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

Date: 17 March 2021
ESMA34-45-1218

esma European Securities and Markets Authority

EBA EUROPEAN BANKING AUTHORITY

eiopa EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (hereinafter "RTS") on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (hereinafter Sustainable Finance Disclosure Regulation "SFDR") and in particular on the specific questions summarised in Section 3 of the consultation paper under "Questions to stakeholders".

Comments are most helpful if they:

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

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

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.
- The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading 'Your input - Consultations' by 12 May 2021.
- Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

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

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[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	CFA Institute
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
CFA Institute welcomes the opportunity to provide comments to the ESAs draft regulatory technical standards on the content and presentation of taxonomy-related product disclosures under the Sustainable Finance Disclosure Regulation.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organisation is a champion of ethical behaviour in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environ-ment where investors' interests come first, markets function at their best, and economies grow. There are more than 160,000 CFA® Charterholders worldwide in 164 markets. CFA Institute has nine offices world-wide and 161 local member societies.

The answer below is the result of CFA Institute consulting with its local member societies in the European Union and, in particular, expert members in France and Poland as well as CFA Institute's own views.

The promotion of Investor protection and transparency are key goals for CFA Institute. Given the increasing interest in investment products with sustainable characteristics, CFA Institute has been working on the development of a voluntary ESG disclosure standard for investment products. Differently from other ESG-related standards, this Standard would define and classify common ESG features, and establish disclosure requirements for investments related to those features A public consultation on the proposed scope, structure, and design of this standard was launched in August 2020. Based on the feedback received, a first draft initial version of the ESG disclosure standard will be published in the coming days.CFA Institute would be pleased to further discuss this initiative with the ESAs as soon as our initial draft version of this Standard is ready.

With regard to the ESAs consultation, CFA Institute welcomes the proposed solution of amending the existing SFDR RTS concerning the additional disclosure obligations for investment in products with environmental sustainable objectives. Such an approach is a much better solution than introducing a new set of standards for such disclosures. Adjusting the existing standards to the EU Taxonomy-related product disclosures would reduce overlappings, and avoid any confusion and complexity for end investors .This approach would bring about more consistency between the SFDR and the EU Taxonomy. As highlighted in our recent "Corporate Governance and ESG Disclosure in the EU" report, the use of clearer and more consistent language between the two regulations would help investors have a better understanding on the sustainable characteristics that investment products have.

CFA Institute also agrees on the ESAs proposed approach for the Key Performance Indicator regarding the extent to which investments are aligned with the EU Taxonomy. The methodology, which captures the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies, is appropriate, and should be applied to all economic activities that the product proceeds are invested in. An additional graphical representation of the share of taxonomy-compliant investments of the financial product would provide useful complementary information for investors.

Overall, the use of a standardised template, common standards and format for the publication of Taxonomy-related product disclosures, which is the suggested approach in the ESAs consultation paper' Preliminary Impact Assessments, would be key to ensure a better understanding and easier comparability of products for investors and stakeholders.

It should however be reminded that the part of the disclosure template related to the share of taxonomy-aligned investments remains a arduous task for investment firms, given the lack of data, the lack of harmonisation of this data and the multi-layered complexity of computing all this information. We would like to encourage the ESAs not to underestimate the large complexity of the task at hand for investment firms, beyond the intention of providing investors with meaningful information related to environmental objectives.
<ESA_COMMENT_ESG_1>

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

<ESA_QUESTION_ESG_1>
CFA Institute welcomes the ESAs decision to amend the existing SFDR RTS instead of drafting a new set of draft RTS. Market participants and stakeholders, who will be subject to or impacted by the SFDR, should have now a thorough understanding of the SFDR RTS. Hence, amending the existing SFDR RTS rather than setting new standards for taxonomy-related product disclosures would minimise duplications and confusion, and avoid further complexity for investors and stakeholders.
<ESA_QUESTION_ESG_1>

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

<ESA_QUESTION_ESG_2>
The KPI for the disclosure of the extent to which investments are aligned with the Taxonomy, which is based on the share of the Taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies – is a sound one. The same approach should apply to all investments made by a given financial product in order to better provide investors and potential investors with like – to – like comparisons. No disclosure system will provide all the information investors need, but that this disclosure could represent a good baseline from which to begin.
Members from CFA Society France underlined that a graphical representation of the weighted average of the Taxonomy-aligned investments also would be a useful information to disclose. However, the share in terms of Taxonomy-aligned turnover should be the default KPI. Capex can be seen as a first derivative, i.e. showing improvement. But improvement has to be be shown versus its basis to make things comparable. However, a financial product could dedicate part of its investments to already "green" investments and another part to future "green" investments. The first needs to report on a turnover basis, the second on a capital expenditure basis.
<ESA_QUESTION_ESG_2>

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

<ESA_QUESTION_ESG_3>
The usefulness of such data depends on the accuracy of the information provided by issuers. A further issue is data verification as information could be cherry-picked to make it look better for SFDR disclosures. The process for collecting this data should be disclosed along with the data itself, and assurances provided that the data has been audited and can be depended upon.
<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_4>

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

<ESA_QUESTION_ESG_5>
It would be very difficult to capture all instruments in a precise manner. The use of equities and debt instruments would cover the vast majority of relevant investment instruments used by the public, and therefore should be sufficient at least for this round of the SFDR RTS. It If this proves not to be the case in the future, the ESAs should revisit the issue.
<ESA_QUESTION_ESG_5>

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

<ESA_QUESTION_ESG_6>
Including all investments in the denominator for the KPI prevents cherry-picking. However, when possible, the KPI should be presented in both ways, and include explanation regarding differences in each number. This would give investors and prospective investors more information to help them make a well-informed decision.
<ESA_QUESTION_ESG_6>

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

<ESA_QUESTION_ESG_7>
A statement of Taxonomy compliance can help assure customers and potential customers that the products they are investing in or thinking of investing in have the characteristics that products purport to have. This statement should not be a simple boilerplate statement, and should be assured with supporting evidence. Moreover, these statements should be auditable and assessed by third parties.
<ESA_QUESTION_ESG_7>

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

<ESA_QUESTION_ESG_8>
Such disclosures should only be made if they are useful to investors and potential investors and are reasonable to carry out for firms. These disclosures should only be required when they are essential for an investor or potential investor to make an informed investment decision (in essence, if they are material).
<ESA_QUESTION_ESG_8>

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

<ESA_QUESTION_ESG_9>
We believe they currently strike a balance between providing adequate information to investors and potential investors, while not being too onerous for firms selling financial products. We suggest that the ESAs annually speak with or survey customers and firms to ensure the intent of these forms are indeed being seen in practice, and if not adjustments should be made.
Some members from CFA Society France suggest that the creation of an index of "intensity of sustainable transformation" could complement the templates. The French government recently published a paper (in French) focusing on the benefits deriving from the development of this index.

It should however be reminded that the part of the disclosure template related to the share of taxonomy-aligned investments remains a arduous task for investment firms, given the lack of data, the lack of harmonisation of this data and the multi-layered complexity of computing all this information. We would like to encourage the ESAs not to underestimate the large complexity of the task at hand, beyond the intention of providing investors with meaningful information related to environmental objectives.
<ESA_QUESTION_ESG_9>

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

<ESA_QUESTION_ESG_10>
Yes, CFA Institute believes that the use of unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products would be preferable at this stage. This solution would help market participants and those who are required to make such disclosures, and facilitate the comparison of financial products for investors.
However, as with our previous answer, CFA Institute encourages the ESAs to revisit this question in the future once these templates will have been used in practice in order to understand whether intended results match actual practice and adjust accordingly.
<ESA_QUESTION_ESG_10>

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

<ESA_QUESTION_ESG_11>
Yes, CFA Institute believes that this amendment to the templates would provide investors with more information, which should apply to Article 8 and 9 SFDR products as well.
<ESA_QUESTION_ESG_11>

Q12 : Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

<ESA_QUESTION_ESG_12>
CFA Institute agrees with the proposed ESAs policy options included in the preliminary impact assessments. Policy option 1.3 would be the best one among the other proposed solutions in policy issue 1 as a mandatory standardised template would be easily understandable for investors and facilitate comparability of products. We also agree with the ESAs preferred option in policy issue 3 (option 3.2.) as a fully-binding statement with optional independent third-party verification would provide enough information in a standardised form for investors to make informed decisions and allow for data verification. Policy option 4.2. appears to be the best option for policy 4: common standards and format with pre-contractual disclosure would facilitate comparability, and give some flexibility on the approach used for these disclosure on the basis of the specificities of the product.
<ESA_QUESTION_ESG_12>