11 May 2021

Joint Consultation paper on Taxonomy-related sustainability disclosures (SFDR RTS)

EBF response

General remarks

Banks are, according to Article 2, (1, letter j, and 6) of SFDR, considered financial market participants when they provide portfolio management as defined in point (8) of Article 4(1) of Directive 2014/65/EU (MiFID II).

This means that their financial products affected by the proposed Taxonomy-related sustainability disclosures are portfolios managed on an individual basis according to MiFID II.

The application of SFDR to these financial products still needs to be clarified as officially requested by the Joint Committee ESAs' letter to the European Commission of 7 January 2021 entitled "Priority issues relating to SFDR application".

In the absence of the necessary clarifications, we interpret that in the case of the portfolio management service:

- only products claiming sustainable investments and thereafter Taxonomy-aligned investments need to be reported under RTS Taxonomy/SFDR as opposed to all Article 8 with environmental characteristics;
- the disclosure requirement referred to in Article 6, paragraphs 1(a) and (b) of the SFDR may be satisfied in the context of the pre-contractual information documentation relating to the contract for the provision of the portfolio management service and related contractual annexes to the different underlying individual management lines, at the level of standardised portfolio solutions;
- financial products can be identified under the SFDR disclosure regime, taking into account the characteristics of the individual management lines, whose related information provided by contractual annexes clarify in detail the investment policy of clients' portfolios; through the signing of the portfolio management contract, clients give in fact a mandate to the

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intermediary to manage their portfolio in accordance with one or more management lines associated with their contract; by way of example, qualification as sustainable under Articles 8 or 9 of portfolios managed on an individual basis must take into account the characteristics of one or more of the underlying individual management lines, since not all the management lines may be characterised by elements of sustainability for the purpose of qualifying the entire portfolio management service as such;

- while SFDR is applicable to products not strategies, we agree that pre-contractual information will be provided in the portfolio management agreement, with accompanying documents; depending on the mandate from clients and the investment strategy, a portfolio management agreement may actually cover several "portfolios", which from an SFDR perspective need to be treated as separate financial products; it may occur that only some of them are characterised by sustainability profiles, and therefore fall into the categories referred to in Articles 8 and 9; based on this, the reporting requirement referred to in Article 11 therefore concerns only the management lines which fall into the categories referred to in Articles 8 and 9 of SFDR .

This said, we must underline that the new draft RTS raises the following critical issues already outlined with regard to the first set of draft RTS:

- the lack of comparable, reliable and standardized data and information necessary both for a complete and correct due diligence and classification of the financial products' sustainability degree; the external data providers are also not yet in the position to supply such data;
- the lack of high-quality data is particularly challenging to demonstrate that financial products do consider the 'do not significantly harm' principle through both consideration of Principal Adverse Impacts ('PAI') and alignment to the European Taxonomy, although we acknowledge that the CSRD will extend the entities in scope to provide data in relation to the Taxonomy;
- the complexity of product distribution chains will induce an excessive complexity of the required information to be published by financial market participants (FMPs), which may no longer be understandable to investors;
- the high costs for the implementation of the new requirements and, hence, the need for a proportionality approach for market players according to their different characteristics, type of activity and dimensions;
- limited time for each requirement implementation, given the complexity of the required adjustments to FMPs, means it is of utmost importance that;
    - financial market participants are not obliged to start applying the templates based on the first RTS of SFDR and then must change the template based on the taxonomy-related amendments; this would create unjustified burden and IT costs;
    - the use of templates should start only after the adoption of all SFDR RTSs;
    - technical reporting details are kept as simple as possible for successful implementation and use of this new type of investors' information;
    - European Commission considers safeguards in case the RTSs are not finalized early enough to allow sufficient implementation time for the FMPs.

As a general comment, we believe some language used in the templates should be clarified in order to be easily understandable for investors ("sustainable investment", "environmentally sustainable economic activities". Using very similar wording, it may be difficult for investors to understand the subtleties.

Answers to Specific Questions

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

A consolidated single text of RTS appears reasonable to rationalize the regulatory framework and to avoid proliferation of rules. This will ensure a "single rulebook" making the rules more accessible, although the timeline will be quite challenging for financial market participants, as the final version of the templates would only be available at the time of publication of the final RTS in the Official Journal, later this year (Q3 to Q4). Further clarification is required in this respect.

It is not practical for the two SFDR-RTSs to come into force at different times. Banks would have to implement the templates of the first RTS and then change them again when the second RTS becomes applicable. Since the templates are mandatory, they cannot be implemented on the basis of the draft of the second RTS, as this would risk violating the law if the second RTS were delayed.

We are concerned however that the consolidated version of the RTS, which includes the EU Taxonomy-related information in the precontractual and reporting templates, will not be finalised in time to ensure an appropriate implementation of the templates.

Considering the complexity of the regulation, the need to finalize necessary changes to IT and reporting systems and ongoing discussions and analysis of data providers and, also considering its timing of the coming into force aimed at ensuring the availability of ESG data originating from issuers (Art. 8 of the TR and revision of the NFRD), we encourage the **ESAs to address and discuss the timing issue with the Commission to ensure a proper implementation of the templates**.

We suggest an i**mplementation period of at least six months in terms of the mandatory use of the templates**. ESAs themselves talk about 'at least 6 months' implementation time in their statement.[1] Assuming that the final RTS will not be published until autumn 2021, at the earliest, it is expected that full compliance with the first obligations in January 2022 will prove unrealistic and unworkable.

We would also favour a **one-year transition phase where a best effort approach is allowed.**

Such an experimental type of enforcement of one year will benefit both FMPs and their supervisors. It will not only allow, but support FMPs to try their best efforts of implementing the regulation on time, without fear of regulatory reprimands.

We consider our proposal in line with the approach already provided by the existing draft SFDR RTS. As a matter of fact, the additional detail specified by the entity-level 'principal adverse sustainability impacts statement' set out in the RTS is to be phased in with the consequence that the earliest information relating to a reference period to be disclosed in accordance with the RTS would not be made until 2023 in respect of a reference period relating to 2022.

[1] ".. in case the RTS are not adopted sufficiently early to allow at least six months to enable financial market participants to gather the necessary information and adapt their practices to comply.."; see here;

Furthermore, we would encourage the publication of a consolidated text also with regards to the level 1 regulation, namely the SFRD /Regulation (EU) 2088/2019 and the TR (Regulation (EU) 852/2020). In our view this would be give practical support to the understanding and implementation of a complex regulatory framework and would help ensure consistency among all elements of the regulation representing the basis of sustainability regulation for financial market participants.

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

We agree with the alignment with obligations of non-financial undertakings under Article 8 of the Taxonomy Regulation.

While turnover is probably the most relevant indicator, CapEx is also important as regards to companies in transition. We suggest however incorporating flexibility in the use of indicators, so that the same indicator does not have to be used for all investments. This could be done by allowing financial market participants to choose which indicator they find most appropriate for a specific sector and then require them to use this indicator on all investments within that sector.

In addition, it is preferable to allow the possibility for the use of several KPI for one portfolio, when considered relevant. This option may be reconsidered at a later stage when sufficient time has been allowed to test different approaches and assess which one(s) is/are most relevant from a transparency perspective for end-investors.

In any case, information should be disclosed in the pre-contractual documents on which KPI(s) is/are used with information by types of asset classes when needed.

However, we would like to point out that the application will be dependent on data from non-financial undertakings and limited by the lack of information disclosed by non-financial undertakings. In this respect the Commission has specified that the first annual report under the New Corporate Sustainability Reporting Directive (CSRD) previously named NFRD will be 2023 (first data Q2 2024). It is very unlikely that it will be feasible for non-financial undertakings to disclose the required information from 1 January 2022 (date of application of the SFDR RTS). Therefore, FMPs will not be in a position to consider data reported by non-financial undertakings in the 2022 reporting period.

Considering the above, it would seem reasonable to either postpone the application of these additional disclosure obligations or alternatively allow the FMPs to carry out purely qualitative assessments (e.g. on the basis of proxies) due to the lack of quantitative data. This is extremely important, especially for, but not limited to, precontractual disclosure.

Question 3: Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?

The use of Opex to calculate Taxonomy is informative for the short-term performance of the investee only. Whereas Capex gives a clear signal about the strategy of a company around investments in a long-term horizon, Opex indicates the expenditures generally linked with the immediate short-term operations of the company. The latter will hence not reflect appropriately the – mostly long-term- ambition of investee companies in terms of environmental sustainability.

While it seems that Turnover and Capex would be the most relevant KPIs to disclose the taxonomy-alignment of each investee company and of the portfolio in most cases, the use of Opex should be maintained at this stage as it is part of the three indicators retained in the draft Delegated Acts for Article 8 under the EU Taxonomy Regulation.

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

Derivatives are a very heterogenous category that includes a large variety of instruments that can be used to quite different ends. There is no common methodology that has been developed / agreed so far to take into consideration the particularities of the various types of derivatives and to aggregate the exposures to all derivatives.

However, exclusion of all derivatives such as TRS or similar swaps, would exclude some strategies from the eligibility (e.g. ETFs under the synthetic replication).

Therefore, extension to derivatives shall not be made mandatory as all derivatives are not used for the same purpose and for the same horizon of time. Clear guidelines on how and to what extent derivatives could be considered, based on a common methodology should be provided.

Further scrutiny would be required on how and to what extent the different types of instruments under MiFID II Annex I Section C might have to consider sustainability-related disclosures in accordance with SFDR in the future.

Notwithstanding the above, we would like to point out operational challenges in relation to the implementation of the portfolio management service:

- it would require a "look- through" approach;
- it appears disproportionate for portfolios managed on an individual basis where the use of derivatives is very limited;
- lack of data for derivatives;
- derivatives used, to a large extent, for risk mitigating, not as a tool to meet sustainability objectives.

We also note that including taxonomy-aligning derivatives could artificially increase the exposure of FMPs to taxonomy-aligned activities, since the intrinsic characteristic of derivatives potentially provides limitless positions and therefore does not truthfully reflect the extent to which the activities the product invests in, qualify as environmentally sustainable under the TR.

We notice that in its advice to the European Commission on Article 8 of the Taxonomy Regulation, ESMA recommends that derivatives also be excluded from the KPI disclosed by asset managers with the exemption of Contracts-for-Differences (CfDs). It is important to ensure consistency with other frameworks meaning that CfDs should be included, if they are included in the KPI disclosure by asset managers and vice versa.

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

Sustainable investment (Article 2(17) SFDR) means an investment in an economic activity (…). Investments are however not made in economic activities. Asset managers buy either directly or indirectly "debt instruments" and "equities" issued by investee companies. In that sense, it is not entirely clear how buying equity / debt instruments (in the secondary market) can be regarded as an "investment in an economic activity"?

We believe it would be very useful for the ESAs to publish a list of indicative examples in order to help FMPs to understand better the use of equities and debt instruments and what valuation criteria should be adopted. There should also be a more granular approach of categories of instruments that can be issued by investee companies.

We would also like to share the following additional comments about the specific case of green bonds.

- Green bonds: first, as long as the Green Bond Standards (GBS) have not been adopted and published in the Official Journal (which will probably not happened before end of 2021), we would recommend considering grandfathering of green bond holdings of investors issued under the Green Bond Principles, the de facto global standard, at least until the Taxonomy Delegated Acts for relevant activities enter into force. Existing investor holdings of green bonds under the GBP, where EU issuers have led in global market share, should be duly recognized and grandfathered as good faith investments. If a potential EU Green Bond Standard were to enter into force, its provisions could take primacy thereafter, without prejudice to GBP-aligned securities issued prior to that date.
- For disclosure of use-of-proceed for other green bonds, the proportion of alignment with the taxonomy should be retained when this information is available. Otherwise, we recommend that the "corporate level" disclosure on the alignment with the EU Taxonomy is used as a proxy to verify the alignment with the EU taxonomy when the proceeds' alignment with the taxonomy is not known. Then this percentage of alignment should be applied as per the portfolio weighting of the holding.

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

While including sovereign bonds and other assets that cannot be assessed for taxonomy, will not give a thoroughly accurate view of the composition of the portfolio with regards to the non-taxonomy aligned share of the portfolio (which could be made of both non-assessable and non-aligned activities), we do consider this to be acceptable as long as the meaning of the % is clearly stated and understood by investors.

Otherwise, the method will risk pushing taxonomy-focused investors away from products that might suit them well (but which *appear* non-aligned due to the inclusion of sovereign bonds and other assets that cannot be assessed for taxonomy-alignment).

To provide investors with clarity, it **should be made possible** for financial market participants to disclose **an additional KPI**, which excludes sovereign bonds and other assets that cannot be assessed for taxonomy-alignment to ensure that funds are not unduly penalised for investing in sovereign bonds.

Such an indicator would be limited to the taxonomy-eligible investments, both at the numerator and denominator level. Typically, sovereign bonds and activities/sectors, not yet in the scope of the EU taxonomy as currently defined (only for the climate change mitigation and climate change adaptation objectives) should be removed. As a result, the taxonomy-aligned disclosure would better reflect the capacity of one product to invest in taxonomy-aligned activities. The scope of investments taken into account in this second voluntary indicator will of course expand progressively, in particular, when delegated acts for other environmental objectives will be adopted and when a social taxonomy will be developed. We also believe that requiring governments reporting, thus availability of information on sovereign bonds (as governments are currently not subject to sustainability disclosure) would improve the meaningfulness of the indicator.

There should also be a blank explanation field, where the FMPs can describe the product's investments and the investments' relation to the EU taxonomy in more detail. This is particularly important as investments can be sustainable in social terms (aligned with the SFDR art. 2(17)) without being taxonomy-aligned, and it should be possible to communicate this clearly to the customer.

Another way to address the lack of data availability is to allow the use of proxies/estimations by financial market participants to provide a better coverage of the assets invested in the portfolio. This type of approach can be envisaged only if methodologies to produce these kinds of proxies and estimations have been preliminarily validated by an EU authority. Otherwise, it would not allow comparability of products which remains a key priority of the SFDR.

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

It is not entirely clear whether the verification on the statement about the taxonomy compliance of the economic activity refers to the disclosures by the companies (Art. 8 TR) or the financial product.

We believe that requesting certification downstream of the process is an unnecessary complication, and, in consideration of the already heavy burden placed on FMPs to align with the regulation, we would recommend not prescribing a third-party assessment. In our opinion it is more efficient to place the certification upstream of the process, i.e. with reference to the data produced by the information providers, in which case we support inclusion of information on, *whether* the statement has been subject to an assurance provided by an auditor or a review by a third party.

More in detail, it refers to the need to ensure the development of a European certification of entities providing data and information on the sustainability of institutions (i.e. info. providers). It should be noted that this aspect was, in particular, highlighted by ESMA itself in the context of the request addressed to the European Commission for the adoption of a legislative act to regulate the methodologies for assigning ESG ratings and the activity of evaluating the characteristics of sustainability of financial products and instruments.

However, a requirement on third party assessment appears too excessive. Especially for products subject to quarterly reporting, e.g. portfolio management agreements, it will constitute a not-proportionate , cost incurring and burdensome requirement not counterbalanced by the value added.

Also, we do not favour the inconsistency created by requiring only part of the statement to be summitted to review by a third party.

If third party assurance is needed, we find it more appropriate to have the method/process reviewed by a third party.

In terms of the proposed statement, we further suggest a rephrasing of the section in the periodic disclosure templates as follows:

"The minimum percentage of investments of the financial product that are made in environmentally sustainable activities are aligned with the EU Taxonomy are made in environmentally sustainable economic activities"

The rephrasing is required in order to avoid circular meaning of the statement (noting that the Taxonomy Regulation as of this date only captures environmentally sustainable investments).

Also, if ESMA would consider a one year "phase-in" period, this assurance assessment should initially be experimental to allow for both the maturity of these regulations and reporting within the financial institutions, but also maturity within the external parties. This experimental assessment by external parties is beneficial because it initially allows resources to be allocated to implementing and innovating the regulations properly. Another option would be for the regulator to provide an initial assessment and examples of best practices, so that financial institutions can align before undergoing the full scrutiny of an external audit.

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

We do agree that the information provided ex-ante should be comparable with the information provided ex-post.

As a general remark, and as stated above, owing to the fact that companies begin to report their taxonomy alignment only in 2022, investors will not yet have the data available for periodic disclosures in 2022.

According to Article 11 of SFDR the information required in periodic disclosures for portfolios managed on an individual basis is to be disclosed within a periodic report as referred to in Article 25(6) of MiFID II, which normally must be provided to clients once every three months. This would:

- be misaligned with respect to the reference period (which is annual for financial products other than portfolios managed on an individual basis) of the proposed templates for a periodic report for financial products, referred to in Article 8 and 9;
- require an effort for individual portfolio managers, namely: i) disproportionate to what is required with regard to the other financial products; ii) very difficult to implement; iii) unable to provide an added value for investors.

Moreover, the same critical issues already highlighted with regard to the unavailability of the required quantitative data related to the precontractual disclosure apply also to the proposed mirroring periodic reporting.

For example, the information required in the RTS is easier to implement for funds than for individual portfolio management (e.g. the Point "What investment strategy does this financial product follow?"). For quarterly reports, for example, the qualitative information on each client would have to be filled in individually. This represents a major effort. Therefore, we ask to consider that the relevant periodic reporting be also annual for individual managed portfolios.

In addition, with regards to the pre-contractual disclosure, new requirements would have to remain aligned with the initial purpose of the SFDR. Our understanding is that financial participants have to provide transparency on all elements identified in the RTS, in a similar way to allow comparison between products which are in the same category (i.e. Article 8 and Article 9 products).

However, it does not mean that financial market participants should be asked to commit themselves to achieving a minimum level of alignment with taxonomy when making this information available (as it could be suggested with the use of "minimum share of investments aligned with the EU taxonomy"). This disclosure should be information-oriented and not commitment-oriented.

Consequently, we recommend that the template should refer to "**expected minimum share**" of taxonomy alignment instead of "minimum share".

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

There are some uncertainties regarding the scope of application of the TR and its RTS. Our understanding is that the FMPs offering SFDR Art. 8 products that promote environmental characteristics and invest partially sustainable investment in the portfolio and Art. 9 products that have an environmental objective are in the scope of the Taxonomy and should apply the Taxonomy to indicate which of the six environmental objectives[2] (as per Art. 9 TR) are being considered (Art 5.a.1 TR) and what proportion of it is aligned with the taxonomy (as described in Art. 3 TR).

In our opinion this approach leads to a very complex "layering" of the classification, not easy to understand for the final investor. In this context the use of the percentage to indicate the alignment with the taxonomy is not always appropriate and could be potentially misleading.

The proposed pre-contractual disclosure seems to be based on the fact that data on the assets of the financial product already exists, e.g. Art. 16(a)(1)(a)(ii)(iii), Art. 16(a)(2)(b), however for some financial products, e.g. portfolio management services, no product exists when the pre-contractual documentation is established. This information can therefore not be provided for.

Further, the pre-contractual disclosure should not reflect data at a specific date but focus on the strategy and what the portfolio manager is compelledto do when making investment decisions. The data should instead be included in the periodic report. The proposed pre-contractual disclosure seems not to follow this principle. This could lead to information being misleading for the customer.

The fact that a minimum proportion of Taxonomy-aligned investments are set, instead of a target, will lead to FMPs putting very low thresholds, especially considering that data on taxonomy-aligned investments is lacking. A risk of doing so is also that portfolio managers are bound to invest in such an investment, which could lead to such investments being over-priced as the amount of such investments will most likely be quite limited, at least at the start. We also question the suggestion of dividing the minimum proportion into enabling and transitioning for multiple reasons. First, and linked to our argument on minimum proportion described above, this limits the portfolio manager even further and the risk of over-pricing becomes even higher. Second, a customer will not understand what this means. Third, the Taxonomy is based on three categorises, i.e. enabling, transitioning and sustainable in itself (no dedicated name). By defining only two of these, the third category will not be visible for the customer.

Disclosure by Article 8/9 products not investing into taxonomy-aligned investments

Including mandatory information on taxonomy-alignment may pose a risk that some investors are deterred by a low – or even zero – percent minimum taxonomy-investments (please also see our comments on question 6). If this low number is caused by – for example – an investment strategy

[2] For climate change adaptation and climate change mitigation only at this stage in accordance with the Taxonomy Climate Delegated Act

related to activities for which no taxonomy-criteria exist, it could be misleading rather than informative.

Given both the early status of the taxonomy, with only two objectives specified, and given the lack of data across the environmental spectrum, the best sustainable funds today may have no more than 30% taxonomy-aligning investees, while they can prove they are 100% delivering positive impact on social and environmental sustainable objectives.

We therefore suggest that financial market participants should clearly state in a check box solution whether the financial product:

a) invests in activities that contribute to an environmental objective [article 9 products, taxonomy aligned or non-taxonomy aligned];
b) invests in environmentally sustainable investments [=taxonomy aligned];
c) promotes environmental characteristics [Article 8 products];
d) invests in socially sustainable investments Art. 9];
e) promotes social characteristics [Art. 8];
f) invests in both environmentally and socially sustainable investments (Article 9, either taxonomy aligned or other);
g) promotes environmental and social characteristics (Article 8).

In line with the above, we strongly suggest that the section on “what is the minimum share of sustainable investments that are not aligned with the EU Taxonomy” be supplemented by an option to confirm that the financial product does or does not have a minimum share of other sustainable investments. Also, the wording on the precontractual template is too engaging for a “precontractual document” (ex: minimum share of… => could be “expected minimum share”

In addition, the graph used to represent the minimum share of investments aligned with the EU taxonomy should be removed as this information is not relevant from an ex-ante perspective. It is much more relevant in the periodic disclosure template as the FMP can use reliable data to disclose this information.

We also believe that the first box in the template should allow for providing more general information on the characteristics of the products by mentioning whether the product invests or not in activities/sectors which are in the scope of the taxonomy (i.e. taxonomy-eligible activities/sectors). This can be done by adding a new box (both for Article 8 and Article 9 products) **asking whether investments are taxonomy-eligible or not.**

We also think it is preferable not to include commitment-oriented investment limits in pre-contractual documents that could be interpreted as binding limits/commitment in % of AuM (Assets under Management) of a product. Indeed, in this case, there is a risk that a financial market participant shows very low percentages. Therefore, the questions relating to investment limits should be reworded.

Furthermore, the content of the template shall be adapted according to what is ticked in the first box. It means that the questions relating to the sustainable investment pocket (for Art. 8 products) and taxonomy investments (compliant or not) shall only appear and be answered if the corresponding boxes are ticked. Such adaptation would allow to remove any extensive focus on non-applicable characteristics of the financial product.

Finally, a disclaimer shall be added at the beginning of the template to indicate that (1) only the two first objectives of the taxonomy will be covered in a first stage and (2) that social taxonomy has not yet been developed. As a result, taxonomy alignment is not to be considered in isolation by the investors.

Also, we do not believe that it is appropriate to require information on why a financial product has invested in economic activities that are not environmentally sustainable. As stated, several times by the European Commission, the Taxonomy Regulation is primary a transparency tool and does not represent a mandatory list of activities to invest into, we do not consider it appropriate to demand a "justification" regarding the choice to invest in taxonomy compliant activities or not. It is not a requirement to invest in only taxonomy-aligned activities. Instead, the periodic reporting templates should allow for a more qualitative description on the taxonomy investments.

Finally, some typos/inconsistencies shall be corrected: e.g. "Can I find I find more product specific information online?" (p.40)

Article 8 – pre-contractual

It is not a pre-requisite for Article 8 products to invest in sustainable investments. Accordingly, the heading *"To which objectives do the sustainable investments contribute and how do they not cause significant harm"* should be supplemented with a "N/A" option for products, which are confirmed initially in the template as not to be invested in sustainable investments.

Subject to our comments above, the section on "minimum share of sustainable investments that are not aligned with the Taxonomy Regulation" should not be included for Article 8 products. The level 1 text provides no basis for such specific disclosure requirements on Article 8 products. Such language could mislead investors to assume that products not aligned with the EU Taxonomy do not pursue any E,S or G characteristics which may not necessarily be the case.

Concerning the point "*What investments are included under "#2 Other", what is their purpose and are there any minimum environmental or social safeguards?"* of the templates, it should be explained in more detail what exactly is understood by purpose (e.g. risk diversification, ...). Perhaps possible answers could be added here, or at least explanations on which purposes are acceptable could be included in the recitals.

The point "*Does this financial product take into account principal adverse impacts on sustainability factors?"* is a little bit confusing when it comes to Art. 9 products. Should the PAI not be always considered in the case of Art. 9 products? or does this only apply to the part of the investments that are not taxonomy compliant or only to "social Art 8 SFDR" Products (= Products with social characteristics)? In addition, the question relating to PAIs does not answer the requirements of Art. 7 SFDR (level 1). It only requires ticking "Yes" or "no", while Art. 7 requires providing more details by December 2022. Should it not be indicated in the mock-up?

The sample responses included in the first draft of the RTS were very helpful. It would be beneficial if sample answers were also providedin this RTS.

It is not clear why the legal identifier (LEI) has to be listed next to the product name at the beginning of the templates. The ISIN would make more sense here. If the product manufacturer has to be listed here, this should be done in a separate point after the one with the product name.

In view of the Commission's proposal for amendments to the delegated acts on MiFID, it would be more appropriate to include the consideration of PAI right at the beginning in the yellow box of the product information.

It should be specified in the templates where the sentence according to Art. 6 last paragraphs TR ("The "do no significant harm" principle applies only to those investments....") should be included.

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

The views are somehow split. From a theoretical point of view, it is reasonable to propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR financial products as using the same templates can make it easier for investors (especially retail investors) to get comfortable with the structure and avoid unnecessary complexity. Unified templates will facilitate comparison between products and avoid drafting of several additional documents.

However, this could lead to number of issues:

- timing issue as indicated above;
- adaptation of the template depending on the boxes ticked, as indicated in the comment to the previous question;
- templates are only applicable for products investing in environmental activities; the documents do not cover social-oriented products.

In terms of its feasibility, the availability of clear criteria and data to qualify and report on all the different types of sustainable investments is essential. If it is not the case, only a few sections/parts of the proposed templates can be filled in. It may therefore be preferable to have different templates for different product types. That said, the risk mentioned in our response to question 9 would need to be mitigated.

The cross-references between TR and SFDR in the product classification or demarcation of products are not comprehensible.

The definitions should be simplified or the terms clarified. It is sometimes difficult to understand what the difference is between an Art 8 SFDR product with an environmental characteristic and an Art 6 TR product or an Art 9 SFDR product and Art 5 TR product. What exactly is an Art 6 TR product? What is the difference between environmental characteristic and environmental objective exactly? Certain exclusion together with some active points are perhaps a characteristic. But are these characteristics already objectives?

Thus, due to the differing nature of the two financial products, identical templates would not be feasible as the requirements are different for the different types of products. Additionally, this may contribute to greenwashing as a retail client may not be able to identify, easily the differences in Article 8 (light green) and Article 9 (dark green) products.

Concerning Art. 16a and 23a: it is difficult to distinguish the products from each other. Which products will fall under Art. 16a para 1 lit b or 23a para 1 lit b?

Does the product note ("Art. 6 TR Sentence") have to be generally made for Art. 8 SFDR products even if they have only environmental characteristics but no sustainable investments? And which product note has to be made in case of Art. 8 SFDR Products with social characteristics (Art 6 TR or Art 7 TR)?

We would also like to raise a major challenge relating to the reporting requirement in the pre-contractual documents, notably, for asset managers. As of today, the Article 6 of the SFDR states that the information referred to in Articles 6, 8 and 9 shall be disclosed in the prospectus referred to in Article 69 of Directive 2009/65/EC, but does not specify in which manner this information shall be provided. The RTS states that such information shall be presented in an annex to the prospectus, in accordance with the templates set out in the Annexes of the RTS, and with a prominent statement in the main body of the prospectus, indicating that information related to environmental or social characteristics/sustainable investment is available in that annex.

Due to the level of content of the information requested and the size foreseen of each annex per product, in a given prospectus (especially in respect of umbrella funds with many sub-funds), we do recommend that the RTS indicate clearly that such information be made available to investors in the prospectus through a pdf/website link. This can greatly contribute to making this regulatory document management more efficient, avoid multiplying the sources of information for an investor within a single document, and participate widely to greater clarity of the information communicated to the investor.

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

This issue is somewhat similar to the one presented in our response to question 9 (and 6). We therefore recommend the same approach and suggest mitigating any possible misunderstandings with an additional text, e.g. stating that no detailed taxonomy-criteria for social sustainability currently exist. By ticking the relevant box, it should be clear that investments of this product are not taxonomy-eligible and as a result cannot disclose their alignment with the taxonomy. The case of sustainable investments with social objectives would fall into that scope. As the Social Taxonomy is not developed yet, the templates shall clearly disclose that the Taxonomy Regulation does not apply to social activities/objectives, with the objective of providing clarity to investors that a socially-focused product may be qualified as sustainable investment, even if not aligned with the Taxonomy Regulation.

The identification of sustainable investments for all the six environmental objectives has to be finalized first in the EU Taxonomy (till now only mitigation and adaptation are in the Taxonomy) and also for social objectives. We know that the Platform for Sustainable Finance is committed to issuing, before the end of the year, its first proposal for a social Taxonomy. Therefore, we foresee a long period before having a clear and common tool (delegated act) to identify social sustainable investments. Even if we see the importance of this category of sustainable investment (that is already part of the product palette and initiatives of many EU banks), we underline again the data gap issue (in part owing to a lack of Taxonomy) and the absolute necessity of giving banks a sound period to implement all the bank's processes before making anything compulsory in terms of disclosure.

In the meantime, FMPs, their investors and regulators should all accept, that the most sustainable funds may be "only" 30% taxonomy-aligned.

As stated above, we see merit in a blank explanation field where the FMPs can describe the product's investments and the investments' relation to the EU taxonomy, and/or to the SFDR Art. 2(17)'s definition of sustainable investments, more in detail, to reflect the existing complexity and different investment options between taxonomy-aligned investments, sustainable investments, investments promoting environmental and social characteristics and investments without any of the aforementioned features.