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EBF response to the Joint ESA consultation on ESG disclosures

INTRODUCTION / EXECUTIVE SUMMARY

The European Banking Federation supports the efforts of European co-legislators towards financing a more sustainable economy and welcomes the recent regulation on disclosures relating to sustainable investments and sustainability risks. We are in favor of increased transparency in sustainable investments and sustainability risks, provided disclosures are balanced and help consumers make informed financial decisions aligned with their objectives.

Constant discussions, exchange of information and proactive decisions have been taken in order to ensure swift compliance to guarantee that our members apply the key regulations on Sustainable Finance put forward by the European Regulators.

However, the EBF is concerned that the proposed elements of the draft RTS supporting the Regulation might lead to a miscount of adverse impacts, create confusion and could be counterproductive with the very aims of the regulation and the broader sustainable finance growth EU strategy. The indicators proposed seem to be not coherent with the broader package of EU disclosure requirements.

The path to make the Action Plan on Financing a Sustainable Growth a practicable reality and to be able to finance the Green Deal is forcing answers that are not always aligned to the practical reality both in data production and material outcome. That because the majority of firms (issuers) are not capable yet to provide sound and reliable sets of data by themselves. Instead, they need to buy their own data and related services to correctly respond to the need of the future disclosure of the impacts, whatever they will look like.

We envisage the complexity of this consultation through a few headlines further explained in the body of this document:

1. Timelines overlap for different pieces of legislation the consultation refers to (chapter 6 page 4);
2. Data still not available in a standardized and reliable way (table 2 page 19);
3. Need for cost proportionality among different market players (chapter 7 page 6);
4. EU issuers and issues are screened differently than those outside the EU border (chapter 5 page 5);

5. Need for a clear definition of entity vs product disclosure in the data collecting tables (Q2 page 16);
6. Need for clarity on how to deal with different types of products under art. 8 and art. 9 (table 1 page 9, L1 4. Page 11);
7. Impact metrics & unworkable underlying methodologies (page 10, Table 2 page 25).

In synthesis:

1) Financial market participants will need to carefully assess the systems and procedures that will have to be put in place for the 10 March 2021 deadline in relation to the initial Disclosure Regulation requirements to check if they are still compliant with the changes introduced as a result of the Taxonomy Regulation coming into force only a few months later. Please consider that:
    a. the Regulation (EU) 2020/852 (Taxonomy Regulation) has been published on 22 June 2020, and RTS for the Taxonomy are still under revision;
    b. amendments to MiFID II provisions aimed at including ESG considerations within investor protection conduct rules have been submitted to public consultation on 6 June 2020 but raise several interpretative doubts especially with regard to the approach adopted in identifying financial instruments with various degrees of sustainability ambition; this is not consistent with the one adopted by the SFDR in this regard;
    c. the Non-Financial Reporting Directive is still under revision and that the public consultation just ended on June 30th;
    d. UCITS and AIFMD are undergoing amendments, still underway;
    e. Future regulation of ESG data providers and rating agencies might be feasible, as questioned in the EU Renewed SF Strategy CP, and should be taken into account.
2) The granularity requested to appropriately fill the fields in Table 1 can possibly be achieved almost solely by acquiring data services likely from one of the three main ESG rating companies (all characterized by USA capital). These seem too small-in-size to provide the articulate magnitude of data required by the consultation, yet the outcome is likely to be non-satisfactory given the amount of issues that are difficult to identify and report about (e.g. Gender Pay Gap, Operations and suppliers at significant risk of incidents of forced or compulsory labour).
3) Data need to be material. I.e. deforestation for IT companies might be less opportune and meaningful then for mining companies etc.
4) We believe that proportionality is essential in order for smaller market participants to be able to implement the disclosure requirements. Indeed, smaller market participants will find it very costly to implement all the necessary requirements if compared to larger better equipped companies; naturally, players with a large budget can invest more in data providers, hence igniting the dichotomy.

    We also consider that some requirements will not bring any meaningful information to the market and will unduly over burden the operational processes. For the following requirements, some proportionality should be found:

- Adverse impact disclosures should not relate to the entire reference period (i.e. average positions) but only to the portfolio as it stands at the end of the relevant reference period;
- All short term holdings should be excluded (including derivatives).

5) Investing in stocks or funds that are not subject to the EU's sustainable finance legislation is likely to bring confusion. Foreign stocks purchased in the same financial vehicle holding EU stocks will be favoured by not falling under the important requirements that EU companies (both issuers and investors) are going to be compliant to

6) Table 1 requires reporting collective data and metrics at entity level. If disclosure is not provided per product, the efficacy of the effect of table 1 for the final user/client risks are to be compromised while representing a collective set of data that might not be of direct interest of the portfolio/fund's client.

   Our understanding is that the draft RTS go beyond the provisions of the level 1 text, and according to Art 4, financial market participants are only requested to provide qualitative information on the points covered in this article. If this is a correct interpretation, there will be a strong case for quantitative indicators to be optional.

7) Regarding indicators at entity / counterparty level, we favour an approach either of only qualitative indicators (at least till the investee companies apply the revised NFRD) or an approach of a very few mandatory under "comply or explain" or recommended indicators that might become compulsory over time, or basis, where the following criteria are taken into account:

   1. Availability and maturity of data;
   2. Availability of a standardised methodology applied to companies;
   3. Availability of a methodology to aggregate performance – and in their absence, disclosures breakdown by asset class (debt/equity);
   4. Demonstrated relationship between indicator at firm-level and real world impact.

   We consider that the following non-quantifiable disclosures would be much more valuable

   1. Governance of sustainability within financial market participants
   2. Paris alignment/climate and ESG strategy at firm-level
   3. ESG Due diligence processes – identified cases and remediation actions.

   Attention should be raised on potential side effects of a "comply or explain"/opt-in approach for Corporate and Investment banks (CIBs) on the producers' side. When they manufacture a product, CIBs do not know which indicators will be chosen by the distributor that will buy their products and are themselves subject to the SFDR. CIBs will therefore have to analyze and provide information to their clients on the dozens of indicators to allow distributors to select the indicators they wish to provide to their clients. This potential side effect will in fine prevent investors from having qualitative data to do their PAI assessment at entity level.

Outline of this paper

Given the complex nature of the matter and the extensive range of implications this regulation and subsequent RTS have on financial markets participants and consumers alike, the EBF has written a consultation reaction in the form of a position paper. The paper is outlined in three sections.

I – GENERAL REMARKS

1. Complexity of the matter and practical concerns

The Commission's EU Action Plan on Financing a Sustainable Growth was published in 2018. With the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (Disclosure Regulation or SFDR) published only in December 2019, and the level 2 text not ready in draft before the end of this year. We believe that the regulatory texts are:

- Very complex in general;
- Unclear and multi-interpretable (a lot of examples to follow);
- Not easy to fully grasp, especially in conjunction with existing legislation and legislation that is under review (i.e. MiFID2, Solvency II, AIFMD, NFRD, UCITS).

2. More than challenging timelines

It is imperative to ensure consistency and coordination with the different pieces of rules on sustainability-related disclosures (the reviewed NFRD, the Disclosure Regulation, the Benchmark Regulation and the Taxonomy Regulation). In particular, the corporate disclosures under the revised NFRD should align to what is disclosed by FMP's on financial products.

It is also crucial to ensure time sequencing consistency with NFRD entry into force and factor in the necessary time to collect and treat the necessary data.

Under the Disclosure Regulation, financial market participants ('FMP's') must comply with additional disclosure requirements from 10 March 2021. The draft RTS that are required to assist FMP's in complying with these disclosure requirements do not have to be submitted to the Commission until 30 December 2020, which already potentially leaves financial market participants with little time to implement any changes to their systems and procedures that are necessary in order to provide the applicable information.

This means that, again, FMP's may have only a short time between finalization of the RTS and the entry into force of the new disclosure obligation within which to implement any necessary changes to their compliance systems. It also means that FMP's will need to carefully assess the systems and procedures that have been put in place for the 10 March 2021 deadline in relation to the initial SFDR requirements to check whether they are still compliant with the changes introduced as a result of the Taxonomy Regulation ('Taxonomy') and the NFRD coming into force only a few months later.

- The entry into force date of the Delegated Act of the EU Taxonomy Regulation on environmental sustainability mitigation and adaptation is by 1 January 2022, and for the other environmental objectives is 1 January 2023. It is not clear how the Taxonomy Regulation will articulate and be streamlined with some parts of the SFDR (for example. regarding certain disclaimers, or methods to define the greenness of an economic activity under article 9). We would like to highlight the useless overburden related to the risk of twice operational implementation in case of inconsistent regulations.
- The MiFID ESG amendments regarding Product Governance and Suitability have just been submitted under consultation but they're far from being. published This could mean that no client ESG preferences are registered and accumulated as of March 2021, but investment firms do need to include descriptions of the following in pre-contractual disclosures: (a) the manner in which sustainability risks are integrated into their investment advice/ investment decisions; and (b) the result of the

assessment of the likely impacts of sustainability risks on the returns of the financial products they advise on/make available. .

- In order for investment firms to make a disclosure that has any relevance or significance, they need to base their assessment on data. Data is simply lacking. The Non-Financial Reporting Directive (NFRD) is still under revision. Adoption is announced by the EC by Q1 2021 and potential application date by 2022-2023, which is much later than the application date of the Disclosure Regulation. In addition to calendar concerns, the scope of the NFRD is too limited for portfolio managers to disclose anything about most companies with any certainty. As long as companies are not subject to disclosure requirements, it will remain impossible for FMP's to disclose sustainability risks, with any relevance.
- While Chapter VI art 53 states:" In respect of a financial market participant that first considered the principal adverse impacts of its investment decisions before 1 March 2021, from that date until 30 June 2022, by way of derogation from Article 4(1), that financial market participant shall publish the information in Articles 5 to 10 except for the information that relates to a reference period", it is not clear why the formal inception is march 2021 when the first disclosure document will refer to the previous fiscal year and will be issued rolling on base June, year by year.

3. If costs will increase, return for retail investors will decrease

The implementation of these new requirements will prove to be burdensome and costly for both banks and customers (i.e. review of client profiles, updated systems policies, additional reporting, expanded staff competence and, in combination with MiFID 2 amendments new questionnaires). This effect is likely to be more visible if a proportionality approach is not applied. The smaller the entity, the more costly in marginal terms the value added to be passed on to the final cost for the client, with potential inequality of offer among different distributors.

These costs are likely to be incurred by the end investor. The unclear and continuously changing legislation on the topic of ESG leads to implementation by banks that must be redone over and over (as the legislation is continuously changing) and therefore could drive overall costs for investors to a higher level.

Implementing the ESG requirements as proposed will require an impactful change in the product offering and review process, as well as the client intake and review of existing clients (for example, through periodic reporting). All products on offer have to be assessed on ESG criteria and the onboarding of new clients and the review of existing clients has to be adapted (re. proposed changes in MiFID). Therefore, the level of necessary (financial) resources will be substantial. The related costs will be duplicated when this entire process has to be followed again after the taxonomy has been determined and enters into force. A true principles-based ESG framework rather than a de facto rule-based framework will be an important factor herein. Since at the end of the day, our (retail) clients will have to pay for these additional costs, it may even turn out that especially for smaller investors it is no longer cost efficient (taking into account the possible return after deduction of the total costs) to continue their investment services.

We would like to highlight that, according to ESMA, costs are the most significant detriment on retail investors return. Thus, banks have to offer cost efficient products. With the new requirements, offering cost efficient products could prove to be more and more difficult, as the costs for ESG data might rise significantly. Furthermore, we would like to highlight that financial market participants will further have to rely on third-party data providers (that, according to the commission, might use non comparable, reliable and qualitative data),

something the European Commission portrays as a possible (concentration) risk. The Commission is therefore investigating whether it may be useful to ensure open and centralized access not only to company reporting under the NFRD, but also to relevant company information on other available ESG metrics and data points. To this end, a common database would ease transparency and comparability, while avoiding duplication of data collection efforts. The EBF, together with other EU Trade Associations, has written a letter to the EC to plead for such a database with the highest urgency. Unfortunately for FMP's under scope of this SFDR, this initiative will come too late.

4. Information overload and data access dependency

We believe that both policy makers and supervisors expect too much from disclosing additional, more detailed information to clients, especially retail. As no consumer test has been rolled out, we have no insights in how consumers will respond to the disclosures and thus, how effective disclosing additional detailed information actually is. As we have learned from MiFID 2 (that will be revised and was recently under consultation, with proposed changes to reduce the sheer amount of information to (retail) clients) most clients feel overwhelmed by the amount of detailed information they receive, which they can hardly process. We therefore believe that, although useful for some clients, most clients will not directly see the benefits of these new requirements, whilst (as set out under point 3) costs have increased.

Also, we believe a too single-sided view on ESG risks might lead to underestimation of other risks like (financial) risk and return. In the latter two areas, we are finally experiencing a reduction of information that is compulsory to provide to customers.

For banks that are both a Financial Market Participant as well as a Financial Advisor, the requirements how to position the information on websites entail the risk of information overload while at the same time both entity levels need to ensure the comprehensibility of the disclosure for the consumer.

It seems to us that putting the accent on how investors conduct due diligence, the extent of such due diligence, and more importantly how they are addressed and on encouraging remediation processes and concrete action, is more valuable than encouraging a focus on calculating, estimating and reporting "meaningless quantified information" that might lead to divestment or penalisation of those companies that are not transparent, which will seriously affect smaller companies and emerging markets' actors.

Finally, at present, credit institutions would totally depend on a restricted number of info providers, of which, the 3 largest in size are all characterized by being controlled by US capital. The present inability of the market to provide accurate and reliable numbers on a plethora of indicators suggests that market participants will likely be encouraged to not consider adverse impacts of investment decisions on sustainability factors, according to SFDR article 4(1b), or not report on too many of those indicators as expressed by RTS art 7.2.

5. Sustainable Finance doesn't stop at the EU border

From an asset management perspective, the investable landscape covers all available securities. European FMP's make use of a wide array of securities with good reasons, for example for diversification and hedging purposes (and subsequently, their duty of care). Not investing in stocks or funds that are not subject to the EU's sustainable finance legislation, in the short-term, is not a possibility.

But foreign funds, like US-listed funds, don't produce a UCITS KIID or a PRIIPs KID. Foreign stocks, like an Australian stock, are not in scope of the NFRD. For both examples, the FMP that is subjugated to the SFDR is therefore liable of assumptions and estimations they make of the investee company. It is not desirable that FMP's are liable for own estimates of companies that don't disclose any information, or for estimates carried out by third party ESG rating agencies.

For these reasons, the scope should highlight the perimeter of the financial products involved. Eg. wrappers, fund of funds from third parties should not be included yet in the SFDR.

The options might eventually be three at this point: 1) limiting the ESA's disclosure scope to European issuers only or 2) the ESAs shall provide a clear methodology to apply to all non-European issuers, 3) a newly constituted European rating agency, under the Commission, shall provide a detailed rating to all the investee companies worldwide (a way to do it has already been explored by the CDP, when they apply the worst rationales - concurring to the final score - to the issuers that do not disclose about those KPIs).

6. Flawed cross-sectorial legislation

We believe the disclosure regulation is hindered by the flawed timelines of implementing cross-sectorial legislation, like MiFID 2, the NFRD, the Taxonomy Regulation and the Ecolabel for financial products.

- **MiFID 2 ESG amendments** - As of August 2020 no Product Governance or Suitability ESG amendments had been published. We expect that, when these amendments are published, they will become effective 12 months later. In any circumstance this means that the MiFID amendments will not become effective before most SFDR requirements will become effective (10 March 2021). This will could bring FMP's in precarious situations for example regarding periodic reporting: no ESG preferences of the client have been aggregated, whilst periodic reporting on how ESG preferences have been incorporated already has been started. Regarding periodic reporting, there is also the issue that the Commission has hinted that ESG suitability assessment will only be necessary for new clients, and not for legacy clients. The Commission wrote: "to enhance legal certainty, it was clarified that a new suitability assessment for existing contracts will generally not be necessary". Furthermore, we see a risk that the Commission is already hinting on further guidance on or amendments of the to be published MiFID 2 amendments. In the recently published 'Renewed Sustainable Finance Strategy' consultation the Commission explicitly mentions that: 'to ensure that retail investors are asked about their sustainability preferences in a simple, adequate and sufficiently granular way, would detailed guidance for financial advisers be useful when they ask questions to retail investors seeking financial advice?'. For the sake of efficiency, we would like to see one change (the publication of the Product Governance and Suitability amendments) now or later, but not a change now and within one or two years another.

- **Non-Financial Reporting Directive** – As mentioned under point 1, the NFRD has recently been consulted and reporting non-financial data is for most companies still not compulsory. If these companies do report, they do so with significant flexibility: these companies can choose the most 'useful' way to disclose relevant information (i.e. UN Global Compact, OECD guidelines, ISO 26000). With current timelines, FMP's under the SFDR will have to disclose information that has to come from investee companies, but that is not available yet, or that is highly doubtful (as the

investee companies have a wide flexibility to choose more or less the form of reporting they see most fit). **In the most favorable scenario, in 2022 investee companies might report over data stemming from 2021.** NFRD already aims to provide data for investment decisions but both the SFDR and the taxonomy can only fully meet their objectives if relevant non-financial information is available from investee companies.

- **Non-Financial Reporting Directive** – European companies bound by NFRD are also deemed to assess compliance with "do no significant harm" criteria and minimum safeguards. And in **June 2019**, as a supplement to 2017 NFRD guidelines, the **European Commission published Guidelines on reporting climate-related information** which integrates the recommendations by the Financial Stability Board's Taskforce on Climate related Financial Disclosures (TCFD). Both these guidelines are voluntary (non-binding) and do not create any new legal obligations. Therefore, in this phase, liabilities lay with the distributor or manufacturer, rather than the investee company. We believe this balance is rather unfair.

- **Non-Financial Reporting Directive** – For example, if a FMP itself is a listed company on a stock exchange, this means that under Directive 2014/95/EU (that amends the accounting directive 2013/34/EU) this FMP is already required to include non-financial statements in their annual reports from 2018 onwards. So the FMP already has to publish reports on a wide array of policies they implement in relation to:
  - environmental protection
  - social responsibility and treatment of employees
  - respect for human rights
  - anti-corruption and bribery
  - diversity on company boards (in terms of age, gender, educational and professional background)

  We would like to warn the ESA's that **SFDR potentially could overlap on some significant areas with the final revised NFRD** (when the company is in scope of the NFRD). For example, the requirements as set out in art. 3 and art. 4 might be already covered by requirements in the NFRD. More clarification on this topic is desired.

- **Taxonomy** – We would like to see clarifications on the overlap between the Taxonomy's DNSH-criteria and the Principle Adverse Risk Impacts from the Disclosure Regulation. **The Do No Significant Harm definition is included in both the taxonomy and SFDR, but they differ in scope. This effectively, means no alignment.** This in turn might prove to be very difficult for both regulated companies and regulators, as the DNSH criterion is embedded in the definition of sustainable investment in the SFDR. So, DNSH seem to **always** apply when a firm in SFDR scope has to disclose. Basically, a firm has to describe DNSH criteria for E, S an G under the definition of a sustainable investment of the SFDR. For example, in a global equity fund, it might almost be impossible to safeguard social standards throughout the supply chain (and thus adhere to DNSH). Importantly, the definition of "sustainable investment" introduces a new "do no significant harm" (DNSH) principle that is broader than the DNSH principle in the EU Taxonomy in that the scope here goes beyond the six environmental objectives.

We believe that the definition on a second taxonomy under SFDR brings additional complexity to a global legislative framework that is already very difficult to understand. It is completely useless and misleading to define a second Taxonomy under SFRD whereas the existing EU taxonomy, that will be regularly enriched in the future (with social objectives for instance), seems to be an appropriate tool for the objectives pursued.

For the sake of clarity, we would like to remind ESA's and the EC that the use of the Taxonomy / DNSH should remain restricted to disclosure and 'labelling' purposes only, as required in the Taxonomy Regulation, and should not be extended to risk management purposes of banking corporate portfolios. Our comments above are strictly limited to the SFRD scope, hence investors / investment advice providers disclosure requirements.

- **Process wise** there are many Interdependencies with Taxonomy Regulation, for example the dependency on definition of Technical Screening Criteria (TSC) for the 6 environmental objectives according to the TR which comes into force later (1 Jan 2022). The RTS for comprehensive TSC are expected only at the end of 2020. Implementation of SFDR requirements will need to consider the taxonomy requirements. We therefore believe it is important to align the taxonomy framework content with the SFDR.

  We also would also like to raise our concerns related to the unworkable and incomplete underlying methodologies embedded in the proposed RTS. How to aggregate or count exposure to investee companies through different financial instruments; and how to aggregate performance of the same indicator when calculated differently by companies?
  The current proposal does not clarify or provide any guidance on these operational questions. ESAs should explain how investors should aggregate performance at indicator-level, and provide evidence that it can be done, in the following cases:
  a) When expose to one company through different financial instruments – equity + debt + derivatives;
  b) Between companies that calculate differently the same indicator;
  c) Between companies for which the indicator is calculated for different proportion of their activities; and,
  d) Between companies of different sectors when that is material to the understanding of performance.
  e) The issue of 'double counting' has to be addressed more succinctly. For instance a utility provider's scope 1 is the scope 2 of many other firms and, consequently, some investors' portfolio carbon footprint might be overstated.

- **Upcoming regulation on ESG rating agencies** – the new EU Sustainable Finance Strategy consultation hints at further requirements for ESG rating agencies, as they question the EC questions the current comparability, quality and reliability of ESG data from sustainability providers/rating agencies. As most investment firms use these agencies, they should be made aware of upcoming changes when they implement the DR.

7. Proportionality

The DR is very clear in the need to ensure that the regulation and the RTS do not go beyond what is strictly necessary in order to achieve the objectives to strengthen protection for end investors and improve disclosures to them.
We believe that proportionality is essential for smaller market participants to be able to implement the disclosure requirements. Although the DR text mentions proportionality, we would like to highlight again that for smaller market participants (and especially, those that just exceed the 500-employee limit) it might be very costly to implement all the necessary requirements. Supervisors should be made aware of this in an early stage (before the evaluation of the application of the DR by 30 December 2022. Please also refer to point 3 of this paper.
We also consider that some requirements will not bring any meaningful information to the market and will unduly over burdens the operational processes. For the following requirements, some proportionality should be found:

- adverse impact disclosures should not relate to the entire reference period (i.e. average positions) but only to the portfolio as it stands at the end of the relevant reference period;
- All short term holdings should be excluded (derivatives as well).

8. Legal Uncertainty

In the background analysis to the Draft RTS the ESA's note that they are aware of various "challenges" and difficulties both for themselves when drafting the RTS as for the FMP's / FA's that need to work with these RTS's, i.e. mentioned are:

- Data constraints;
- The use of definitions in the SFDR, " without reference to the taxonomy regulation;
- Financial products investing in equities / debt instruments issued by companies that carry out a variety of activities, some taxonomy-eligible and others not;
- The relation between the concepts of "do not significantly harm" and principal adverse impact in the future.
- The proportion of investments in the financial product funding taxonomy eligible activities should be disclosed by the investee companies;

We share the concerns regarding to most of the mentioned difficulties. We would however expect to see some form of solving these difficulties, rather than passing them on to the FMP's and FA's, resulting in amongst others legal uncertainty.

II - TECHNICAL REMARKS

Table 1. Summary

Article	Issue	Solution
Level 1 Article 2(17) (Not for consultation)	Non alignment with taxonomy (i.e. environmental objectives and DNSH-criteria)	
Level 1 Definition of Article 2 (22) (Not for consultation)	Unclear definition	Drastically reduce table one. Focus on: • material demonstrated relationship between indicator at firm-level and real world impact • available data • available standardised methodology • available methodology to aggregate performance Possibly: phased in approach of indicators
Definition/Scope of Level 1 Art. 6-9 (Not for consultation)	Specific issues regarding tailor made managed portfolios	Clarification of definition
Definition of Article 8 and Article 9 products (for consultation on level 2)	Unclear definition	Clarification on definitions of SFDR art. 8 and art. 9 'products' or MiFID 'instruments'

Article	Isssue	Solution
Level 2 Article 1.	Narrow interpretation of "fossil fuel"	Follow the definition by Eurostat
Level 2 Article 4 (referring to SFDR art. 4)	Table 1: non-alignement with level 1, data issue, always considering PAI's	Drastically reduce table one. Focus on 1) material and 2)

		available data. Possibly: phased in approach
Level 2 Article 5	Unclear definition of 'language customary in the sphere of international finance'	Clarification of definition
Level 2 Article 6	Historical comparison of principal adverse impact	
Level 2 Chapter II-IV (referring to SFDR art. 8-9)	Differences between MiFID "financial instrument" versus SFDR "financial product". Interpretation issues around art. 8/9 products.	
Level 2, Chapter II ('Table 1')	Non alignment with level 1, non-alignment with international standards	Align with international standards as described
Level 2 Art. 11	Definition of "make available	Clarification of definition
Level 2 Art. 12	Confusion on the scope in terms of financial products	Clarify 'products' in scope
Level 2 Article 14 para 1b and Art 16	Information to be provided as in art. 16 when "no sustainable investment objective"	Clarification of requirements
Level 2 Article 19	Derivatives	Exclusion of derivatives
Level 2 Article 53	First date of publication	Change wording, align with taxonomy timelines

Level 1

1. **Definition of Level 1 Article 2(17)** of the **Disclosure Regulation defines a sustainable investment as an investment in an economic activity that contributes to an environmental objective or a social objective**. Although not for discussion in this RTS CP, we believe it is worth mentioning that such investments must not significantly harm any of those objectives. In addition, companies where money is invested in must follow good governance practices, particularly with respect to sound management structures, employee relations, remuneration of staff and tax compliance. We would like to highlight that the above definition provides examples of what can be considered an environmental objective but, **in theory, it is the Delegated Acts of the Taxonomy Regulation, which are yet to be finalised, that will define an environmental objectives in more details.**

Furthermore, as described under the general issues as well, we **would like to see clarifications on the overlap between the Taxonomy's DNSH-criteria and the Principle Adverse Risk Indicators from the Disclosure Regulation.**

2. **Definition of Level 1 Article 2 (22)** (Sustainability Risk). Although not for discussion in this RTS CP. **The definition of sustainability risk is rather vague and ambiguous as the words "*potential negative impact*"** might lead to different interpretations. This could create confusion for FMP's who will have to spend more time and resources to assess potential impacts on their investment portfolios. As Recital 14 SFDR mentions this concept is to be specified in sectoral legislation and delegated acts and regulatory technical standards adopted pursuant to it.

3. **Definition/Scope of Level 1 Art. 6-9**
   Our main technical issue with the Disclosure Regulation, is the scope of art. 6-9. It is clear from level 1 that discretionary managed (or 'tailor made' portfolios) are in scope. We would like to underline the difficulties regarding managed portfolio's (some of which mentioned by ESAs). **As managed portfolios have similarities to funds, they were probably included in the scope of the Disclosure Regulation**. They therefore have the same difficulties as funds in obtaining data for the underlying assets. The FMP needs additional information from the underlying funds and stocks they invest in (with subsequent issues as mentioned before re. NFRD and foreign securities).

   An additional problem for tailor made portfolio's are summed up by the ESA's in the CP, for example additional costs for individually managed portfolios and security issues (i.e. regarding GDPR and bank secrecy laws). Banks are concerned with the proposals regarding publication of information on individual portfolios on the webpage since it would be in contravention with bank secrecy laws and also be very burdensome and costly from an administrative perspective as well as of little interest to clients.

4. **Definition of Article 8 and Article 9 products.** We have questions around the definitions of both 'promoting ESG characteristics' and 'Sustainable Investment as its objective'. Is an art. 9 product per se an art. 8 product as well? And as the definition of sustainable investment is rather vague (and not linked to the taxonomy in the SFDR), what is the precise definition of an article 9 product?
   Art. 8: where a financial product promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics. What is the definition of 'promoting' an 'ESG characteristic'?

Level 2

5. **Level 2 Article 1.** We disagree with the narrow interpretation of "fossil fuel" in the definition in article 1(1). In our view, "fossil fuel" for compliance with the SFDR must follow the definition by Eurostat: "Fossil fuel is a generic term for non-renewable energy sources such as coal, coal products, natural gas, derived gas, crude oil, petroleum products and non-renewable wastes. These fuels originate from plants and animals that existed in the geological past (for example, millions of years ago). Fossil fuels can be also made by industrial processes from other fossil fuels." Any deviation from commonly used definitions in the European Union would be highly

confusing, for investors, for companies that would be required to report two different costly sets of information, and for monitoring the EU's environmental footprint in statistics.

6. **Level 2 Article 4** If the information as set out in the Annex 1 is not available, because investees are not able to provide the information, FMP's shall make reasonable efforts to obtain the relevant information. Where no information can be found, FMP's shall use best estimates based on reasonable assumptions. FMP's might be very reluctant to make estimations and assumptions. As mentioned before, **as long as 'producers' of investment products are not legally required to provide information regarding to the ESG factors, it is not legitimate to put the obligation to provide the same information on the distributors**. That's why it is key that the revised NFRD will require from investees limited and relevant BUT mandatory disclosure (cf. EBF answer to the NFRD consultation). Ultimately, this could encourage distributors not to consider adverse impacts of investment decisions on sustainability factors, according to SFDR article 4(1b), thus being negatively perceived by investors, regarding information that they do not own or are not able to obtain it.

7. **Level 2 Article. 4** Regarding the list of adverse impacts: FMP's shall adopt a risk-based approach to assess which adverse impacts identified qualify as principal. This assessment and prioritisation shall be based on the probability of occurrence and severity. The definition of a principal adverse impact under the SFDR should be clarified regarding the materiality underneath and the needed assessment by FMP, taking due the size nature and scale of their activities, as mentioned in SFDR recitals 12 and 18 and Article 4 (1).
The proposal that the indicators in Table 1 (Annex 1) always lead to principal adverse impacts irrespective of the value of the metrics, might not seem reasonable, given that, we would be considering that irrespective of the value of principal adverse impact indicators, every FMP has to consider that minimum set of principal adverse impacts.

   In addition, the mandatory principal adverse sustainability impacts as envisaged in article 6 seems to be contradictory with the purpose of informing investors of principal adverse impacts of investment decisions on sustainability factors, where they are considered as such by FMP (SFDR article 4(1a)).

   Furthermore, we also do not understand how this could be move forward if a FMP does not consider adverse impacts of investment decisions on sustainability factors as it is envisaged by article 4(1b). A FMP which considers adverse impacts of investment decisions on sustainability factors would have a minimum set of principal adverse impacts to show, even if with the lowest values for such indicators (e.g. among peers), in spite of others, with worse numbers, might not consider adverse impacts. One could ask if this is could disincentivize FMPs to consider adverse impacts of investment decisions on sustainability factors, as envisaged by SFDR article 4(1a).

   We also believe there is inconsistency of headlines regarding Art. 4(2d) and Art. 8. We ask the ESA's to align these headlines.

8. **Level 2 Article 5**. Language of the summary: The due diligence policy itself, shall be accompanied by a summary ”provided in, as a minimum, at least one of the official languages of the home Member State of the financial market participant and, if different, in a language customary in the sphere of international finance”. We consider that this concept should be clarified.

9. **Level 2 Article 6**: historical comparison of principal adverse impact disclosures up to ten years is potentially excessive for items that are constantly and rapidly evolving

   We understand the motivation behind the possible historical comparison of principal adverse impact disclosures up to ten years, but this has to be well designed in order not to prejudice the comparison in such a long term period.

   Eventually there could occur serious problems with data comparability among years given the expected developments/improvements in ESG disclosures. When companies start to disclose or improve their own disclosures this will have an impact in the analysis of such information in a prolonged period, hurting comparability and any kind of conclusion of improvement/stagnation in the quality and range of such data provided by FMP.

10. **Financial instrument (MiFID) vs. Financial Product (SFDR)**.
   In general the difference between the term “financial instrument” according to MiFID and the term “financial product” according to the SFDR causes confusion. As financial products contain different financial instruments, but manufacturers of financial instruments are not generally obliged to disclose sustainability related information, it will be difficult for financial market participants offering financial products to obtain the necessary data.

   We would also like to comment that, there are inconsistencies between the MiFID II definition of “sustainability preferences”, as submitted under public consultation, and SFD art. 8 and art. 9 (question 16) definitions. EBF members find that this new definition which refers to “financial instruments”, to SFDR article 2(17) or indicators have made things even more confusing than before.

   Strictly seen, stocks are no financial ‘products’ and have no ‘manufacturer’. Stocks form a critical component of most portfolios, but cannot be considered as products and therefore not qualify as either an art. 8 or art. 9 product. A managed portfolio or a fund, that are both in scope of SFDR requirements, need information of the underlying stocks. These stocks in turn, are not considered as financial products and thus do not fall under the SFDR. In addition, smaller issuers, as well as issuers in registered non-EU jurisdictions are not subject to the NFRD disclosure requirements. This leaves FMP’s rather in the dark on the ESG characteristics of the underlying securities.

   As long as the ‘producers’ of MiFID instruments are not legally required to provide information regarding to the ESG factors, it is not legitimate to put the obligation to provide the same information on the distributors. In this context it seems that, if MiFID instruments (like stocks) are offered directly to the investors without the intervention of an investment firm, the ESG-factors do not have to be disclosed.

11. **Level 2, Chapter II (‘Table 1’):**

The definition of a principal adverse impact is not clear under the SFDR, but there are some useful references to establish the boundaries of such concept, namely the materiality underneath and the needed assessment by FMP, taking due the size nature and scale of their activities, for example recital (12) and (18)

SFDR Article 4 (1) also supports the views provided in these recitals given that "*financial market participants shall publish and maintain on their websites: (a) where they consider principal adverse impacts of investment decisions on sustainability factors, a statement on due diligence policies with respect to those impacts, taking due account of their size, the nature and scale of their activities and the types of financial products they make available*".

Therefore, **the proposal that the indicators in Table 1 (Annex 1) always lead to principal adverse impacts irrespective of the value of the metrics, does not seem reasonable**, given that, we would be considering that irrespective of the value of principal adverse impact indicators, every FMP has to consider that minimum set of principal adverse impacts.

The mandatory principal adverse sustainability impacts as envisaged in article 6 seems to be contradictory with the purpose of informing investors of principal adverse impacts of investment decisions on sustainability factors, where they are considered as such by FMP (article 4(1a)).

Furthermore, we also do not understand how this could move forward if a FMP does not consider adverse impacts of investment decisions on sustainability factors as it is envisaged by article 4(1b). A FMP which considers adverse impacts of investment decisions on sustainability factors would have a minimum set of principal adverse impacts to show, even if with the lowest values for such indicators (e.g. among peers), in spite of others with worse numbers, choose not to consider adverse impacts. One could ask if this could disincentivize FMPs to consider adverse impacts of investment decisions on sustainability factors, as envisaged by article 4(1a).

As a minimum standard, the ESAs could align the metrics in the Annex 1 Table 1 with references to the main relevant international standards and frameworks, included[1]:

- ✓ Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)
- ✓ Global Reporting Initiative (GRI)
- ✓ Objectives of Sustainable Development (SDGs)
- ✓ Corporate reporting dialogue
- ✓ Climate Disclosure Project (CDP)
- ✓ Climate Disclosure Standards Board (CDSB),
- ✓ Sustainability Accounting Standards Board (SASB)
- ✓ International Integrated Reporting Council (IIRC)
- ✓ Eco-management system EMAS
- ✓ United Nations Guiding Principles on Business and Human Rights (UNGPs)
- ✓ OECD Guidelines for multinational enterprises

[1] Although we also envisaged in our NFRD consultation reaction, that this list is non-exhaustive and – at the moment – not fully sufficient.

- ✓ Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)
- ✓ ISO 26000 – Social Responsibility

As far as it regards the reference to the NACE (Nomenclature des Activités Économiques dans la Communauté Européenne) we believe it is necessary to provide a matching table to the economic classifications used in practice by the financial world. Generally speaking, 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 (EU) 2019/2089.

This is important because it maintains consistency and reliability in the data. The climate transition benchmark handbook in Annex b lists these tables. This directly affects the data providers that will have to prepare their systems and align with the NACE classification, on which all sustainable taxonomy is based.

12. **Level 2 Article 11. Definition of "make available"**: There is no formal definition in the SFDR as to the meaning of 'make available'. Further clarification will be required from the ESA's, including as to whether it is limited to active marketing by the FMP, or whether it also includes distribution of a FMP's products through third parties, or products sold exclusively in response to reverse enquiries.

    In short, we would consider a content "made available" when posted on a website in a way that is easily detectable and user friendly for the final customers.

13. **Level 2 Article 12.** We also believe it is important to **clarify the scope in terms of financial products** covered by the financial adviser adverse sustainability impacts statement as: a portfolio managed; (b) an alternative investment fund (AIF); (c) an IBIP; (d) a pension product; (e) a pension scheme; (f) a UCITS; or (g) a PEPP.

    We expect that the same clarity and timeline is provided to the financial adviser adverse sustainability statement referred to in Article 12 of the draft RTS as:
    - according to Article 2 (12) of SFDR 'financial product' means: (a) a portfolio
    - the catalogue of products under investment advice is much larger, including any type of financial instrument;
    - according to Article 6 (2) of the SFDR financial advisers shall include descriptions in pre-contractual disclosures of: (a) the manner in which sustainability risks are integrated into their investment or insurance advice; and (b) the result of the assessment of the likely impacts of sustainability risks on the returns of the financial products they advise on;
    - according to the proposed amendments to Article 52 of MiFID II Delegated Regulation 2017/565 investment firms shall provide a description of: (a) the types of financial instruments considered; (b) the range of financial instruments and providers, analysed per each type of instrument according to the scope of the service; (c) when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis; (d) the factors taken into consideration in the selection process used by the investment firm to recommend financial

instruments, including risks, costs and complexity of the financial instruments, including any sustainability factors.”;
- all the above mentioned types of disclosure must be consistent and coordinated.

14. **Level 2 Article 14 para 1b and Art 16** “no sustainable investment objective”: this sentence could be confusing for customers especially with regard to the information provided in Art 16 para 2. A positive wording would be better e.g. “This investment only promotes environmental and/or social characteristics (and is no sustainable investment in the meaning of the EU-Taxonomy).”

15. **Level 2 Article 19**: it would be necessary to clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable (“admitted derivatives”). We believe exclusion of derivatives at this point in time should be considered by the ESA’s.

16. **Level 2 Article 53** of the draft RTS is not clear. Specifically, it is not fully clear what it is required by stating: ”In respect of a financial market participant that first considered the principal adverse impacts of its investment decisions before 1 March 2021, from that date until 30 June 2022, by way of derogation from Article 4(1), that financial market participant shall publish the information in Articles 5 to 10 except for the information that relates to a reference period”. In our view, taking into account that Article 4 of the SFDR shall apply from 10 March 2021 and that the transparency of adverse impacts have been conceived as ex-post quantitative reporting on investments made in the previous year, all financial market participants should begin to consider the principal adverse impacts of investment decisions on sustainability from 10 March 2021 and publish the first sustainability impact statement by 30 June 2022 referred to the previous fiscal year, to be issued on base June year by year.

    This interpretation, in addition to being more compliant with the Level 1 text, would allow to better align the timing of entry into force of the SFDR with those of the Taxonomy Regulation, NFRD and on MiFID II amendments. Which would also allow financial market participants to operate with greater clarity and having available more useful elements for the correct fulfillment of the new disclosure requirements.

    We therefore strongly suggest to evaluate further the objective and wording in Article 53 of the draft RTS in order to clarify exactly the timeline of application of the financial market participant adverse sustainability impact statement.

III - ANSWERS TO THE CONSULTATION PAPER

Question 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?

No, we don't agree with the approach proposed.

First of all, we don't agree that the indicators in Table 1 always lead to principal adverse impacts, because:

- Indicator 1 is not related to invested capital. Large financial market participants will therefore show higher emissions.
- It is not checked whether an indicator is "material" for a sector or company. For example, it is asked whether a company has a Deforestation Policy (indicator 11). Companies for which this is not relevant will not have such a policy. According to Table 1, this in turn, can be qualified as a principal adverse impact. **(Please also see the paragraph materiality, in our answer to question 11)**
- Numbers are not always comparable. An extreme example forms a utility company that could reduce emissions from 200 to 100 units and thus complies with the Paris Agreement Reduction Pathway (positive). But a gym chain that has emissions of 100 units is not doing well. So the number 100 says nothing about the underlying risk. **(Please also see the paragraph incomparability, in our answer to question 11)**
- In order to promote the transition, investments must also be made in "polluting" sectors that then reduce their emissions over time (compare Benchmark Regulation). This transition element is not reflected in this number. **(Please also see our general remarks sections, on cross-sectoral legislation)**
- The numbers themselves have little meaning for the (retail) customer. This will have to be placed in context. **(Please also see our general remarks sections, on information overload for retail investors)**

Opt-in regime

We do not see how an opt-in regime could be useful for end-investors. First of all, the underlying methodologies of the table fields are non-identical and therefore hardly comparable. Second, with the opt-in possibility firms are required to minimally add one indicator from table 2 and one indicator from table 3. This means, that in reality most firms will not disclose the same indicators from table 2 and 3 as they have a choice of freedom. This means the aggregate for an investor is hardly comparable (note: if the same key indicators are disclosed, their underlying methodologies are still possibly non-identical and therefore non-comparable). The phasing-in of several key indicators from table 1 seems more feasible.

Timing

While Chapter VI art 53 states:" In respect of a financial market participant that first considered the principal adverse impacts of its investment decisions before 1 March 2021, from that date until 30 June 2022, by way of derogation from Article 4(1), that financial market participant shall publish the information in Articles 5 to 10 except for the information that relates to a reference period.", it is not clear why the formal inception is march 2021

when the first disclosure document will refer to the previous fiscal year and will be issued rolling on base June year by year.

Question 2: 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?

Aggregated principal adverse impacts have no added value for individual investors

The proposed level 2 text is a one-size-fits-all approach that does hardly differentiate between the size, nature and scale of FMP's and the types of products they make available.

Accordingly to Article 4 of the SFDR, which is entitled "Transparency of adverse sustainability impacts at entity level" and to what is reported on page 14 of the consultation paper "In order to promote comparable disclosures at entity level, the ESAs have proposed a reporting template containing principal adverse impacts in Table 1" financial market participant adverse sustainability statement should be conceived as a disclosure at entity level.

If this is the case, it means that Data on Table 1 should be represented per participant and not per product. Consequently, it should report all the detailed quantitative information proposed by Annex I to the draft RTS regarding to all financial products manufactured by the same entity without any possibility to take into account the relevant differences existing between each product. At entity level a financial market participant can decide to offer financial products promoting, among other characteristics, environmental or social characteristics, or a combination of those characteristics, financial products having sustainable investment as their objectives and not sustainable financial products.

We wonder which is the utility of such quantitative complex disclosure both for:

- end-investors, who could not only understand the overwhelming amount of aggregated information, but most of all would simply not be interested in it, as they want to understand the specific sustainability nature of each financial product they invest in (reversibly, end investors are not or less interested in strategies they do not invest in);
- financial advisers as they have to select financial products to advice on on the basis of their specific sustainability nature.

The SFDR covers a wide range of financial products and financial market participants, including, i.e. PEPPs, AIFMs, UCITs and investment firms authorized under MiFID II providing portfolio management. Bearing the end-investor in mind, a disclosure on entity level might make sense for an IORP, as their AUM is bulk and different underlying pension schemes might not differ greatly in their asset allocation. Whilst for individual investor (opposite to their collective pension), they are interested in the material adverse impacts of products they invest in.

From a portfolio management perspective, disclosure on an entity level will in most cases lead to the disclosure of principal adverse impacts irrespective of the value of the metrics. In our view investors are interested in the disclosures regarding the products and services they invest in (reversibly, investors are not or less interested in strategies they do not invest in). Investors therefore, are interested in product-specific disclosures and less in aggregated company disclosures. For the latter, investors should consult the NFRD disclosures, not the SFDR disclosure by FMP's that offers investment services.

Disclosing aggregated amounts to all investors might even lead to a confusing overview for individual investors (i.e. a client that has invested in non ESG-related products, is disclosed

an ESG impact or a client that has invested in ESG related products ex-fossil fuels, will be showed the principal adverse impacts regarding fossil fuels that the investment firms have aggregated on company level).

We therefore believe that:

- Table 1 should be conceived differently and be drastically reduced in size;
- it would be necessary to differentiate by product type: the data required by an entity level that provides the individual portfolio management service should be quite different from an asset management company that establishes and manages investment funds.

Question 3: 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?

Yes. We believe that it is useful to report on product-level in line with Art. 8 and Art. 9, as we outlined in other sections of this CP. Furthermore, it is also possible to introduce some key indicators for products outside the scope of Art. 8 and Art. 9.

We believe that the "greener" the product the more information should be provided. Under the current proposals, a large FMP (>500 employees) will automatically have to disclose a complete table 1, whilst it may not offer any ESG products or services. This does not seem very proportionate. That's why we propose to restrict the list of key indicators to be disclosed.

Furthermore, credit institutions would totally depend on a restricted number of info providers, of which, the 3 largest in size are all characterized by being controlled by US capital. The present inability of the market to provide accurate and reliable numbers on a plethora of indicators suggests that market participants will likely be encouraged to not report on too many of those indicators as expressed by RTS art 7.2.

Question 4: Do you have any views on the reporting template provided in Table 1 of Annex I?

Non-alignment level 1 with level 2

The SFDR requires FMP's to disclose 1) policies and 2) actions. Table I, on the other hand, is mostly about indicators. An indicator is not a policy and in our opinion also not a good representation of a policy. We believe this set of indicators does not fit well with the mandate the ESA's have been provided with by the level 1 text.

Decrease the number of key indicators

First of all, we believe disclosure should take place on a product by product basis, and to a lesser degree on entity level. If disclosure on entity level has to take place, we believe Table 1 should be drastically minimised, and Table 2 and 3 should be deleted (see opt-in paragraph in our answer to question 1). Better is to assess the most viable and important indicators, where the data challenge is of least concern. With the current proposal, Table 1 contains too many indicators. The focus should be on a few indicators, that are meaningful to end-investors. More information is, in this case, not always better. It should be about understandable information. Furthermore, we believe the ESA's should test with (retail) clients what information adds value for them. As mentioned before, more detailed information can be provided in disclosure on product-level.

It seems appropriate to propose a phased introduction of only 5-10 (to be selected) indicators to be reported in the first step (regarding consistency principle). These indicators should be of general relevance and already have good data coverage.

Taxonomy alignment

Elements of the taxonomy that have already been developed (i.e. climate change mitigation and adaptation) will be integrated into law by December 2020, becoming effective a year later. As other environmental objectives (like sustainable use of and protection of water and marine resources, transition to a circular economy, waste prevention and recycling, pollution prevention and control, protection of healthy ecosystems) are still under development, we do not expect these taxonomy objectives to become effective before 2023. The current taxonomy does not cover social activities. Given the current context, we believe that the development of the social taxonomy not only is important but it should be brought forward. It is important to note that the Taxonomy Regulation contains provisions for Minimum Safeguards. The minimum safeguards in the taxonomy were designed to ensure that Taxonomy activities do not harm social objectives – in essence, a form of DNSH to social aspects (plus a range of governance issues). These build from several frameworks including the RBC guidelines referenced in the Disclosure Regulation concept of Principal Adverse Impact. The inclusion of the OECD MNEs Guidelines and the UN GPs as a framework to define minimum safeguards effectively ensures high and ample social standards. The OECD MNEs are the only government-backed and the most comprehensive instrument covering all major social and governance risks. Therefore those financial products that are taxonomy aligned by default have no exposure to adverse impacts – social and environmental.

Definition of fossil fuel

We disagree with the narrow interpretation of "fossil fuel" in the definition in article 1(1). In our view, "fossil fuel" for compliance with the SFDR must follow the definition by Eurostat: "Fossil fuel is a generic term for non-renewable energy sources such as coal, coal products, natural gas, derived gas, crude oil, petroleum products and non-renewable wastes. These fuels originate from plants and animals that existed in the geological past (for example, millions of years ago). Fossil fuels can be also made by industrial processes from other fossil fuels." Any deviation from commonly used definitions in the European Union would be highly confusing, for investors, for companies that would be required to report two different costly sets of information, and for monitoring the EU's environmental footprint in statistics.

Proportionality

Policy option 1.3 (detailed rules on *all* adverse impacts) would require very granular, detailed information that is mostly not available, or meaningful yet (see table below). The ESA's also believe that this is the most resource intensive and expensive option for FMP's. This very strict and granular approach, leaves little room to the initial proposed proportionality in the level 1 text. We believe that proportionality is essential in order for smaller market participants to be able to implement the disclosure requirements. Although the SFDR text mentions proportionality, we would like to highlight again that for smaller market participants (and especially, those that just exceed the 500 employee limit) it might be very costly to implement all the necessary requirements.

Furthermore, the quality and availability of data will become more important with this regulation. Parties with a large budget can invest more in data providers, and can therefore provide more reliable data. Smaller parties must make choices for the amount of data and

the reliability of the data. This may be at the expense of reliability, and thus at the expense of the comparability of data between FMP's. We don't believe this is desirable. We are in favour of the EU providing a database of all the data for all companies that we need to report on if this data is to be released. In this way, all asset managers have the same data and the reports are more comparable. Recently the EBF, together with five other financial industry associations, was calling for the European Commission to establish a common ESG data register in the European Union to enhance the availability of relevant and reliable ESG data, facilitate disclosure and scale-up sustainable funding.[2]

Materiality of the data

Table 1 does not take into account "materiality" of an indicator for a company or sector. We have also responded to this issue in our answer to questions 11. Please find in table 2, below, a more elaborate answer per principal adverse sustainability indicator, and the subsequent metric the ESA's propose.

[2] EBF: a centralized register for ESG data in EU: EACB, EBF, EFAMA, ESBG, IE, PE joint letter. (hyperlink)

Table 2.

		Adverse sustainability indicator	Comments
Environmental	Greenhouse gas emissions	1. Carbon emissions (broken down by scope 1, 2 and 3 carbon emissions - including agriculture, forestry and other land use (AFOLU) emissions - and in total)	See our answer to question 11. Data for scope 3 is not available now. Current methodologies can lead to double counting. When the methodology is refined and data is available this can be included in the future. Meanwhile, Scope 3 could be envisaged with a selection of relevant sectors (Energy/Power, Oil & Gas, Shipping, Automotive, Construction…) and a phase in approach by sectors (starting with energy/power for instance) and as far as methodologies are developed. Scope 1 and 2 are not always available, even scope 2 will lead to double counting. Furthermore we do see from year to year big differences in reported emissions from companies.
		2. Carbon footprint	
		3. Weighted average carbon intensity	
		4. Solid fossil fuel sector exposure	Data is not available. Furthermore, we disagree with the narrow interpretation of "fossil fuel" in the definition in article 1(1). In our view, "fossil fuel" for compliance with the SFDR must follow the definition by Eurostat.
	Energy performance	5. Total energy consumption from non-renewable sources and share of non-renewable energy consumption	Data is not available. For 5-8 we would rather see indicators for % portfolio invested in sustainable energy with a 'visible trend'.
		6. Breakdown of energy consumption by type of non-renewable sources of energy	Data is not available. Doubts if companies themselves have insights in this breakdown
		7. Energy consumption intensity	Non-availability of data. Only a small selection of companies provides the GHG data to CDP. But that does not mean that energy consumption is available. Furthermore against what should it be weighted?

		8. Energy consumption intensity per sector	Not covered by most data rating agencies. We recommend to ask for the energy and electricity mix of our portfolios – overall - , which will provide a very good picture of where investors' investments in the energy sector look like rather than on the energy consumption description of all investees which is: a) extremely cumbersome and today impossible b) less meaningful as the key lies in the energy and electricity markets.
	Biodiversity	9. Biodiversity and ecosystem preservation practices	As there is no data, the share of all investments in investee companies that do not assess, monitor or control the pressures corresponding to the indirect and direct drivers of biodiversity and ecosystems changes, is 100%. For both 9 and 10 ESA's could ask what % in high risk companies that have policies in the field of soil degradation, deforestation (% certified forest products), sustainable palm oil (% certified palm oil) and perhaps also a % portfolio that invests in non-organic pesticides.
		10. Natural species and protected areas	Hardly any company will provide this information. Reliability is very questionable as well. So FMP's will have to make use of third parties who are going to investigate this and estimate it. Most of these companies are not listed. So data raters have to dig into the supply chain and then come up with unreliable, non-comparable figures.
		11. Deforestation	We suggest to change it to number of companies or % of investments that commit/have a policy on No deforestation, No peat, No Exploitation (NDPE) out of total number (or investments) that could be associated to the risk of deforestation (limiting it to a number of relevant economic activities). 11 is a typical example of materiality vs. sector. Most companies do not have a deforestation policy. As for many companies that is not relevant

			(e.g. Software technology company). So once you are solely invested in IT companies you score 100%.
	Water	12. Water emissions	A handful of companies have provided this data to CDP. Most data providers do not even provide assumptions or estimations.
		13. Exposure to areas of high water stress	A handful of companies have provided this data to CDP. Most data providers do not even provide assumptions or estimations.
		14. Untreated discharged waste water	Non availability of data.
	Waste	15. Hazardous waste ratio	Are companies under NFRD obliged to provide this data? We don't believe so. Relying on estimates has many limitations. Possibly better to focus on i.e. landfill waste and exposure to materials on the UN POP list (instead of hazardous waste ratio).
		16. Non-recycled waste ratio	Non availability of data.
Social	**Social and employee matters**	17. Implementation of fundamental ILO Conventions	Not available in most cases. If available, what does this data reflect? Are the companies with policies either good or bad? Or did the company just not have the resources to make it available to the public? Materiality issue is relevant for 17, 21 and 22.
		18. Gender pay gap	Non availability of data. Such calculation is not possible because: • Only very few companies disclose gender gap – namely companies from the UK, France and Spain where it is compulsory (other countries address the issue but not in their annual reporting). It shouldat the very least, be compulsory across the EU and one unified methodology provided. • But also what is consider as "pay", as "employee" and how the employee's pay is calculated varies from company to company, and

			within the few jurisdictions where it is mandatory. • Further, regulations varied in what "gender pay gap is and what is required to publish" e.g. in the UK companies with over 250 employees are required to publish any differences in salaries and bonuses between men and women within their organizations using 6 key figures including average gender pay gap as a mean average and as a median average, the same applies for bonuses but those are to be reported separately; French regulation provides a specific methodology for calculating the gender pay index using five indicators, each indicator is assigned a maximum score (being 100 the maximum score). Therefore, we will be adding apples to pears, and the total sum will be meaningless.
		19. Excessive CEO pay ratio	We would like to link questions 19 and 20 to engagement of FMP's. So for question 18, % voting against board remuneration. And for question 19, % board member (re) appointment. Then question 19 is not only about gender, but broader board diversity and also board independence.
		20. Board gender diversity	Is available, although not by all data providers.
		21. Insufficient whistleblower protection	Is available, although not by all data providers. Materiality issue is relevant for 17, 21 and 22.
		22. Investment in investee companies without workplace accident prevention policies	Is available, although not by all data providers. Materiality issue is relevant for 17, 21 and 22.

	Human Rights	23. Human rights policy	Is mostly only available for companies where human rights issues are an issue (i.e. material). So only high-risk sectors and/or companies are relevant to be disclosed.
		24. Due diligence	Is mostly only available for companies where human rights issues are an issue (i.e. material). So only high-risk sectors and/or companies are relevant to be disclosed.
		25. Processes and measures for preventing trafficking in human beings	Is mostly only available for companies where human rights issues are an issue (i.e. material). So only high-risk sectors and/or companies are relevant to be disclosed.
		26. Operations and suppliers at significant risk of incidents of child labour	Non availability of data. Furthermore, questions around the definition of the ESA's: what 'operations and suppliers' are to be included?
		27. Operations and suppliers at significant risk of incidents of forced or compulsory labour	Non availability of data.
		28. Number and nature of identified cases of severe human rights issues and incidents	Data is somewhat available, but in most cases unreliable.
		29. Exposure to controversial weapons (land mines and cluster bombs)	Data is available, but significant differences are observed between interpretations of data providers
	Anti-corruption and anti-bribery	30. Anti-corruption and anti-bribery policies	Materiality issue, this is only relevant for high-level risk companies/sectors.
		31. Cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery	Is more or less available with at least one data provider, though not ready to distribute. The wording of 31 is very complex. It would be better to focus on 'severe cases' only.
		32. Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws	Not readily available by at least one data provider. Furthermore, we question what time period should be used? I.e. the past year. If so, if you have to report a positive number here you just have bad luck.
		Table 2 and Table 3: we don't believe an opt-in policy is a good solution. Phasing in other indicators	

		compulsory in a later stage is a better alternative.	

Question 5: 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)?

No, we don't agree with the list of indicators and, in general, we do not recommend any other indicators.

List of indicators
As answered to other questions as well, Table 1 contains too many indicators. The focus of the ESA's should be on a few, meaningful indicators. More detailed information can be provided over time in disclosures on product-level. We reject the idea of a full list of ESG disclosures and subsequent adverse indicators at this point in time. A better solution would be to start with a relatively small set of indicators , for example indicators that connect rather well with the to-be-set up taxonomy. Phasing in other indicators over time is a more useful tool.

Our understanding is that the draft RTS go beyond the provisions of the level 1 text, and according to Art 4, financial market participants are only requested to provide a qualitative information on the points covered in this article. If this is a correct interpretation, there will be a strong case for quantitative indicators to be optional.
We favour an approach either of only qualitative indicators or an approach of a few mandatory under "comply or explain" or recommended indicators that might become compulsory over time, or basis, where the following criteria are taken into account:

- Availability and maturity of data
- Availability of a standardised methodology applied to companies
- Availability of a methodology to aggregate performance – and in their absence, disclosures breakdown by asset class (debt/equity).
- Demonstrated relationship between indicator at firm-level and real world impact.

We propose the following list of indicators (quantifiable) given their meaningfulness:

- Carbon footprint and GHG scope 1, 2
- Carbon footprint and GHG scope 3, with a selection of relevant sectors (Energy/Power, Oil & Gas, Shipping, Automotive, Construction…) and a phase in by sectors (starting with energy/power for instance) and as far as methodologies are developed
- General exposure to coal at an early stage (in terms of absolute metric tons and percentage of revenue).

We would like to add to the list the following non-quantifiable disclosures:

- Governance of sustainability within financial market participants
- Paris alignment/climate and ESG strategy at firm-level
- ESG Due diligence processes – identified cases and remediation actions.

We also favour disclosures in line with the OECD recommendations on due diligence for institutional investors.

EBF European Banking Federation

Materiality

As mentioned before. Table 2 does not take into account "materiality" of an indicator for a company or sector **(also see our answer to question 4).** We urge the ESA's to align the proposed indicators with the proposed 'double-materiality' standard in the NFRD.[3]

Data

Data on policy-indicators is available, but data on metrics is not widely available (low coverage). We and data providers only have access to this data if companies report on it publicly. Data coverage of companies in the EU may improve with the update of the NFRD, but this does not apply to companies outside the EU. With thousands of (potential) investee companies it is unrealistic to expect that FMP's can approach those companies actively.

Forward-looking climate scenario's

At this point in time, we don't see merit in including forward-looking indicators or the use of forward looking climate scenarios (as proposed in Art. 10). Our proposal would be to delete these climate scenarios.

Question 6: 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?

Although some FMP's might see merit in a relative measure of carbon emissions relative to the EU 2030 climate and energy framework, we believe it is – given the objections to Annex I at this point in time – premature to ask for relative measures of carbon emissions relative to the EU 2030 framework.

Furthermore, we wonder what is meant by 'relative to the prevailing carbon price'?

Question 7: 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?

In general, we agree with measuring both the share in companies without a particular issue and the share of all companies in the investments without that issue. Although we estimate that the outcome will be too complex for most clients to be fully understood and used.

Question 8: 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?

No, we do not believe more indicators should be added, because there are already (too) many indicators in Table 1. More information is not always better. It should be about understandable information. It should be tested with (retail) clients what information adds value for them.

Furthermore, we wonder what kind of indicators the ESA's have in mind.

[3] Please see NFRD CP (p.7-8, hyperlink)

Question 9: 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?

On the S and G more data (not hard data, but policies) seems to be available according to data providers. So we believe E, S and G matters should be included in the indicators from the start, if available and material.

Question 10: 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?

We should build up a database from March 2021 only, with no backward calculations required.[4] Historical comparison of principal adverse impact disclosures up to ten years is potentially excessive for items that are constantly and rapidly evolving. Although we could understand the motivation behind the possible historical comparison of principal adverse impact disclosures up to ten years, but this has to be well designed in order not to prejudice the comparison in such a long term period.

Eventually there could occur serious problems with data comparability among years given the expected developments/improvements in ESG disclosures. When companies start to disclose or improve their own disclosures this will have an impact in the analysis of such information in a prolonged period, hurting comparability and any kind of conclusion of improvement/stagnation in the quality and range of such data provided by FMP.

Question 11: 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?

The large amount of information to be disclosed in itself might lead to window dressing techniques (i.e. specific selection of underlying data). For example, the tendency to exclude a section of the population from sample analysis due to unavailability of data. This erodes the idea of randomness since the exclusion of a certain class of data is somewhat identical to collecting data from a subset of the population. The resulting parameter is therefore not representative of the population as a whole.

Data absence leads to nudging to certain investment styles or sectors

We have been informed by data providers that many of the requested data points are not available (**see also our table/response to question 4**). In certain areas, data might be available but only for certain, specific sectors. Depending on the focus of the portfolio, a company may or may not be able to report on this. In some cases, this turns out to be positive if companies cannot report on this, in some cases it is negative if you cannot. This can lead to portfolio managers with a specific focus being in favour or disadvantage under the proposed SFDR (for example, thematic investors). So that is rather a matter of luck, and can lead to unintended investor behaviour for certain investment styles of asset managers / portfolio managers. For example, for a highly concentrated portfolio in technological start-ups (have low relative CO2 emissions, no impact on land degradation, and the CEO does not receive a salary, but has a large option package).

[4] We believe backward calculations are not required before March 2021, according to RTS Article 6(2).

Data challenges

For many taxonomy activities the data required for the technical screening criteria is lacking because of limited corporate reporting. Both data providers and investors will have to use estimates, based on assumptions that give the end investor no certainty about the disclosed information and therefore, could be misleading. The TEG has also mentioned this in their last final report.

Another challenge is that many investors and data rating agencies use a different classification system than the NACE nomenclature of macro-sectors and economic activities used in the taxonomy. Therefore company reporting is often not according to NACE. Most data providers assess companies, not their economic activities and therefore the taxonomy does not align very well with the practical reality of data providers and rating agencies.

Materiality

Most ESG scores include determining which factors are *material* to a company's financial performance. This (double) materiality standard is also part of the proposed NFDR, and we do not see why the SFDR does not make any reference to the materiality of adverse impacts to specific companies.[5] How different parties use materiality in practice in the end however, is based on differences how materiality is defined and unveiled. Information is only of use when it is material to the company, to its shareholders, to society and the environment. We believe disclosing Table 1 on entity level does not qualify to all the before mentioned requirements.

Scope 1, 2, and 3 emissions.

Regarding Annex 1, Table 1, one of the mandatory indicators is "*Carbon emissions (broken down by scope 1, 2 and 3 carbon emissions - including agriculture, forestry and other land use (AFOLU) emissions - and in total*". According to Annex 1(f), (g) and (i), total carbon emissions, carbon footprint and carbon intensity are indicators that shall be calculated in accordance with formulas which considers investee company's scope 1, 2 and 3 carbon emissions.

However, while total carbon emissions are calculated with scope 1, 2 and 3 emissions, and should be broken down by scope, there is no indication if carbon footprint and carbon intensity should also be broken down.

It is widely recognized that scope 3 carbon emissions, which in some cases, constitutes for the majority of emission impact (eg car industry), are very difficult to obtain, and only few companies are disclosing such emissions (most of them focus on scope 1 and 2).

According to the consultation paper (page 14): "*The ESAs, taking into account the input received by the JRC and EEA, saw as the best approach to use a mandatory set of indicators to ensure a minimum level of harmonised assessment of principal adverse impacts of investment decisions on sustainability factors*".

Our concerns regard the inclusion of scope 3 by default, disregarding the balance between (i) incentivizing companies' disclosures on scope 3 and (ii) the need to be able to present lower carbon emissions. If such indicators are being designed to ensure a minimum level of harmonized assessment i.e. an improved comparison, among FMP investment decisions, as a large portion of companies do not disclose scope 3 emissions, such inclusion may

[5] Please see NFRD CP (p.7-8, hyperlink)

penalize the investments made towards companies that are actually disclosing scope 3 emissions. Such companies, which carbon emissions are lower than other companies, could in fact register higher emissions (scope 1, 2 and 3) than companies that only disclose scope 1 and 2 carbon emissions, and therefore be "discriminated" for disclosing the full range of scopes. So, when referring to indicators that measure carbon emissions, they should be broken down by scope, thus increasing comparability.

Furthermore, some FMP's already publish the CO2 footprint of companies (equity only). Not disclosing other 'adverse impacts' is justified given that other potentially interesting data are simply not available. Even with the current CO2 data, FMP's have encountered the necessary caveats. Partly, carbon emission data is estimated, but also over time FMP's have analysed rather large fluctuations in the CO2 data of a company itself. The use of CO2 footprint data (CO2 per market value) also benefits companies with high valuations. Fund managers who invest in highly valued companies, and who may therefore take more financial risk, have an advantage under the proposed SFDR.

	Availability	Quality and comparability	**Include in SFDR?**
Scope 1	Partly	Medium	**Yes**
Scope 2	Partly	Low	**Yes**
Scope 3	No	Low	**No**

At the moment there is no uniform methodology to calculate Scope 3 emissions. This leads to different interpretations and double-counting. We think that Scope 3 should therefore not be included from the start, but in the future Scope 3 could be included. In any case, the ESAs should consider a grace period before applying scope 3 in the compulsory disclosure requirements on carbon emissions.

If scope 3 will be included from the start in the SFDR, the ESAs should consider a grace period before applying scope 3 in the compulsory disclosure requirements on carbon emissions.

Policies

Data on policy-indicators is available, but data on metrics is not widely available (low coverage). We and data providers only have access to this data if companies report on it publicly. Data coverage of companies in the EU may improve with the update of the NFRD, but this does not apply to companies outside the EU. With thousands of (potential) investee companies it is unrealistic to expect that we can approach those companies actively.

It therefore seems that the process is subject to subjectivity, which means that the process of determining - and reporting on - impact is also experienced as complicated. The field of impact measurement is still under development and banks are mainly gaining independent research and experience.

Data incomparability might lead to window dressing

Research from several think-tanks shows that the ESG data rating agencies hardly every agree on the ESG performance of a company. It seems that the process of rating agencies is subject to subjectivity, which means that the process of determining - and reporting on - impact is also experienced as overly complicated. As SFDR regulation is aimed at FMP's

and not at rating agencies, the issue of incomparability is not solved as FMP's are still free to choose what data provider or rating agency they prefer.

Recent research of one of the biggest asset managers in the world found 'discernible differences in how ESG data providers source and acquire raw data. In addition to using traditional sourcing techniques to gather data that is disclosed by the company or is otherwise publicly available, ESG data providers use statistical models to create estimates for unreported data. These models are based on averages and trends from what the data provider views as similar companies and industry benchmarks. This is an example of how investors are incorporating judgement calls by the data provider into their investment processes. Each ESG data provider has developed a method to aggregate and weight particular ESG factors for its summary scores. Again, these are proprietary judgments made by each provider.'[6]

Venue shopping

FMP's will use data providers and data rating agencies. What data is used, is up to either the rating agency and/or user of the ratings. This could lead to ESG-rating 'venue-shopping': 'venue-shopping' refers to the idea that financial market participants might seek to avoid obstacles to the realisation of their requirements by looking for new rating agencies that, given the alternative data and methods, align better with FMP's preferences (for example, regarding costs or availability and not per se quality).

As most SFDR data points require very detailed information, they can only be retrieved at very high costs, at the same time this data will still turn out to be unreliable and non-comparable.

Some market leaders in the data-rating agency have declared recently, that there are no 'end-to-end solutions with respect to the taxonomy'. As the SFDR requirements see on even more data fields (i.e. broader scope, not only environmental but also social and governance indicators) and has a far more stringent timeline that has no phases (in contrast to the taxonomy), this makes March 2021 an impossible deadline for FMP's throughout Europe.

Question 12: Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?

On the one hand we believe that, if there are currently no mandatory templates for pre-contractual information and periodic reporting, they should not be introduced under this regulation. If those templates already exist, such as PRIIPs and UCITS KID, we prefer supplementing these with ESG information.

On the other hand the use of standard templates might proof to be the only way to avoid greenwashing. The templates also help to provide qualitative and comparable data. However, it is difficult to agree with reporting templates that are not yet available and which will be the subject of future consultation.

Consistently with our above remarks, we must underline the need to:

- avoid too complex templates;
- ensure that the required quantitative data must be linked to the taxonomy and the NFRD;
- ensure adequate timeline for financial market participants and financial advisers.

[6] 'The ESG Data challenge', SSGA march 2019 (hyperlink)

We believe these outstanding drafts of disclosure templates are risking the markets ability to implement on time. We ask the ESA's to provide outstanding drafts as soon as possible to ensure realistic timeframe for the market to implement

Question 13: If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?

It should be an open but limited template, leaving room for the different interpretations of sustainability. The elements as proposed in the RTS should be included in the pre-contractual and periodic templates, when having a focus on transparency of the methodology used in order to allow to maintain different strategies and interpretations

Question 14: 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.

It makes more sense to do this on a product by product base, rather than aggregate.

The templates will not result in comparability between products of different suppliers. This depends on the methodology behind the metrics and the data provider used.

Question 15: 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?

As investors are already overwhelmed by the amount of information provided to them, before they are able to invest via advisory or discretionary services, we do think they should not be obliged to go through more information. We also think there has to be a balance between pre-contractual and website information with the more detailed information only to be mentioned on the website in order to avoid an information overload in the pre-contractual phase. Before executing the transaction, the investor should be informed on a sufficiently high level basis in order to take an informed investment decision without being overloaded with information. We should also link these requirements to the additional requirements in light of the adaptations to MiFID II and IDD.

For banks that are both an FMP as well as a FA, the requirements how to position the information on websites entail the risk of information overload while at the same time both need to ensure the comprehensibility of the disclosure for the consumer

Question 16: 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.

No, we don't believe the differences between Article 8 and Article 9 are sufficiently captured. We have questions around the definitions of both 'promoting ESG characteristics' and 'Sustainable Investment as its objective'. For example:

- According to the Background Analysis the ESA's consider that the broad concept of 'ESG integration' should not be enough to justify that a product promotes environmental or social characteristics. We agree with this approach. FMPs should be allowed to continue to apply different ESG approaches for products that do not fall under Art. 8 or Art. 9. These approaches may vary in intensity. It is unclear where ESG Integration ends and promotion of environmental or social characteristics start. Leading should be if the FMP promotes those products as Art. 8 or Art. 9.

- Art. 8: where a financial product promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics. What is the definition of 'promoting' an 'ESG characteristic'?
- Promoting is a non-defined qualification. What defines as 'promoting'? For example, adhering to PRI or UN Global Compact on an entity level, could implicate that all products that the entity makes available, are Article 8 products. Or, if exclusion of certain underlying stocks (like cluster ammunition, that has to be excluded by law) leads to the 'promotion' of ESG characteristics, this automatically would lead to qualifying as an Art. 8 product.
- And as the definition of sustainable investment is rather vague (and not linked to the taxonomy in the SFDR), what is the precise definition of an article 9 product?
- Is an art. 9 product per se an art. 8 product as well?
- We would also like to comment that, there are inconsistencies between the MiFID II definition of "sustainability preferences" and SFDR art. 8 and art. 9 (question 16) definitions. EBF members find that this new definition which refers to "financial instruments", to SFDR article 2(17) or indicators have made things even more confusing than before.

Because of the unclear definitions, FMP's might make selectively use of the vagueness in definitions. Unintentional, products might fall under article 8. On the other hand, intentional FMP's might try to evade article 8 and article 9 disclosures whilst still pursuing ESG integration (but not actively 'promote' it).

Article 8 and 9 products which include environmental objectives (in our opinion, all art. 8 and 9 products), are required to disclose against the taxonomy. All other art. 8 products (in our opinion: none) and non-ESG products can opt to disclose against the taxonomy or provide a disclaimer. In that sense, without guidance from the taxonomy, disclosing for these products will proof to be almost impossible (not leading to any comparability). Measuring the environmental performance of an equity of bond fund, or other products, is one of the main goals of the taxonomy. We believe alignment is key, and that is certainly not the case with current timelines.

Question 17: Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?

Question 18: 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?

Yes, this could be misleading to consumers as the underlying methodologies, reporting etc. are not standardised.

Graphical representation should be tested with (retail) clients. What are these consumers looking for? What do they understand? What is comprehensible for them? (**please also**

see the paragraph 'information overload' in the general remarks section of this paper).

Question 19: 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?

We don't agree with the definition of the solid fossil-fuel sector. As the definition (and implications of disclosure) is not clear yet for the fossil fuel sector, we believe it to be premature to capture other sectors such as nuclear energy.

We disagree with the narrow interpretation of "fossil fuel" in the definition in article 1(1). In our view, "fossil fuel" for compliance with the SFDR must follow the definition by Eurostat: "Fossil fuel is a generic term for non-renewable energy sources such as coal, coal products, natural gas, derived gas, crude oil, petroleum products and non-renewable wastes. These fuels originate from plants and animals that existed in the geological past (for example, millions of years ago). Fossil fuels can be also made by industrial processes from other fossil fuels." Any deviation from commonly used definitions in the European Union would be highly confusing, for investors, for companies that would be required to report two different costly sets of information, and for monitoring the EU's environmental footprint in statistics.

There is also much debate on nuclear energy, even within the EU there is no clear answer if this is or is not sustainable. Therefore, we don't think at this point in time FMP's should report on this separately.

In any case it is important to bear in mind that:

- SFDR is related to "sustainable investment", and, therefore to "an investment in an economic activity that contributes to an environmental objective, (…) or an investment in an economic activity that contributes to a social objective, (…) or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance";
- Article 8 refers to products promoting "environmental or social characteristics, or a combination of those characteristics". A product could be defined ESG (and then subjet to SFDR) even if it pursues only social ojectives. We don't understand the reason to make an environmental indicator (exposure to solid fossil-fuel sectors) mandatory for any ESG product, even for those potentially pursuing only "S" (social) and/or "G" (governance) objectives.

Question 20: Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?

No, they do not. The product disclosure rules do not take into consideration the difference between products. Much more clarity is required on this.

The SFDR should be adjusted to the type of product, for example different disclosures for different products like funds-of-funds, multi-assets funds, government bond funds.

Moreover it is necessary to analyse better the specific characteristics of the individual portfolio management which under the SFDR is considered as a "financial product", but which is de facto an investment service provided to several individual investors taking into account their specific needs and investment objectives and which therefore pertains to several portfolios individually managed.
What does the precontractual and web-site product disclosure should regard in this case must be balanced taking into consideration that there isn't a real "product". Moreover making disclosures on a website for individual mandates has no sense and could contravene to GDPR and bank secrecy laws.
Furthermore, underlying instruments consist both from direct investments (stocks and bonds) and from funds. How will banks have to combine the information?
Regarding underlying investments in funds, there is no look-through approach and capturing the necessary information from asset managers could be extremely burdensome and costly with no commensurate benefit for end clients.

Each fund manager has to make available information per fund. For a Fund mandate banks would have to present this information at aggregate level. But:

- Each fund manager can select a different indicator for from Annex I table 2 & 3
- Each fund manager can use a different data provider (comparability?)
- How can banks collect the data from the different websites?
- Fund managers have the same timelines as banks. That means there is no time left for banks to analyse this issue and to implement a methodology, liaise with providers and set up data flows and new processes.

Stocks (like bonds) are also a critical component of a lot of portfolios; they cannot be considered as products and therefore not qualify as either an art. 8 or art. 9 product. If a wealth management portfolio does apply to the SFDR requirements, FMP's need information on the underlying stocks. These stocks in turn, are no products and thus do not fall under the SFDR. This leaves FMP's rather in the dark on the ESG characteristics of the underlying securities.

For end clients, information on the strategy, the investment universe and the investment process of the mandate are prevailing.

Regarding portfolio management, a specific approach which make sense for end-clients and with a balanced cost for FMPs/ benefit for end-clients should be carefully studied and tested. Also a specific timeframe should be granted.

Last point, in relation with Multi-option products (MOPs), it should be clarified that where a MOP qualifies under Article 8 or 9 of the Regulation, Articles 14-21 and 23-31 of the RTS do not apply, and MOPs manufacturers would only need to comply with Article 22 and 32 of the RTS. It would also be helpful for the RTS to explicitly state that this means no information on the product wrapper would need to be disclosed.

Question 21: 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?

In general, we agree with the proposed articles. Both articles refer to good governance. We think that this captures minimum requirements that should also apply to Art. 8. So, it is good if both have the same definition. Sound management structures, employee relations, remuneration of staff and tax compliance is a workable definition.

Furthermore, we believe the definition of good governance should be aligned with:

1) Taxonomy
2) Other EC initiatives on corporate governance. The European Commission classifies its governance policy activities in broad categories, including directors and board members, shareholder rights, employee share ownership, remuneration policies, transparency, and financial institutions.[7]

Question 22: 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?

We believe there is inconsistency between the taxonomy principle of DNSH in the taxonomy, and DNSH integrated in the definition of Level 1 Art. 2 (17) of the de SFDR.

DNSH definition and use in SFDR

We believe the taxonomy is leading in defining and identifying DNSH criteria. As we cannot expect granular DNSH criteria before 2022, we believe integrating DNSH criteria in article 2(17) of the SFDR, and subsequently in the disclosure requirements for Article 9 products is premature and could lead to confusion.

We would like to see clarifications on the overlap between the Taxonomy's DNSH-criteria and the Principle Adverse Risk Impacts from the SFDR. The Do No Significant Harm definition is included in both the taxonomy and disclosure regulation, but they differ in scope. This effectively, means no alignment. This in turn might prove to be very difficult for both regulated companies and regulators as the DNSH criterion is embedded in the definition of sustainable investment in the SFDR. So, DNSH seem to always apply when a firm in SFDR scope has to disclose. Basically, a firm has to describe DNSH criteria for E, S an G under the definition of a sustainable investment of the SFDR. For example, in a global equity fund, it might almost be impossible to safeguard social standards throughout the supply chain (and thus adhere to DNSH). Importantly, the definition of "sustainable investment" introduces a new "do no significant harm" (DNSH) principle that is broader than the DNSH principle in the EU Taxonomy in that the scope here goes beyond the six environmental objectives.

Art. 8/9 and DNSH

Do not significantly harm is now used for Art. 8 and Art. 9 products. We believe that this concept does not fit the purpose of Art 8, products that promote ESG characteristics, very well. Under Art. 8 fall strategies like "best in class" and "exclusion". Those products do not have sustainable investment as objective so there should not be a requirement that no significant harm is done to other sustainable objectives.

Question 23: 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

[7] See European Commission full list (hyperlink)

financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?

These strategies are already defined by the Global Alliance Forum Sustainable Finance and Eurosif.[8] They relate to an area continuously developing, in which new investment strategies are emerging. It might be useful to adopt a shared definition of the mentioned investment strategies. In order to avoid green washing and foster transparency and comparability we see merit in this task for the ESAs. On the other hand, by providing a closed list of strategies financial market participants will be limited in the development of new products / strategies, which in turn could have a negative impact on market forces and initiatives. In fact, it might even strengthen greenwashing.

If, however a list will be constructed, we believe defining these different strategies with great flexibility is key whilst adhering to already standing international principles:

- Exclusionary screening (i.e. aligning with UN Global compact?)
- ESG integration (i.e. aligning with PRI?)
- Norms-based screening
- Active Ownership / Engagement (alignment with own FMP policies + SRDII)[9]
- Positive best-in-class screening
- Positive thematic / Impact investing

Question 24: 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? Specific questions on pre-contractual disclosure items in light of differences between types of disclosure documents As highlighted in the background section above, the ESAs believe that finding the balance between pre-contractual and website disclosure is challenging given the different types of disclosure documents in Article 6(3) of Regulation (EU) 2019/2088. Therefore, specific feedback is sought from stakeholders in this regard.

We believe that the current practice of investment funds of monthly providing disclosure on the 10 top performer investments (instead of the 25 top proposed by the draft RTS) is sufficient.

Question 25: 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.

a) 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);

Website

b) 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);

Website

[8] See Eurosif definitions (hyperlink)

[9] ESA's have mentioned in their public hearing that SRDII is out of their merit/mandate, and will therefore not be aligned actively with SFDR requirements

c) 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);

Website

d) 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.

Website

The question suggests that pre-contractual and website are contradictions, whilst we believe pre-contractual information can be pre-eminently published through the website. Since the introduction to the question refers to Article 6 (3) of the Disclosure Regulation, we suspect that the word pre-contractual information was used to refer to retail information documents, such as the UCITS KIID and PRIIPS KID.
However, there is no such document for DPM. The information obligations for Discretionary Portfolio Management (DPM) are set out in Article 24 paragraph 4 MiFID II, which is elaborated in, inter alia, Articles 46 - 51 Delegated Regulation 2017/565. Banks offering DPM have worked this out in an agreement. If that is now possible on the website, that could be beneficial. For the bank therefore, these questions seem irrelevant.
We assume most FMP's buy the data and therefore don't have to look up in the KID or on the website and therefore have no specific preference.
In order to keep the information documents accessible to the retail investor, we believe it would be obvious to answer all questions with the website:

a) 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);

b) 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);

c) 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

d) 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.

Question 26: 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)?

First of all, we believe it would be necessary to clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable ("admitted derivatives") and – more in general – the scope.

Regarding the way to disclose the admitted derivatives which have been used, we believe that a separate information would be preferable.

Question 27: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

In targeted interviews the Commission asked FMP's about costs of integrating ESG considerations. Only six firms provided numbers on the prospective costs of ESG integration. First of all, n=6 is not a significant analysis. Furthermore, the ESA's analysis did not include all ESG aspects that have been presented in this consultation paper. The ranges of total costs SFDR costs are estimated between maximum 0.0001% to maximum 0.0003%. In our view, this is a complete unrealistic, and misleading estimation.

As often noted, guidance on costs (with subsequent hard data) is almost impossible – for example, burdens borne by banks might change sales policies, which in effect impacts clients. Like ESG adverse impacts, there is no data quantifying burdens on a monetary scale. It is therefore impossible to state that on a maximum the costs to integrate ESG consideration would amount to 0.0003%.

According to EFAMA the 'European AUM' accounted in 2018 for around 23.1 trillion euro.[10] Even if costs would only – at maximum – amount to 0.0003% of AUM, this would - in the analysis of the ESA's - mean that total costs could to process and report adverse impacts rise to a staggering 6.9 billion euro throughout Europe.

Ongoing compliance costs will probably account for an even bigger burden: as most of the EU Action Plan on Financing a Sustainable Growth (like the NFRD, or Taxonomy) is far from incomplete, FMP's that are subjected to the SFDR (and other regulations) will most likely face significant costs of re-implementation once EU policies change.

An impact assessment of a medium-sized bank could learn us the following:
- Data costs: significant (i.e. 1 million €, depending on Annex I, II and III)
- Editing and publishing the data (1 FTE per year)
- Keeping the site up to date with all transparency obligations (0.5 FTE per year)
- Integrating climate risks into the analysis (1 FTE per year)
- Obligations as an asset manager (0.5 FTE per year)
- Compliance with regulations (0.5 FTE per year)

One-off costs for implementation:
- Adjusting processes (4 FTE)
- Coordination adjustments (2 FTE)

Furthermore, we would like to highlight that these new requirements could have unintentional consequences. For example, because of behavioural effects, clients could drop out of onboarding processes. Clients could also fear that if costs rise significantly, return

[10] Please see EFAMA annual reporting (hyperlink)

will shrink, therefore not deciding to invest. According to ESMA, costs are one of the main detrimental factors to lagging retail investor return.[11]

Taken together, non-measurable benefits and high costs in our opinion lead to disproportionate high costs.

[11] Costs continue to have a significant impact on the final value of an investment, with retail clients paying around 40% more than institutional investors on average across asset classes.

CONCLUSIONS

There is incontrovertible scientific evidence that the EU Green Deal is a compulsory paramount step forward to achieve a better future sustainable lifestyle in Europe. We cannot but expect that the appropriate setup and activation of the Deal will have progressively significant effects on economies, societies and markets. Among else, financial markets are asked to take the profound effects of climate change into account soon enough to provide positive market signals encouraging low carbon economic development and competition.

We believe that this very articulate consultation shows without doubt that the EU is determined to break the deep ice between what for very long has been recognised as an "I would like" attitude and the "I do" precept.

Nevertheless, the depth this consultation goes through, in terms of granularity and expectations, has ignited a robust and constructive conversation among market participants. In synthesis, we do agree that we need to pursue the necessary steps before it is too late. On the other hand, the considerable amount of programs, overlapping legislative packages, consultations, amendments and regulations converging in a limited timeframe is representing a burden that needs to be managed to face the necessary steps in an articulated and partaken manner. One of the risks we highlighted, for instance, calls for undertaking the discrepancies in terms of costs and opportunities among market players of different size.

The complexity and granularity of the required disclosure, as represented in this consultation, makes it difficult for market participants to suddenly comply with the magnitude and qualitative depth of the expected data. Indeed, the lack of accountable and reliable data has been for long time a concern that it does not seem to be resolved yet. While we do agree that without the necessary steps towards a better functioning, more transparent and *greenwashless* market place the Deal will struggle to find its way, we do highlight our concerns regarding some pivotal points we have listed and elaborated on in this paper.

We call for clarity on issues that still need interpretation and guidance, also when it comes to understand and manage the dichotomy between EU and non-EU investee companies. We recognise how Europe is leading the way in the great shift towards a more sustainable future on Earth, yet we would require a practical framework to manage the discrepancies between virtuous and compliant EU issuers and the less constrained companies operating outside the EU, both of which will contribute to define investment products under article 8 and 9 of the SFDR.

Overall, we welcome the consultation and its content while we trust that the open discussion lit up by it will underline the considerations collected in this paper and will make them useful and viable for the European system of financial supervision.