JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

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European Securities and Markets Authority EBA EUROPEAN BANKING AUTHORITY EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

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) 2018/1725[1]. 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	Sustainable Finance Committee to the German government
Activity	
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
The Sustainable Finance Committee (SFB) advises the German government on the development and implementation of its Sustainable Finance Strategy. It was appointed by the Federal Government on 6 June 2019 for the duration of the current legislative period of the German parliament in order to pool existing expertise and promote dialogue between the relevant stakeholders. Its members are practitioners from the financial and the real economy, civil society and academia. The feedback provided here does not reflect the view of the German Government.

The SFB welcomes the opportunity to comment on the ESA consultation paper on ESG disclosures, reflecting the cross-section of perspectives provided by its diverse members.

By specifying the material concepts of SFDR and providing detailed guidance in terms of investor information, the results of the ESAs' work will play an essential role in implementing the EU Commission's action plan on sustainable finance. The SFB acknowledges that the work on developing this guidance is very challenging, not least given the evolutionary nature of sustainable finance and the lack or inconsistency of adequate data needed for comprehensive disclosure requirements. Therefore, the SFB advocates that any guidance by the ESAs:

- Achieve the goal of greater transparency and understanding at the level of the user of disclosures.
- Reflect the different nature and sizes of financial market participants.
- Be practical for financial market participants at reasonable cost.
- Ascertain consistency and avoid duplication with other regulatory requirements.
- Be flexible over time, i.e. adapt to new market developments and research findings.

Against this background, the SFB endorses:

- The approach of having a set of mandatory PAI indicators in Annex I that financial market participants and financial advisers should always consider in their investment decisions and a complementary set of additional indicators that can be helpful to identify, assess and prioritise principal adverse impacts.
- Providing templates for disclosure as they allow for easier comparability.
- The need to clarify the relation between the concept of DNSH and principle adverse impact in SFDR, as it can become confusing for financial market participants and financial advisers as well as users of the disclosure information. Even more so as the DNSH features differently in the Taxonomy Regulation, only focusing on environmental factors.
- The proposal to include the sustainability information on the website where the financial information is provided, not separately. This gives the same level of importance to both financial and sustainability information.

On the other hand, the SFB is concerned that:

- The general **approach to the identification of principal adverse impact** results in a uniform treatment of all investments and does not allow for prioritisation in line with the Level 1 text. Also, while achieving a level playing field across the financial industry is desirable, differentiation between different types of financial market participants needs to be taken into account.
- The **list of mandatory PAI indicators** proposed is rather long and risks overburdening of financial market participants at this stage as not all indicators are relevant to all investments/sectors and covered by comparable and reliable data that can be made publicly available by companies at a reasonable cost and effort. As a result, too much complexity and detail in the requirements at the outset may actually result in less disclosure than intended as more financial market participants could opt for "not relevant" statements. Therefore, the ESAs should for the mandatory PAI indicators:
  - for practicality and ease of use focus on a few decisive indicators of greatest relevance and for which data is available today or could be made available in the future at a reasonable cost and effort;
  - for a central, publicly accessible, free of charge EU data register, where all investee companies that are required to report under the NFRD report the relevant data in a standardised and ready-to-use format;
  - for consistency relate the definition of the indicators as much as possible to the taxonomy regulation and / or international frameworks; particularly for the social dimension, the UN Guiding Principles on Business and Human Rights should be referenced as is the case in the taxonomy regulation;
  - for greater relevance regarding the transition needed in the face of climate change endeavour to make the indicators more forward-looking, particularly related to climate.
  - for greater ambition to foster the carbon transition the disclosure requirement of exposure to only 'solid' fossil-fuels is insufficient and inconsistent with the objectives related to climate change as promoted by the Paris Agreement, the SDGs and the EU climate strategy. Exposure to all fossil-fuels must therefore be included.
- The **definition of and delineation between Article 8 and Article 9 products** risks becoming blurred by the RTS. To avoid confusion for the user of the disclosures and at the point of sale, consistency is needed across all pieces of EU regulation with regard to the understanding of products that are allowed to be marketed as sustainable.
- Assuming the draft RTS are submitted to the Commission by end January 2021, market participants will be left with no more than five weeks for the implementation of the new rules. **Postponement of the application date to 1 January 2022** therefore appears reasonable and would also **align the general SFDR implementation with the application of Taxonomy-related disclosures,** effective as of 1 January 2022, that are likely to lead to further adaptations of the RTS.

<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>
[
The SFB in principle subscribes to the idea of mandatory PAI indicators, supplemented by optional indicators. However, the list of mandatory indicators should only include aspects of general importance for all assets and sectors and with satisfactory data coverage either today or in the foreseeable future. Against this requirement the mandatory list proposed by the ESAs is too long as a starting point for disclosures under the SFDR. A list of a handful of essential indicators should provide valuable insights and be manageable.
On social PAI indicators in particular: They give sustainable investors key information about the social dimension of their investment. We strongly believe that ILO Core labour standards, human rights (especially child and forded labour), gender pay gap, excessive CEO pay, corruption, protection for whistle blowers are essential information for sustainable investors and any financial product claiming to be sustainable should report on these. We also welcome the disclosure on weapons and would like to add nuclear, chemical and biological weapons. We do however believe that the topic of "human trafficking" is not of high importance to financial products as it is closely linked to the transport sector only. Therefore we suggest to drop this issue in the list of disclosure requirements.
We also welcome the "Additional indicators for social and employee, respect for human rights, anti-corruption and anti-bribery matters". With one exception, all of these indicators are easy to provide for companies. The exception is "Number of incidents of discrimination reported in investee companies". In our experience it will be difficult to produce meaningful data on this issue. So this indicator could be dropped. We also would appreciate further information on the indicator: "Share of securities not certified as social". What kind of certification is meant here? Does this mean the share of certified social bonds?]
As the know-how of market participants and availability of data from companies and investment projects improves over time the list of mandatory indicators will lengthen and become more robust. In the interim, risk-based materiality considerations should drive the disclosures on the optional indicators, allowing also for qualitative assessments by the disclosing entity as a function of the investment processes applied.
<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>
Considering the differences between all the entities captured as "financial market participants" under the SFDR, the SFB welcomes the idea to take into account the size, nature, and scale of financial market participants activities and the type of products they make available. Yet, the approach laid out in Chapter II and Annex I does not satisfactorily achieve this objective:

- The indicator of '500 employees' to determine the scope of disclosure is too arbitrary as financial market participants with fewer employees can have a huge impact (both positive and negative) on the environment and society but would not be obliged to disclose .Again, materiality should be the guiding principle here. Assets under management should also be taken into consideration.
- The proposed indicators address issues that are primarily relevant to investments in companies (equity or debt). Most of them are not relevant or even not applicable to investments in other assets such as sovereign papers, real estate or commodities. In case of large asset managers with a wide-ranging product offering, the aggregate disclosure at the entity level will inevitably be distorted and thus, less meaningful. The focus and effort of disclosure should therefore be more on a product than entity level.

<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 outlined in the response to Q1, the SFB agrees with the approach in principle. However the RTS should stipulate for the mandatory list a smaller set of essential indicators that are of general importance for all assets and sectors and with satisfactory data coverage. All remaining indicators should be made optional and a list of indicators or international standard frameworks to choose from should be provided. Market participants could be requested to explain their selection of indicators.

From a practicability perspective further clarity should be provided on the following questions:
- Which indicators apply to which categories of assets?
- How should exposures of portfolios and entities with various asset classes (beyond shares and bonds) be calculated for disclosure purposes?
- How should the (partial) lack of data be dealt with in the calculation of PAI indicators?

<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
The SFB supports the idea of having a mandatory template, thereby ensuring comparability. Besides the concerns around materiality already outlined in the responses to Q1-Q3 the SFB sees the need for the ESAs to address the following aspects:
- Information overload / consistency: The various pieces of sustainable finance regulation entail a proliferation of reporting / disclosure requirements on different levels. Any detailed disclosure requirement, particularly in template form, should not lose sight of the ultimate aim for the finance sector to contribute significantly to the great transformation needed in the (real) economy. Therefore, the interpretation of the PAI indicators is crucial. A certain value of an indicator is per se not easily interpreted adequately if no accompanying information is being given about the sectoral allocation or benchmark developments - for example an investment in the mobility or real estate sector will typically lead to a higher value of GHG emissions indicators than investing in the technology sector even if the former might have a far greater transformational impact as the business strategy adapts to a low-carbon world. Without forward-looking elements the PAI indicators might lead to unintended consequences by discouraging investment where it is most needed to make a real impact, i.e. in the transition of traditionally resource-intensive sectors.
- Efficiency and data consistency across the investment value chain: It should be assured that no duplicate requirements for the same assets are made and that consistent data is used along the investment chain if more than one financial market participant according to SFDR is involved. This may regularly be the case if institutional investors like pension funds invest via asset management mandates implemented in regulated investment funds (in Germany for example most often through “Special Funds”, i.e. single-investor AIFs managed by asset management companies as fiduciaries). The RTS should take account of customer-service provider relationships among financial market participants and ensure that unnecessary duplication is avoided.

<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>

[The list of indicators is extremely comprehensive and in some parts even goes further than current indicator sets of established ESG rating agencies. Moreover, there are significant data gaps in company reporting regarding these indicators which means that it will be very difficult to get the required information.

Regarding specific indicators the SFB highlights the requirement in Article 4(2)(d) where financial market participants shall include in their disclosure 'where relevant, the degree of their alignment with the objectives of the Paris Agreement', also mentioned in ESAs recital 14.

In detail:
First of all, we would like to note that the wording should be "degree of non-alignment", given that the focus is on adverse impact. In addition to that, we understand the alignment with the objectives of the Paris Agreement to be relevant for all products. Since measurement methods for Paris-alignment of investment portfolios are relatively new and only emerging now, an intermediate step for disclosing forward-looking adverse impact could be a focus on environmental targets:

Proposed KPI:
- "Exposure to companies without any active, medium-term (e.g. 2025-2035) emissions reduction target covering relevant value chain emissions". (please see NFRD non-binding guidelines for reporting climate-related information for further details around targets disclosure)."
  The concept of targets could also be applied to other ESG indicators. Furthermore, a historical pathway related climate metric could be introduced as a proxy KPI:
- "Exposure to companies without Scope 1 & 2 emissions reductions over the last 3 years".
  This metric could also be further specified by relating it to annual reduction requirements as laid out in the PAB/CTB Benchmark proposals (i.e. 7% annual reduction).

The first three indicators in the core set (Carbon emissions, Carbon footprint and Weighted average carbon intensity) are very similar. It might be sufficient to only ask two out of these three. As for scope 4 emissions, the term "scope 4 emissions" is counter to the concept of greenhouse gas accounting that only looks at gross emissions. Instead of "scope 4", we suggest the established term "potentially avoided emissions" (PAE).

Regarding the metrics relating to energy performance, it is unclear why there is only a focus on energy consumption. Indicators on energy production are missing to capture portfolio's exposure to the energy mix of power producing companies. Therefore, the SFB suggest to add
- KPI: Total energy production from non-renewable sources and share of non-renewable production owned by the fund/portfolio

The ownership principle should be applied the same way as proposed for the carbon emissions indicator and the calculation formula prosped in point f. Current proposed energy metrics 6, 7 and 8 seem to provide the least value-added and could in our opinion be omitted in an attempt to shorten the list of KPIs.

As for the indicator on solid fossil fuel exposure, while aligned with the taxonomy, it is not the only sector with strong adverse impacts. Many products have an adverse impact on society and/or the environment. This should also be reflected here. Not only further fossil fuels (e.g. oil and gas) would be relevant, but also further controversial sectors such as weapons (not just controversial weapons) and tobacco.

As regards labour rights, due diligence on ILO conventions is mentioned separately to human rights due diligence, which is justifiable. However, in terms of cases/incidents identified, there is only an indicator on human rights issues, not on labour rights issues. Would the latter be included here? If yes, it should be clarified.

Moreover, several indicators in the list are rather sector specific, or at least much more relevant for certain producing industries than service industries for example. It might be more feasible to move these from the core set to the additional set. Such indicators include: Natural species and protected areas, Deforestation, Water emissions, Untreated discharged wastewater, and Hazardous waste ratio.

As regards board gender diversity, an alternative would be to ask for executive team gender diversity and/or management level-gender diversity.

As for workplace accident prevention, this again is not as broadly relevant across sectors as a health and safety management system would be, so “Investment in investee companies without workplace accident prevention policies” could be replaced by “Investment in investee companies without a health and safety management system”, possibly even a certified management system (e.g. OHSAS).

The indicator “Processes and measures for preventing trafficking in human beings” overlaps with “Implementation of fundamental ILO Conventions” (forced labour) and thus might not be necessary.

As for “Operations and suppliers at significant risk of incidents of child labour” and “Operations and suppliers at significant risk of incidents of forced or compulsory labour”, these indicators are not as meaningful in terms of impact as they only ask for risk exposure. Instead, supplier standards (or rather the absence thereof) to manage such risks could be the focus here.

Regarding the indicators on anti-corruption, on top of the reference to the United Nations Convention, it would be helpful to clarify what exactly is meant by corruption. Ideally here all types of business ethics issues should be covered, e.g. bribery, anti-trust, money laundering, conflicts of interest, accounting fraud and insider dealing.

Moreover, for some indicators, there are very specific definitions, e.g. “hazardous waste as defined in Article 3(2) of Directive 2008/98/EC…“ which do not correspond to current reporting practices of companies nor evaluation practices of investors. At the same time, other indicators are not sufficiently defined, e.g. inorganic pollutants.

Similarly, it is not clear what is meant by “Share of securities not certified as green/social”.

Moreover, it would be helpful to have some clarification on the differentiation between ‘investee company’ and ‘entity’.
In addition, as for definitions, we would recommend to be cautious about the Enterprise Value (EV) usage in the formula. EV should be adjusted for distortion by adding the cash back in to avoid that companies with large cash reserves (such as Google) come out with a near-zero or even negative EV.

Lastly, there are several important topics that are not included in any way, such as contractors, payment practices, employment security/redundancies/restructuring, non-regular employment, tax payments/policies, political contributions, and lobbying.

Overall the SFB sees merit in structuring the mandatory PAI indicators in the following way:

- For environmental indicators, focused on climate-related risks (incl. water security and deforestation risks) with a particular focus on investee companies’ historical performance and future targets in these areas.
- For social and employee, respect for human rights, anti-corruption and anti-bribery indicators reference should be made to the UN Guiding Principles on Business and Human Rights, which has emerged as the leading international standard, also referenced by the Taxonomy Regulation.

<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 SFB supports the disclosure of metrics about portfolio alignment to science-based international climate objectives. Work in the area is evolving rapidly with around a dozen different methodologies currently in the market for measuring company and/or portfolio temperatures.
The amended non-binding guidelines to the NFRD for reporting climate-related information also recommend corporate disclosures of targets versus EU climate and energy objectives.
Overall, this is a very new, innovative and dynamic area of metric development both for corporates and financial market participants. The requirement to disclose such a metric under the SFRD could support corporate disclosures and standardisation of approaches.
<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>
N/A
<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>
See response to Q5
<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>
See response to Q5
<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>
In order to follow the transition path and see the evolution of investments by financial market participants the demand for a historical comparison seems useful. However, the SFB notes that it is more important for the sustainable finance objectives to be reached that the PAI disclosure includes forward-looking elements. In addition, a solid high quality ten year track record for ESG metrics seems unrealistic, even in the field of carbon emissions where still, corporate disclosures are evolving and a max 3-5 y history would be available.
<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 SFB is convinced that the best way to discourage potential "window dressing" is by avoiding short-termism. The timing of reporting points across the reference period plays an important role in addressing the risk of window dressing. While continuous calculations of the PAIs would be ideal in this context, it appears at this stage, however, unattainable, for reasons of technical practicability and cost.
Window Dressing on social issues can best be avoided by a high transparency of investee companies. For this the mandatory publication of all major Suppliers is crucial. It would also be helpful if all financial products including pension funds, life insurance etc. publish their holdings once a year. This first-hand information is often more reliable than ratings and metrics when it comes to social issues.
<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>
The provision of templates that are manageable for financial market participants and easily understood by users of the disclosed information is a sensible tool to aid the reporting process and foster comparability.
<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>
The SFB encourages the ESAs to take on board the specific input of market practitioners on this question.
<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>
N/A
<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 SFB in principle agrees with the concept of balancing the information disclosed between pre-contractual and website information requirements. It should be noted that pre-contractual information requirements are typically more stringent, less flexible and costlier. For details in defining the balance the SFB therefore encourages the ESAs to take on board the specific input of market practitioners on this question.
<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>
The SFB notes the concern by market participants that the delineation between Article 8 and 9 products could be significantly blurred by both the proposed RTS on product disclosures and the concurrent Level 2 measures under MiFID II and IDD. As a general remark, the SFB urges the ESAs to ensure in their RTS that definitions and requirements around “sustainable investments” are consistent with other pieces of EU-regulation on sustainable finance, particularly with the Taxonomy Regulation and the target market definitions under MIFID II and IDD.

Specifically, the SFB notes the following issues:
- For Article 8 and Article 9 products alike, it is proposed to illustrate the planned proportion of sustainable investments as part of the pre-contractual information. However, “sustainable investments” according to Art. 2 (17) SFDR are defined by Level 1 only in the context of Article 9 products. Article 8 products, meanwhile, are defined as only promoting environmental or social characteristics but not following a certain sustainable investment objective. Since the portfolios of Article 9 products may also include holdings that do not fulfil the criteria of “sustainable investments” of Article 9 there is a high potential for confusion at the point of sale. A clear delineation between the two categories of sustainable products, however, is key for the ultimate understanding of the different product features, especially by retail clients.
- The proposed statement “This product does not have as its objective sustainable investment” for Article 8 products can be understood by distributors and end investors as warning not to buy these products while their environmental or social characteristics may perfectly fit sustainability preferences of clients. Such warning therefore appears misplaced and unnecessary.

<ESA_QUESTION_ESG_16>

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

<ESA_QUESTION_ESG_17>
N/A
<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>
N/A
<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>
The SFB agrees that disclosing the exposure to solid fossil-fuel sectors is key information for the end investor and other stakeholders in order to be aware of unsustainable activities that are part of the financial market participants’ portfolio. It is essentially aligned with the overarching purpose of the EU’s action plan on sustainable finance that targets the shifting of financial resources to a much less carbon intensive

economy. Regarding other sectors that should be captured, at least as a minimum at a disclosure level, the SFB believes that all sectors that pose a high-risk to environmental or social matters should be included.
<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>
While achieving a level playing field across the financial industry is desirable, based on Art. 9 (5) of the EU disclosure regulation differentiation between different types of products and financial market participants needs to be taken into account. The SFB highlights the following deficiencies of the RTS in that regard:

- Lack of differentiation according to the investor type: Many detailed proposals for product disclosures developed by the ESAs are perfectly applicable to products widely distributed in the retail market but are not equally appropriate in relation to professionals. This pertains in particular to the provision of mandatory disclosure templates in terms of pre-contractual and periodic information under Art. 14, 23, 36 and 43 of the draft RTS as well as “summary” website disclosure under Art. 34 (1)(a) and 35 (1)(a) of the draft RTS. By contrast to retail investors, professional investors generally require customised reporting formats in order to be able to use it for their own purposes, e.g. for regulatory reporting in case of insurance companies and pension funds. For products sold exclusively to professional investors and not subject to public distribution, standardised disclosures in accordance with templates that have been developed for the retail audience should therefore be only optional and “summary” website disclosures waived altogether. In addition, website disclosures should be allowed to be provided in a separate password-protected area.
- Insufficient consideration of individual portfolios: Classification of managed portfolios as financial products under Art. 2 (12)(a) SFDR poses huge challenges to financial market participants that offer portfolio management services. The ESAs should use their leeway to improve the feasibility of disclosure standards in relation to managed portfolios at Level 2. Instead of demanding disclosure with reference to each portfolio managed for an individual client in the retail space, for example, standardised portfolio solutions (model portfolios) that fit clusters of clients with the same risk-return profiles (e.g. using the SRRI classification) in the retail market appear suitable for attaining the objective of relevant disclosure without incurring potentially disproportionate cost.

<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 SFB strongly underlines the importance of good governance practices both, as a means of improving the integrity of financial markets and as a key lever of attaining sustainability objectives. As such, the SFB endorses the proposal that the ‘good governance practices’ requirement apply to all Article 8 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>
The SFB endorses the need to clarify the relation between the concept of DNSH and principle adverse impact in SFDR, as it can become confusing for financial market participants and financial advisers as well as users of the disclosure information. Even more so as the DNSH features differently in the Taxonomy Regulation, only focusing on environmental factors. It is not obvious why the social safeguards are not mentioned in these articles as well. Therefore, in order to avoid confusion regarding the DNSH principle under the draft RTS and the Taxonomy Regulation, we urge the ESAs to ensure full consistency with the DNSH test under the Taxonomy Regulation. This could, for example, be facilitated by specifying that for investments in environmentally sustainable economic activities in line with the Taxonomy, consideration of DNSH is already part of the Taxonomy criteria and thus shall be exempted from further testing against the adverse impact indicators.
<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>
The SFB sees no merit in the ESAs defining widely used ESG 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>
N/A
<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.**

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<ESA_QUESTION_ESG_25>
N/A
<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>
N/A
<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>
N/A
<ESA_QUESTION_ESG_27>

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