different strategies, while Article 9 products are more demanding with stricter rules of disclosures.

We would also like to highlight an issue in Article 38 of the RTS. Article 8’s products don’t have sustainable investment objectives. Article 38 of RTS should transpose the Article 16 of RTS for periodic reports of Article 8 products.

Hence, we suggest the following writing :

“Where a financial product invests in a sustainable investment, the section referred to in point (b) of Article 36 shall contain an explanation of how that sustainable investment does not significantly harm the sustainable investment objectives, including:

1. How the indicators for adverse impacts in Annex I were taken into account, and
2. How investments that significantly harm the sustainable investment objectives were excluded.”

<ESA\_QUESTION\_ESG\_16>

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

<ESA\_QUESTION\_ESG\_17>

TYPE YOUR TEXT HERE

Indirect exposures may cause challenges for graphical investment proportions.

That’s why narrative description is very important.

In case of fund of funds, ESAs may specify the possibility to work by transparency, where possible.

Furthermore, indirect investments – e.g. derivatives, special vehicles – should be exempted from the exercise as their function is to protect end investors from volatility and a series of risks such a currency risk etc. There is little to no work and analysis done on how ESG could, if and when feasible, be properly integrated in derivatives. We believe it is too early stage to include them in the scope of this exercise. There should be left for a second phase once work on ESG and this asset class is more mature.

<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>

It is very challenging to differentiate why an asset manager will invest in an issuer from an Environmental or a Social point of view. It is very often, if not always, a mix of both. For example, the concept of a just transition requires investors to take into account social consequences of the environmental policies adopted by the companies.

Furthermore, comparability between two products will be very difficult to get with graphical representations. The narrative description is essential and will help understanding the graphic of each strategy. If ESAs define a too strict graphical representations with a huge number of categories, innovation will be slowed down because it would mean defining rigid sub-categories.

<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 don’t understand why solid fossil fuel should always be disclosed. As explained in the Renewed Sustainable Finance Strategy we are not in favour of the development of a brown taxonomy. As such, disclosing automatically exposure to solid fossil fuel or any other “brown” sectors doesn’t make sense. These sectors need to finance their transition, they don’t need to be singled out.

<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>

No, the Product disclosure rules should take into account the specificities of separate accounts / portfolio management mandates that are concluded with single client. Such services operate on a bilateral basis (between the provider and its client) and ESG disclosure should not jeopardize the privacy of client personal data. In order to do so, product disclosure could be done for each family of portfolio (model portfolio) – rather than individual contracts.

<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>

The governance pillar is transversal, is at the service of Environmental and Social pillars and is as important as the other pillars. Hence, we fully agree with an harmonisation of good governance practices between Articles 8 and 9.

<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>

We would find it very challenging to get different interpretations of the “Do Not Significantly Harm” principle between Taxonomy and Disclosures. ESAs explained they are trying to bring the two together. However, in Regulation (EU) 2019/2088, there is no selectivity threshold regarding principal adverse impact. If the reconciliation of both DNSH and principal adverse impact is made, then the materiality principle should be at the heart of it, ie. a threshold with a significant impact.

<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 would 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. The work has already been done by many participants. We suggest to rely on producers’ definition, hence use EFAMA’s definition. It would be a positive opportunity to disclose which ESG strategy is used, while not tick-boxing in order not to slow down innovation.

<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 agree in principle 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 regarding the number of lines to be disclosed. However, as other financial ratios, a picture at a D-day is important. An average would be burdensome and with no added-value to the end-investors. We cannot imagine that funds would sell/add issuers just before the D-day, just to get a better disclosures. Transaction costs would be much too high and would weigh on financial performance, and run contrary to our legal obligation to act in the best interest of our 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 the 1st point: “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)”, Main reason is that it is consistent with AMF 2020-03 doctrine.

We disagree with the 2nd point: “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)”.

Main reason is that the methodology can evolve. Updating prospectus would be too long. We would prefer this information to be disclosed in the website.

We agree with the 3rd point: “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)”.

Main reason is that these kind of information may evolve. We would prefer this kind of information to be disclosed in the website.

We disagree with the 4th point: “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”.

Main reason is that these kind of information may frequently evolve. We would prefer this kind of information to be disclosed in the website. On top of that the description of the methodology should be as synthetic as possible in the prospectus as it is subject to frequent evolution.

<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>

Derivatives are part of the instruments used in portfolio management ; they are EPMs (Efficient portfolio management techniques) as the UCITS Directive names them. At the same time, it should be reminded that derivatives also contribute heavily to the liquidity of a security, which in turn favours better market conditions and pricing for the security and its issuer. One way on favouring ESG issuers also amounts in markets offering the best conditions and liquidity to their securities. For all these reasons we do not recommend singling out derivatives instruments, as the message conveyed might sometimes be wrongly understood by the wider public, not familiar with the inner workings of the markets functioning.

An exception should be made: singe name derivatives should be subject to an information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product.

We thus **strongly recommend to integrate this issue in a narrative form within the graphical and narrative explanation** of the investment proportions under Article 15(2) and 24(2) and **do not single out in a separate section.**

We also recommend to amend the Recital 3 as follows:

(3) For the purposes of the assessment of principal adverse impacts by financial market participants, an investment in an investee company or an entity includes direct holdings of capital instruments issued by those entities and, ***where relevant***, any other exposure to those entities through derivatives or otherwise.

Although we totally agree to the objective of transparency, and even o the idea of explaining and educating as much as possible on the use of different types of instruments, we wonder why the explanation regarding the use of derivatives should be singled out as at the end of Recital 30 (for these reasons, we propose to delete the last sentence):

(30) Financial market participants can resort to various investment methods to justify the attainment of the environmental or social characteristics, or the delivery of the sustainable investment objective of the financial product. Financial market participants can directly invest in securities issued by investee companies, or resort to other methods such as investment via funds of funds or exposure via the use of derivatives. Financial market participants should be transparent as to the share of their investments that will be carried out via direct holdings, and that carried out via alternative methods. ~~In particular, financial market participants should explain how the use of derivatives is compatible with the environmental or social characteristics being promoted, or with the sustainable investment objective pursued~~

As **we are not in favour of a separate section**, which is by the way rightly not asked by SFDR level 1, we thus recommend to avoid singling out the section on the use of derivatives and propose to delete the following sections in the following articles:

Article 14

Article 23

~~(e) ‘Use of derivatives’;~~

~~Article 19~~

~~Use of derivatives~~

~~The section referred to in point (e) of Article 14 shall contain information on how the use of derivatives within the meaning of Article 2(1)(29) of Regulation (EU) No 600/2014 of the European Parliament and of the Council12 meets each of the environmental or social characteristics promoted by the financial product.~~

~~Article 28~~

~~Use of derivatives~~

~~The section referred to in point (e) of Article 23 shall contain information on how the use of derivatives within the meaning of Article 2(1)(29) of Regulation (EU) No 600/2014 of the European Parliament and of the Council13 attains the sustainable investment objective.~~.

<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>

Our initial cost assessment is as follows:

* 1. Include the contract costs of data providers if the indicators are mandatory: between € 500,000 and € 1M per year, especially in order to then publicly report on these data
* 2. Hypothesis: Implementation of a mandatory reporting project on 32 indicators for 50 funds:
* - Project framing by a consultant: € 50,000
* - Definition of the methods of calculating all the indicators on the basis of the data provided by the data provider: 4days per indicator, i.e. 128 days of work
* - Definition of the indicator reporting format: 3 days
* - Coding of the calculation of all the indicators in the datacentre-systems: 1 day per indicator or 32 days for all of them.
* => 50k + 163days x 1000 € = 213k €

These implementation costs of this policy options are very high. Smaller asset management companies will meet huge costs challenges to comply with this regulation.

<ESA\_QUESTION\_ESG\_27>

1. Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39. [↑](#footnote-ref-2)