

# Response form for the Joint Consultation Paper concerning ESG disclosures





## Responding to this paper

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

Comments are most helpful if they:

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

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

## Instructions

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

- Q1** Insert your responses to the questions in the Consultation Paper in the present response form.
- Q2** Please do not remove tags of the type <ESA\_QUESTION\_ESG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- Q3** If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- Q4** When you have drafted your response, name your response form according to the following convention: ESA\_ESG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA\_ESG\_ABCD\_RESPONSEFORM.
- Q5** The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](#) under the heading ‘Your input - Consultations’ by **1 September 2020**.
- Q6** Contributions not provided in the template for comments, or after the deadline will not be processed.

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725<sup>1</sup>. 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.

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<sup>1</sup> 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	Finance Denmark
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

## Introduction

**Please make your introductory comments below, if any:**

<ESA\_COMMENT\_ESG\_1>

Finance Denmark welcomes the opportunity to comment on the draft delegated regulation supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector with regard to the content, methodologies and presentation of information in relation to sustainability indicators and the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, websites and periodic reports (hereinafter “DR”).

Sustainable finance is a key priority for Finance Denmark and its members and we support the development of a strong framework for sustainable investing which facilitates the transition to a more sustainable economy.

The overarching objective of Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector (hereinafter “SFDR”) is to provide end-investors with sufficient and relevant information to help them choose products.

If sustainable investing is to be widely adopted, a key challenge is to keep the information as meaningful, relevant and understandable as possible for the widest range of investors. In our view, the focus on disclosing information should be on high information value and materiality to avoid information overload. In this regard, we would like to stress the importance of that the ESAs test with retail investors what information adds value to them. The ESAs should keep the target audience in mind, when calibrating the final disclosure requirements. It is important to ensure that the accessibility and usefulness of information is not compromised by disclosure requirements that are not aimed at achieving more transparency towards the target audience, i.e. investors.

The DR shall enable financial market participants (hereinafter “FMPs”) and financial advisers (hereinafter “FAs”) to comply with the disclosure requirements in the SFDR from 10 March 2021. In a letter of 28 April 2020 to the European Commission, the ESAs state that they do not expect to deliver a final draft DR before the end of January 2021 and encourage the European Commission to re-visit the application deadline of the SFDR to allow FMPs and FAs sufficient time to properly implement the provisions in the DR. Finance Denmark appreciates the ESAs letter to the European Commission highlighting the timeline challenges. We would encourage the ESAs to engage in a dialogue with the European Commission and discuss how FMPs and FAs should act in this situation, and how they can best prepare for the entry into force of the SFDR and the DR. Clarity on this is urgently needed to ensure correct and timely implementation and adherence to the new requirements. We would also suggest that the ESAs encourage national supervisors to actively engage in dialogue with local FMPs and FAs and to give them guidance on how to best prepare for the entry into force of the new disclosure requirements. Finally, we would encourage the ESAs to consider applying a grace period or a “no-action period” after the entry into force of the SFDR and the DR to cater for an open dialogue with national supervisors around possible practical and technical challenges in implementing and making the new requirements work in practice. Given the complexity of the DR, level 3 measures are warranted for, ensuring proper guidance in terms of application of the new requirements. The ESAs should ensure that such guidance is available before the entry into force of the DR.

As regards FMPs and FAs ability to comply with the new requirements, we would like to highlight that the unavailability of data remains the key obstacle. We expect that the issue around data availability to some extent will be remedied by the review of the Non-Financial Reporting Directive (hereinafter “NFRD”). This is, however, not expected to ensure data before 2023 at the earliest. The final disclosure requirements should take this issue into due account, e.g. by applying a phase-in approach with focus on first implementing those requirements, where data availability is of least concern, adding more requirements, when data becomes available. Such an interim solution would cater for an appropriate implementation of the new requirements while actively addressing the current timeline challenges. In this regard, we would also encourage the ESAs to discuss with data providers on what data is available, when calibrating the final disclosure requirements. We are aware that the DR requires FMPs to make “best efforts” to obtain data directly from investee companies, when data is not readily available. Given the current lack of data, such an approach will be overly burdensome not only for the FMPs but also for the investee companies, which will be met by numerous data requests from FMPs, and therefore has to be rethought to strike the right balance, e.g. by limiting the obligation to “reasonable efforts” based on a proportionality principle. With thousands of (potential) investee companies it is unrealistic to expect that FMPs can approach all of those companies actively and that investee companies can process these data requests.

Finally, we would also like to reiterate our support and stress the importance of creating a centralized register or platform for sustainability data. Such register or platform should, as a first building block, focus on disclosures in line with the NFRD, the EU Taxonomy and the data necessary for FMPs and FAs to comply with the SFDR and the DR.

<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>

SFDR Article 4(1)(a) requires FMPs that consider principal adverse impacts (PAIs) of investment decisions on sustainability factors to publish a statement on due diligence policies with respect to those impacts (hereinafter “adverse sustainability impact statement”), taking due account of their size, the nature and scale of their activities and the types of financial products they make available.

According to SFDR Article 4(2) the adverse sustainability impact statement shall include at least the following information:

- (a) Information about policies on the identification and prioritisation of PAIs and indicators.
- (b) Description of the PAIs and of any actions taken in relation thereto.
- (c) Brief summaries of engagement policies, where applicable.
- (d) Reference to the adherence to responsible business conduct codes and internationally recognised standards for due diligence and reporting and, where relevant, the degree of alignment with the objectives of the Paris Agreement.

In order to comply with their duties, FMPs should according to SFDR recital 12 consider “all relevant sustainability risks that might have a relevant material negative impact on the financial return of an investment or advice.”

From a strictly legal point of view it could be argued that the approach proposed in Chapter II and Annex I of the DR, where the indicators in Table 1 always lead to PAI, goes against the SFDR, as FMPs materiality assessments are not (sufficiently) taken into account. Our reading of the SFDR, and of Article 4 in particular, is that FMPs are legally obliged to conduct a materiality assessment, when identifying, prioritising and disclosing PAIs and indicators. This interpretation is further supported by SFDR recital 12, which focuses on the *material* negative impacts. In our view, this materiality approach is not fully captured and catered for by the current proposal, which is essential to ensure relevant and meaningful disclosures to end-investors.

To this end, we do not concur with the assumed assumption that any positive value for any of the proposed indicators result in a “principal” adverse impact. Positive metrics on indicators do not provide the context regarding the nature of adverse impacts of investments. In some cases, having carbon emissions in one sector can offset or reduce emissions in another sector, e.g. a solar company can have carbon emissions to produce solar panels, however, the use of solar panels can avoid emissions. For this reason, it is important that FMPs identify the PAIs of investments to ensure that the material PAIs and indicators are identified, prioritised and disclosed.

According to the proposed recital 2 of the DR, the aim of the proposed indicators is to ensure sufficient comparability of entity level PAI disclosures. While we recognise that some consistency and comparability could be helpful, there is a need to strike the right balance between the level of comparability and preparing meaningful disclosures to end-investors.

We do think that some of the proposed indicators are relevant and “universal” to all FMPs and that they could serve as mandatory indicators to provide a certain level of comparability of entity level PAI disclosures. The number of mandatory indicators should, however, be kept at a minimum to allow for FMPs individual assessments of, which indicators are material in terms of PAI. In our view, the materiality determination should be given priority over a set list of mandatory indicators, which have to be disclosed irrespective of materiality/appropriateness. This would also be more in line with the SFDR, which leaves the flexibility e.g. which indicators to use.

When deciding on the final mandatory indicators it needs to be kept in mind that not all indicators are material/relevant for all sectors. We suggest that some kind of sector differentiation is applied to the indicators so that only those indicators that are relevant for a certain sector are disclosed and reported on.

Furthermore, the information needs of the end-investors need to be taken into account, when deciding on the final mandatory indicators. In our view, the large number of proposed indicators do not serve as much guidance as to where to focus. We do not consider a one-size-fits-all approach, as proposed by the ESAs, feasible, as it may result in the disclosure of immaterial information, which could easily confuse and in worst case mislead end-investors. The relevance and usability of the information calls for a more balanced approach towards the number of mandatory indicators to be disclosed to leave room for those indicators identified by the different FMPs as material.

Since no consumer tests have been conducted, it is difficult to say how consumers will respond to the PAI disclosures. We encourage the ESA's to test with retail clients what information adds value to them.

It is also important to keep in mind that PAI disclosures are optional for FMPs with less than 500 employees on an entity and group level. We believe that a large number of mandatory indicators could disincentivise smaller FMPs from making PAI disclosures, which would go against the overall objective of the SFDR to ensure more transparency on sustainability approaches to foster sustainable investing.

Regarding the proposed "opt-in regime", we do not see the merits in this for the reasons stated above. Different FMPs will select different indicators meaning that the aggregate for an end-investor is not comparable and thereby not usable. The indicators should remain what they are, i.e. optional. The proposed indicators in both Table 1, 2 and 3 of Annex I could all serve as inspiration for any further guidance by the ESA's, as to which indicators FMPs could consider, when identifying the most significant or PAI areas.

<ESA\_QUESTION\_ESG\_1>

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

<ESA\_QUESTION\_ESG\_2>

As mentioned in our response to question 1, we recognise that a certain harmonised level of disclosure could be helpful in ensuring consistency and comparability. However, a materiality determination should be the basis to prepare relevant and meaningful disclosures, which is also recognised and catered for in the SFDR.

A one-size-fits-all approach as proposed by the ESAs is in our view not feasible, as it disregards the fact that investment strategies and products vary significantly in terms of underlying assets, investment horizon, composition etc. Not taking this into account, could result in the disclosure of immaterial information that could confuse and in worst case mislead end-investors. Again, materiality and usability of the information calls for a more balanced approach towards the number of mandatory indicators to be disclosed to leave room for those indicators identified by the different FMPs as material.

Furthermore, proportionality is essential in order for smaller FMPs to be able to implement the disclosure requirements. With the proposed approach, there is a risk that smaller FMPs may choose not to disclose PAIs but instead publish the reasons why they don't consider PAIs given the burdens involved in disclosing the proposed indicators. This will be counterproductive to the overall objective of the SFDR to ensure more transparency on sustainability approaches to foster sustainable investing.

<ESA\_QUESTION\_ESG\_2>

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

<ESA\_QUESTION\_ESG\_3>

As mentioned in our response to question 1, we believe that there are certain indicators that are relevant and “universal” to all FMPs and that they could serve as mandatory indicators to provide a certain level of comparability of entity level PAI disclosures. We also believe that the number of mandatory indicators should be significantly lower than the proposed 32 + 2 indicators to leave room for indicators identified by each FMP as material to ensure meaningful PAI disclosures that are usable for end-investors. Since not all indicators are relevant for all sectors, we suggest to apply some kind of sector differentiation to the indicators so that only those indicators that are relevant for a certain sector are disclosed and reported on.

We believe that a smaller number of mandatory indicators for each sector can still serve the purpose of supplying end-investors with the necessary information to assess a FMPs sustainability approach and compare this to other FMPs’. Important is to ensure the right format for presenting the information to make the information easily accessible for investors, not to prescribe the details of each piece of information to be disclosed, which will vary among FMPs given the differences in investment strategies, products etc. In this regard, we are unsure as to what extent the indicators are comparable given that they are an aggregate of all positions in all portfolios. Comparability is much more relevant and important for product disclosures.

Since no consumer tests have been conducted, it is difficult to say how consumers will respond to the PAI disclosures. We encourage the ESA’s to test with retail clients what information adds value to them and how the information can best be presented to ensure a comprehensive yet manageable set of information and avoid information overload.

<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 in our response to question 1, we do not think that the proposed Table 1 of Annex I is sufficiently aligned with the SFDR. The SFDR Articles 4(1)(a) and 4(2) require FMPs to disclose policies and actions, which calls for a more flexible and principles-based approach than the disclosure of mandatory indicators irrespective of materiality/appropriateness. In this regard, we would suggest developing a reporting template that is more in line with global impact frameworks such as the UNEP FI impact analysis tools: <https://www.unepfi.org/positive-impact/tools-frameworks-for-holistic-impact-analysis/unep-fi-impact-analysis-tools/> These tools have a strong focus on identifying the most significant impact areas for each reporting entity in order to determine impact targets and action plans to reduce PAIs.

One aspect, which we do not think is sufficiently captured by the proposed template, is that not all proposed indicators are material/relevant for all sectors. We suggest that the template is expanded to include sectors, whilst reducing the number of mandatory indicators to be reported on for each sector to leave room for FMPs identification and prioritisation of additional material indicators. In our view, including sectors in the template will increase transparency as to which sectors FMPs focuses on, when prioritising the necessary actions to reduce PAIs. This is an important piece of information when trying to understand a FMPs approach to sustainability. The material/relevant indicators for the various sectors will change over time. A review clause should be provided for to ensure that the template is updated in a continuous and predictable manner.

Since the Taxonomy is based on NACE classification, this could be used as an outset. In this context, we believe that it is necessary to provide a matching table to the economic sector classifications used in the financial sector. These classifications are those of data providers such as MSCI, Bloomberg, Thomson Reuters and others. At European level similar work has been done for climate benchmarks. This is important, as it maintains consistency and reliability in the data. The climate transition benchmark handbook in Annex b lists these tables [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/192020-sustainable-finance-teg-benchmarks-handbook\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/192020-sustainable-finance-teg-benchmarks-handbook_en_0.pdf).

We strongly encourage the ESAs to conduct consumer tests on the final template to ensure that the template presents the information in an accessible and manageable manner and that the specific information to be disclosed in the template adds value to them.

<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>

In general, we find the proposed indicators reasonable and meaningful in the broad sense. As already mentioned, we do not believe that all indicators are relevant for all sectors. This is why we suggest the ESAs to apply some kind of sector differentiation to the indicators so that only those indicators relevant for a certain sector are reported on to ensure meaningful and useful PAI disclosures. Furthermore, and just as important, we believe that indicators that FMPs have identified as material should also be disclosed. Again to provide for meaningful and useful PAI disclosures.

The information needs of the end-investors need to be taken into account, when deciding on the final mandatory indicators. In our view, the large number of proposed indicators do not serve as much guidance as to where to focus. We do not consider a one-size-fits-all approach, as proposed by the ESAs, to be feasible, as it may result in the disclosure of immaterial information, which could easily confuse and in worst case mislead end-investors. We therefore strongly encourage the ESAs to conduct consumer test on the final mandatory indicators to ensure that the indicators are understandable for retail investors and adds value to them.

Many indicators seem to apply to investee companies, i.e. corporations, which raises the question of how to deal with those indicators in case of investments in sovereign bonds or real estate. It is crucial that clarity on this is provided for to ensure proper compliance with the new requirements.

Moreover, it is important to keep in mind that FMPs need very specific sustainability data on investee companies to be able to report on the final set of mandatory indicators. Currently, the non-financial disclosures by companies are often not comparable, in many cases lack essential information and have a very limited usefulness for assessing sustainability risks and opportunities. This makes it very challenging in view of creating meaningful PAI disclosures. While we expect that this will be remedied to some extent by the review of the NFRD, data is not expected to be available before 2023 at the earliest. Given this, we encourage the ESAs to consider, whether a more qualitative assessment of indicators could be allowed in the first years. Alternatively, a phase-in approach could be provided for regarding those indicators, where reliable data is currently not available. This means that a limited set of indicators will be reported on in the beginning (those indicators, where data availability is of least concern), adding indicators successively, when more reliable data becomes available. In this regard, we would also encourage the ESAs to discuss with data providers which information is available for each indicator.

Regarding the question on forward-looking indicators, we do believe that such indicators could be useful for assessing sustainability-related risks and opportunities. So in principle, we would not be opposed including forward-looking indicators into the set of indicators to be reported on. For the time being, we believe that focus should be on establishing some common ground on the proposed backwards looking indicators, before adding forward-looking indicators, where common definitions are currently lacking. We would encourage the ESAs to conduct further work on this to provide for the needed level of reliability and consistency in definitions, methodologies etc., so that forward-looking indicators could be included at some stage.

*Specific comments on the proposed indicators*

<b>CLIMATE AND OTHER ENVIRONMENT-RELATED INDICATORS</b>	
<p>Greenhouse gas emissions (<i>indicators 1-4</i>)</p>	<p>We consider all 4 indicators useful and relevant. Providing the information on a sector level, as we have proposed, would give valuable insight as to identifying high impact sectors and determining impact targets and action plans.</p> <p>The proposed formula for “total carbon emissions”, “carbon footprint” and “carbon intensity” include scope 3 emissions. Although, we do see merit in including scope 3 emissions, currently there is not much available and reliable data on scope 3 emissions. We suggest that the formulas are defined in accordance with current international calculation methods such as TCFD (Task Force on Climate-related Financial Disclosures) and PCAF (Partnership for Carbon Accounting Financials). Scope 3 emissions may be included in the formulas going forward, when more reliable data becomes available. In any case, the ESAs should consider a grace period before applying scope 3 in the compulsory disclosure requirements on carbon emissions.</p> <p>As to the proposed definition of “enterprise value” used in the formula for “total carbon emissions” and “carbon footprint”, this is different to the definition of enterprise value in the Commission delegated regulation (EU) of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, which includes cash. We believe that the definition of enterprise value in the DR should be aligned with the Commission delegated regulation and include cash.</p>
<p>Energy performance (<i>indicators 5-8</i>)</p>	<p>We consider indicator 5 (total energy consumption from non-renewable sources and share of non-renewable energy consumption) and indicator 7 (energy consumption intensity) to be the most relevant indicators.</p> <p>Indicator 8 (energy consumption intensity per sector) would not have to be included in the final list of mandatory indicators, if the reporting template is expanded to include sectors.</p> <p>As to indicator 6 (breakdown of energy consumption by type of non-renewable sources of energy), given the fact that data is not available and that companies themselves many times might not have insights to this breakdown, we would suggest removing this indicator from the final list of mandatory indicators for the time being. We do consider the indicator relevant and useful. To the extent that companies are required to report on this breakdown going forward through the review of the NFRD, a grace period for this indicator should be applied so that reporting will start once data is made available by investee companies.</p>
<p>Biodiversity (<i>indicators 9-11</i>)</p>	<p>As biodiversity is part of the Taxonomy environmental objectives as number 6 (protection and restoration of biodiversity and ecosystems) it makes good sense to include an indicator on this. Since the Taxonomy is not yet developed on this issue, we would suggest to limit the number of indicators on biodiversity to one indicator focusing on the percentage in high risk companies that e.g. have policies in the field of soil degradation, deforestation etc. In our view, a materiality approach is needed for this indicator meaning that the indicator should only apply for high risk companies, since most companies do not have for instance a deforestation policy, as it is not relevant for their business activities. Only applying the indicator to high risk companies will in our view ensure more meaningful disclosures.</p>

<p>Water (indicators 12-14)</p>	<p>We consider indicator 12 (water emissions) for useful and relevant.</p> <p>As to indicator 13 (exposure to areas of high water stress), we think that the indicator should focus on the share of companies that do not track and map water usage at plant level situated in areas of high water stress.</p> <p>We consider data availability to be the main obstacle for reporting on indicator 14 (untreated discharged waste water). While we consider the indicator for useful and relevant, we would suggest a grace period for this indicator so that reporting on this indicator will only start once data is made available by investee companies through the review of the NFRD.</p>
<p>Waste (indicators 15 and 16)</p>	<p>We consider both indicators for useful and relevant. Data availability might be an issue and reporting on these indicators should only start once data is made available by investee companies through the review of the NFRD.</p>
<p><b>SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS</b></p>	
<p>Social and employee matters (indicators 17-22)</p>	<p>We consider the proposed indicators for useful and relevant.</p>
<p>Human rights (indicators 23-29)</p>	<p>We consider the proposed indicators for useful and relevant. In our view, a materiality approach should be applied to the proposed indicators so that they only apply for high risk companies / sectors given that only high risk companies will have policies on human rights, processes and measures for preventing trafficking in human beings etc. Only applying the indicators to high risk companies / sectors will in our view ensure more meaningful disclosures.</p> <p>Another possibility could be – instead of having indicators 23-29 – to focus on supply-chain management so that you have one indicator on human rights, where you disclose on policies and violations (direct and indirect). Such an approach is consistent with OECD Guidelines for Multinational Enterprises and UN Principles on Business and Human Rights. Such an approach gives better understanding as to the way a policy is implemented and how effective it is.</p>
<p>Anti-corruption and anti-bribery (indicators 30-32)</p>	<p>We consider the proposed indicators useful and relevant.</p>

<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>

We do see merit in a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and would support including this in the final set of mandatory indicators.

As regards to a relative measure to the prevailing carbon price, we are unsure as to the purpose of this.

<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>

In general, we agree with measuring both (1) the share of the investments in companies without a particular issue and (2) the share of all companies in the investments without that issue. We are doubtful about, whether this will be understandable and thereby usable for most clients. We believe that one measurement is sufficient focusing on a percentage of the aggregate investments. If the PAI disclosures are meant to be used actively by e.g. retail investors, it is important not to have too advanced disclosures metrics. Focus should be on ensuring meaningful and useful disclosures. To this end, it is crucial that the ESAs conduct consumer tests to clarify the information needs of end-investors.

<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>

We do see how such more advanced indicators could be useful for FMPs, especially in determining impact targets and action plans. To what extent such more advanced indicators should be part of the PAI disclosures at this stage is more doubtful. PAI disclosures on such indicators at this stage seems to be premature given the insufficient availability of sustainability data. At this stage, we think that focus should be on establishing some common ground for reporting on more basic indicators, where the data challenge is of least concern, before adding more complex indicators.

<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>

A just transition to a more sustainable economy is about delivering climate action that delivers a positive social impact. To succeed in this transition, progress has to be done on social matters. Based on this, we do believe that PAI disclosures should include social and governance indicators.

We refer to our answer to question 5 regarding comments on the specific indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.

<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>

Since PAIs are to be disclosed on a yearly basis, this yearly reporting can be shown for future reporting as historical comparison. The value of a ten year historical comparison may be limited due to the dynamics and the continuous evolvement within company reporting. Data on indicators is expected to improve over time meaning that the consistency of the measures will change over time and not provide much guidance as to the actual development in the indicators. We think that a 3-5 year horizon would be more sensible for a historical comparison.

<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 non-availability of data may in itself lead to window dressing, as FMPs will have to use estimates based on assumptions to provide metrics for the PAI disclosures. We would be supportive of harmonising methodologies and the timing of reporting in order to prevent window dressing. We would favour an approach, where the DR provides for specific reference date(s) instead of a requirement to calculate a weighted average of PAI indicators over the entire reference period regarding all investments at the entity level. In this regard, we believe that “year-end” would be a sensible reference date given that investee companies normally only disclose sustainability data once a year.

<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>

In general, we support the use of templates. Templates make information more easily accessible for customers and create a better basis for comparing approaches, exposures etc. To the extent that mandatory templates for pre-contractual and periodic reporting exist, such as UCITS KIID, we would prefer supplementing these with sustainability information in order to avoid further complexity. Mandatory templates should, however, only apply to products that are foreseen for public distribution, i.e. available for retail investors. Professional investors need tailored information and hence more flexibility is needed in this regard.

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_13>

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

<ESA\_QUESTION\_ESG\_14>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_14>

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

<ESA\_QUESTION\_ESG\_15>

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<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>

There still exists uncertainty as regards to what is required for a financial product to live up to SFDR Article 8 and Article 9. The recent consultation by the European Commission on the draft delegated acts amending Delegated Regulation (EU) 2017/565 and Delegated Directive (EU) 2017/593 integrating sustainability risks and factors into MIFID II, especially the proposal for a definition on “sustainability preferences” adds to this uncertainty.

More clarity in terms of what qualifies as an Article 8 and Article 9 product is needed so that the industry is aligned across market participants on this and actually can use this classification i.e. when they provide customers with investment advice. There is currently a lot of room for different FMPs to have very different interpretations on this with the risk of green washing or the latter that FMPs are afraid to classify funds as Article 8 or Article 9 funds due to the risk of being accused of green washing as specifications are too vague.

In the consultation paper, the ESAs state that the broad concept of ‘ESG-integration’ is not enough to justify that a product promotes environmental or social characteristics. It is unclear to us, where ESG-integration ends and where promotion of environmental or social characteristics start. We appreciate the ESAs attempt to clarify this in the draft recital 21. We do, however, think that further guidance on this issue is warranted.

Clarity on what constitutes an Article 8 and Article 9 product is crucial for promoting the development of sustainable investment products. In this regard, we find that future products awarded an EU Ecolabel should qualify as Article 9 products given the intention to create a “green label”, even though we understand that this is not necessarily so.

We have noted that Article 16 in the DR requires FMPs to present a disclaimer in the pre-contractual documentation of Article 8 products stating that “this product does not have as its objective sustainable investment”. In accordance with the SFDR, both Article 8 and Article 9 products can be marketed as “sustainable”. We believe that the proposed disclaimer is counterproductive to the overall aim of the SFDR to promote sustainable investing and may confuse retail investors. The pre-contractual description of the environmental or social characteristics promoted by the financial product should be enough for investors to make informed financial decisions aligned with their investment objectives.

<ESA\_QUESTION\_ESG\_16>

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

<ESA\_QUESTION\_ESG\_17>

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<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>

Using the same graphical representation could be misleading to consumers as the underlying methodologies, reporting etc. are not standardised.

We would encourage the ESAs to test graphical representations with retail clients to ensure that the graphical representations are comprehensible and adds value to them.

<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>

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<ESA\_QUESTION\_ESG\_19>

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

<ESA\_QUESTION\_ESG\_20>

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<ESA\_QUESTION\_ESG\_20>

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

<ESA\_QUESTION\_ESG\_21>

Both SFDR Article 8 and Article 9 refer to good governance. We agree with the good governance practices mentioned in SFDR Article 9 and think that these minimum requirements should also apply to SFDR Article 8.

<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 believe there is an inconsistency between the “do not significantly harm” (DNSH) principle in the Taxonomy Regulation and the DNSH principle integrated in the definition of “sustainable investment” in SFDR Article 2(17). According to the SFDR, FMPs have to describe DNSH criteria for E, S and G. This goes beyond the six environmental objectives in the Taxonomy Regulation. We believe that the Taxonomy should be leading in defining DNSH criteria. Proper alignment between the DNSH criteria in the Taxonomy Regulation and the SFDR should be ensured in order to avoid confusion.

More specifically to the proposed Article 16(2) of the DR, we believe that the DNSH principle is not well suited for Article 8 products. To our understanding, under Article 8 would fall strategies like ‘best in class’ and ‘exclusion’. Those products do not have sustainable investments as objective so there should not be a requirement that no significant harm is done to other sustainable objectives.

<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 do see merits in developing examples of what could qualify as sustainable investment strategies to get a more common language around this within the industry.

Providing a closed list on sustainable investment strategies would in our view be too constraining, as it is very unlikely to cover all relevant approaches and be dynamic enough in terms of the development of sustainability processes and products within the financial industry.

<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>

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<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>

In order to keep the information documents as accessible to retail investors as possible, we believe that website disclosures should be the preferred option for (2), (3) and (4). Any commitment of a minimum reduction rate of the investments, cf. (1) above, should remain in the pre-contractual disclosures for the financial product.

<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>  
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<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>

The adverse sustainability impact statement in SFDR Article 4 may impose significant additional costs on FMPs. Completing such a statement will require FMPs to carry out extensive due diligence in connection with a contemplated investment, which may go beyond the due diligence already being conducted. Furthermore, ongoing compliance costs are also expected to be high. The ESAs impact assessment is based on the European Commission's impact assessment on the proposals in the sustainable finance action plan. In its impact assessment, the European Commission conducted targeted interviews with six firms providing numbers on the prospective costs of sustainability integration. We do not believe that an impact assessment based on six interviews is representative of the expected costs associated with the implementation of the new disclosure requirements. We believe that costs will be higher. Besides significant due diligence and compliance costs comes significant costs associated with requiring data necessary to conduct PAI disclosures. Given the current data unavailability, Article 7(2) of the DR and the requirement to do best efforts to obtain the information directly from investee companies, will not only increase FMPs costs significantly, but also investee companies that have to process a large number of data requests from FMPs.

<ESA\_QUESTION\_ESG\_27>