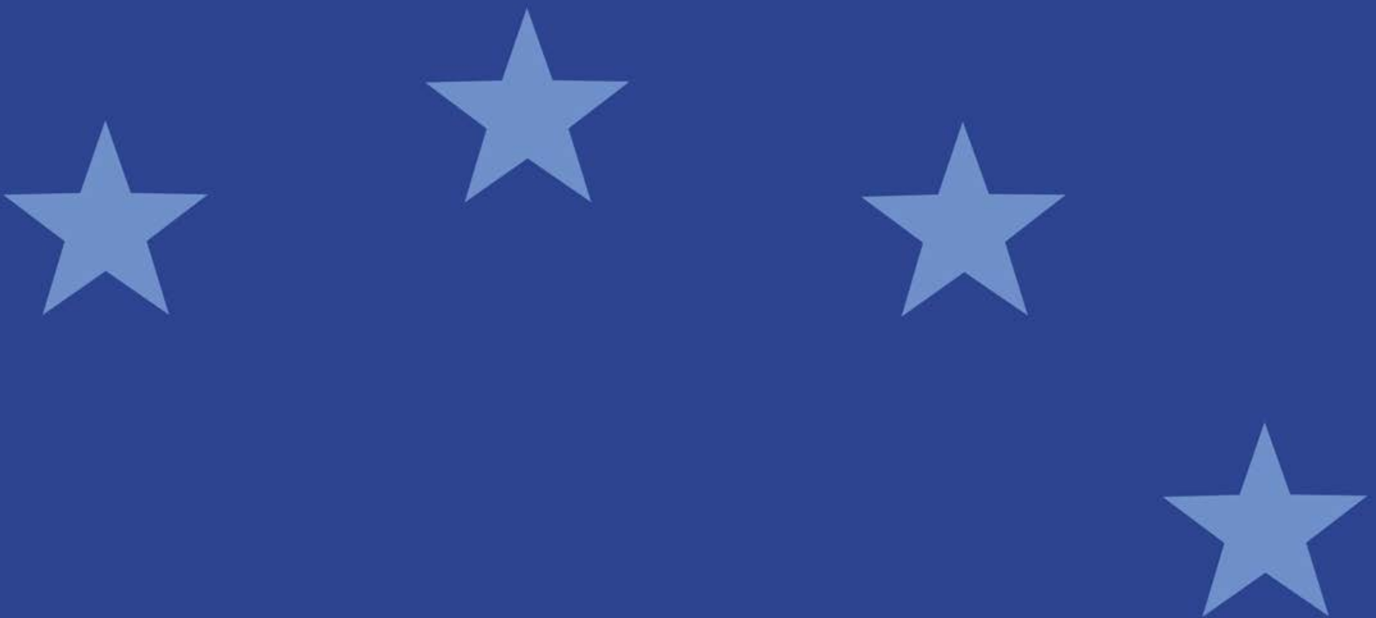
European Securities and Markets Authority

EBA European Banking Authority

EIOPA European Insurance and Occupational Pensions Authority

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning ESG disclosures



23 April 2020

Date: 23 April 2020
ESMA 34-45-904

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

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

Comments are most helpful if they:

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

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

Instructions

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

Q1 Insert your responses to the questions in the Consultation Paper in the present response form.

Q2 Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.

Q3 If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

Q4 When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.

Q5 The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading 'Your input - Consultations' by **1 September 2020**.

Q6 Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

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

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[1]. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

[1] Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Bundesverband Alternative Investments e.V. (BAI)
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
Bundesverband Alternative Investments e.V. (BAI) welcomes the opportunity to respond to the a.m. joint ESA's consultation paper on ESG disclosures.

BAI is the cross-asset and cross-product lobby association for the alternative investment industry in Germany and we perceive ourselves as a catalyzer between professional German investors and suppliers of Alternative Investment products worldwide. The overarching goal is that German institutional and professional investors must be able to diversify their investment with regard to Alternatives better and more easily. BAI is promoting a broad diversification which includes Alternative Investments as indispensable, in particular in terms of safeguarding long-term retirement pensions and the provision of money for construction, maintenance, and development of public infrastructure and renewable energies.

BAI-members are recruited from all areas of the Alternative Investments' industry, e.g. AIF manager and banks, but as well service providers. At present, BAI counts 230 national and international member companies and is growing continuously.

Having evaluated the consultation paper and the extensive proposals prepared by the ESAs, we would like to highlight the following, before commenting below on the detailed questions raised.

Overall, we believe that the draft RTS are too prescriptive and far too burdensome in practice and thus require not just a substantial revision in detail, but especially a further alignment with industry practice and standards, in particular to reflect the specifications of different asset classes (e.g. equities, debt, infrastructure, etc.) itself and with regard to the markets in which they are traded (public vs. private markets).

We acknowledge SFDR as a pragmatic approach for sustainability-related disclosures in the financial services sector, especially we believe that the level of detail laid down in SFDR is already sufficient and clear and thus does not require further undifferentiated and unproportionate itemization as now proposed by the ESAs.

BAI is severely concerned about the draft RTS with regard to fundamental aspects as **materiality**, **proportionality** and **necessity orientation**.

First of all the RTS should be geared to <u>investor needs</u>, but we do not see a clear analysis of this at all. There are different types of investors pursuing different types of ESG strategies. The draft RTS does not reflect this at all. Furthermore there is no differentiation between retail and institutional investors and it is obvious that not all information deemed suitable for professional investors is also deemed suitable for retail investors.

Secondly we do not really see how the <u>principle of proportionality</u> is incorporated in the draft RTS. The draft RTS appear to follow a one-size-fits-all approach and there are no proportionality considerations for example with regard to criteria as size, nature, complexity, etc. The ESAs should also bear in mind that

smaller FMP will opt-in or will be forced to opt-in as investors request specific information. In these circumstances smaller FMPs should still be able to manage the disclosure requirements, but the draft RTS offers only a binary choice. There should be an intermediate level for smaller/medium FMPs opting in.

Thirdly, the principle of materiality which is clearly laid down in SFDR is not really reflected in the RTS. A large amount of information postulated in the draft RTS, especially concerning adverse impact indicators, does not make sense from an investor risk management perspective. One fundamental aspect of sustainable investing is undertaking a good risk management and therefore investors monitor relevant risk data. Therefore the draft RTS should focus – on the basis of a materiality approach – on a minimum set of risk data. In this context we believe as well that disclosure should reflect different needs of different types of investors and how not to overburden retail investors. Especially the templates in Annex I will be confusing and do not provide relevant risk data.

As we will further elaborate below the timing to prepare and consult these RTS is not optimal as the entire Sustainable Finance Initiative is still yet evolving and many concepts and details have not been prepared or discussed even they are a prerequisite for disclosure obligations under these RTS. The ESAs, but also the Commission have to consider this and change the process accordingly.

Finally, we strongly recommend the ESAs to **closely align with industry initiatives as for example the "ESG Disclosure Standards for Investment Products" set up by the CFA Institute**. This is a very good and pragmatic, but also holistic approach to deal with the real needs of investors and meaningful information on ESG issues which can be obtained and disclosed. Especially with regard to the fact that we need standards which can be globally aligned, a fundamental review of the draft RTS considering other – industry – initiatives is indispensable.

We place our main points of criticism as general comments and remarks before the answers to the concrete questions in the consultation paper.

- **Legal panacea for information asymmetry: More disclosure and more data? – But the main problem is the (non-)availability, insufficiency and unreliability of ESG data**

The ESAs aim to eliminate or reduce among other things through the Disclosure Regulation and this RTS information asymmetries between investors and FMPs. As a remedy or rather panacea, the ESAs foresee more disclosures and more data. However, there are also information asymmetries between FMPs and "investees" in the real/non-financial economy. How shall FMPs get the very detailed information, especially in private markets, that they have to disclose by means of mandatory templates? The availability of ESG data is currently still rather low – even the ESAs recognised that the limited availability of sufficient and reliable data to make the disclosures required by the draft RTS is an area of significant concern. If ESG data is already difficult to obtain from European companies in the real economy and hopes are pinned on Taxonomy and the NFRD, what is the situation compared to FMPs from third countries or emerging markets?

For instance, the RTS lists 32 mandatory indicators for Principal Adverse Impact disclosure. But there is indication that there is less than 50% coverage of mandatory indicators by leading (ESG) data providers. While the potential expansion of reporting under a revised NFRD may address some of these gaps, there is likely to be a significant challenge for many FMPs to provide complete, accurate and consistent data for many of these indicators. As an example: The same security can have differing ESG-ratings based on data providers used and subsequent weightings. Some providers have better data on financial and generic environmental aspects, while others might do a deeper dive into corporate governance and broader negative externalities. The task of direct data collection, which is expected under the proposed RTS provisions, will be extremely onerous and potentially costly for many FMPs, to an extent that is not clearly proportionate to the value of disclosure of some PAI indicators. It may be beneficial to consider whether a subset of indicators that are the most important and where data is more readily available should be disclosed, at least during an initial period.

Given the existing information asymmetries between FMPs and investees and the (non-)availability of ESG data, we suggest the following:

Large companies in the real economy are subject to the NFRD, which is currently in a review process. Legislation on taxonomy is not yet complete either: it is based primarily on "E", and Level II measures are also pending. From March 2021, FMPs must therefore have and disclose information that is legally available to them much later or that can only be obtained with great difficulty. Therefore, it is necessary to align on the timetable the (then reviewed) NFRD, the Taxonomy and the RTS on the SFDR: First, the NFRD has to be renewed and completed, the Taxonomy has to be completed by the “S” and “G” criteria of “ESG”, and based on the definitions of the latter and more data available from non-financial investees subject to the “new” NFRD, the ESAs might propose RTS. **We strongly advocate a postponement of the RTS until the completion of the Taxonomy and the review of the NFRD. In fact , the requested data under the draft RTS are only available after the completion/review of the Taxonomy and the NFRD. SFDR alignment with the final Taxonomy is essential for a working overall framework. Rushing through an RTS just to have it implemented should be questioned.**

- **Detailed rules on all information and more data: enabling investors to make better-informed investment decisions and more valuable tools in terms of supervision?**

The policy approach chosen for the pre-contractual granularity of information is the minimum standardisation of requirements, which allows in the meaning of the ESAs for some tailoring of approach to specificities of products. In the view of the ESAs, the same format and detailed rules on disclosure would at the greatest level of granularity allow detailed information to investors and would supervisory authorities provide more information in the context of their tasks. We do not share these convictions; it is indeed difficult to make disclosure and reporting rules effective both for investors and supervisors, but the experiences from the past decade – “the more information the better it is” – show rather the risk that burdensome data reporting and disclosing lead to an information overload and no one – neither investors nor supervisors – take advantages out of the data for their tasks.

As mentioned above, legislators often want to solve information asymmetries with disclosure obligations, as it is the case under the draft RTS. But the experiences during the last few years should have demonstrated that too much information is likely to lead only to information overload (MiFID II being a recent example). The large volume of quantitative information that needs to be disclosed may overwhelm customers of financial products without providing meaningful and/or comprehensible information. With regard to MiFID II and the PRIIPs KID, supervisors and legislators should be aware of such problems. We therefore invite the ESAs to reflect if the aimed transparency is really achieved with so much and so granular information. In our view rather not.

As a result of the granularity and quantity of information to be disclosed, we fear even that many FMPs will not make use of the mandatory templates, the mandatory indicators and therefore make use of the “explain” approach under the RTS.

- **EU-wide centralized ESG database as a necessary tool for FMPs**

The regulatory developments in the context of the EU Sustainable Finance agenda has created and still creates an urgent need for publicly available ESG data as well as how to enhance their sourcing. Compliance with the new disclosure obligations introduced by the SFDR and the discussed draft RTS requires FMPs to have access to comparable robust and reliable ESG data at the level of companies. From the perspective of the EU Taxonomy Regulation, companies subject to the NFRD will have to disclose how and to what extent their activities qualify as environmentally sustainable as defined in the Regulation. Unfortunately, the availability of quality, comparable, reliable and public ESG data is currently rather limited and insufficient to comply with the increasing expectations and new regulatory requirements due to apply shortly, as already mentioned above. When available, data is often difficult to compare and raises reliability questions. Moreover, ESG data by third party providers is often expensive in particular for small-size

FMPs, researchers or academia. With an increasing demand for ESG information, the fragmentation in ESG third party data providers risks to lead to insufficient availability of comparable and reliable ESG data as well as to unnecessary costs and competition concerns. **For this reason, a centralized electronic European ESG data register (based on existing solutions) could be one solution to put the burden of information search not only on the FMPs.**

We understand that a common European Green Deal dataspace to support the Green Deal priorities is already envisaged in the EU data strategy. We encourage the EU Commission to investigate how this proposal can fit in this context. As a first building block, the European data register should focus on ESG disclosure in line with NFRD, EU Taxonomy based information, starting with climate change adaptation and mitigation objectives, as well as ESG data necessary to FMPs to comply with the SFDR. The availability of raw harmonized ESG data would allow for better comparability, increase transparency, lower barriers and costs, generate efficiency, reduce complexity and attract new players. The data register would provide a very valuable source of information to markets and policy makers alike. Such database should also help data preparers by eliminating current multiple different requests. Such an ESG database would help to fill the ESG gaps in financial reports and help to reduce information asymmetries between FMPs and investees to help the FMPs then to reduce the information asymmetries between FMPs and investors.

- **Timeline for the implementation of the RTS**

As a consequence of the non-availability of the requested ESG data, we suggest another timeline. Not only the non-availability of data is a problem, but also the existing timeline: The ESAs shall deliver the final RTS to the EU Commission after this consultation until 30 December 2020. The final RTS will be published then in January 2021. The regulation (SFDR) will take effect from March 2021 with first disclosures from June 2021. Given the RTS are still in development and will be finally published only in early 2021, this provides limited time for FMPs per se to collect the data necessary to report – apart from the non-availability of data as mentioned above. It also means that various regulatory interlinkages, such as those with the Taxonomy regulation, are unlikely to be fully resolved. **With regard to the proposed EU-wide ESG database to be built, the completion of the Taxonomy and the planned review of the NFRD, we strongly advocate to adapt the timeline of the SFDR RTS to these developments.** It would therefore be beneficial to clarify how the ESAs and the Commission will treat the early years of implementation, and ensure that best effort attempts by investors to comply with the legislation are taken into account, and to consider whether a phased approach to implementation would be more appropriate in this instance. For example, this could focus on disclosure of a smaller set of principal adverse impact indicators for which data is more readily available.

- **Phasing-in approach**

We have noted that there is a phased implementation for the SFDR Level 2 RTS. A first set dealing with adverse impacts on climate and other environmental impacts is due by 30 December 2020. A second set dealing with adverse impacts on social and employee matters, respect for human rights, anti-corruption and anti-bribery is not required until 30 December 2021. This would be after the implementation date for this draft RTS. We assume – although this will need to be confirmed by applicable regulators – that this would in practice mean that the due diligence policy would be required to address only climate and environmental impacts on 10 March 2021, with no requirement to address the additional impacts until the remaining Level 2 measures are published.

The implementation of ESG is a holistic approach. The Taxonomy already lacks criteria for “S” and “G”. If FMPs should disclose data for “S” and “G” based on RTS before the completion of the Taxonomy, this would lead to inconsistencies and confusion. A possible approach would be in phasing-in in general the RTS. It would therefore be beneficial to clarify how the ESAs and the Commission will treat the early years of implementation, and ensure that best effort attempts by investors to comply with the legislation are taken into account, and to consider whether a phased approach to implementation would be more appropriate in this instance. For example, this could focus on disclosure of a smaller set of principal adverse impact indicators for which data is more readily available.

The ESAs could encourage FMPs to use parts of the proposed PAI on a voluntary basis and declare the use of them mandatory only after defining and implementing the renewed standards under the NFRD.

- **Ensure coherence and consistency across all legislative projects, including definitions.**

"Sustainable investments" is defined in the Disclosure Regulation, for example, without reference to the Taxonomy Regulation. As a possible consequence, a financial product may qualify as an Article 9 product under the SFDR, regardless of the fact that its portfolio is composed entirely or partly of investments that are not taxonomy compliant (i.e. that are not invested in "environmentally sustainable economic activities" in the sense of the Taxonomy Regulation). Further clarity on the definition of such products would be beneficial. As noted by the ESAs, there are linkages between the concept of PAIs and 'Do No Significant Harm' (DNSH). Given the divergence between the SFDR and the Taxonomy there is a significant risk of conflicting definitions, reporting requirements and approaches, leading to lower transparency and clarity for clients and stakeholders. We would encourage the ESAs and EU Commission to review the definitions, linkages and revise reporting requirements as relevant to ensure an unintentional dual system is not created and to ensure coherence and consistency across all legislative projects.
<ESA_COMMENT_ESG_1>

- **: Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an "opt-in" regime for disclosure??**

<ESA_QUESTION_ESG_1>
The Disclosure of PAI further complicates rather than simplifies the high-level obligation set out in the SFDR. We therefore do rather not agree with the approach proposed in Chapter II and Annex I for the following main reasons:

- The interpretation of **the SFRD itself does not prescribe such a quantitative approach on entity-level, rather a (qualitative) description.**
- **Quantitative approaches more fit on product level than on entity-level.** On the latter we favour a more qualitative approach.
- There is no added value in this approach on entity-level: If investors are seeking for sustainable investments, they want primarily know if their investments (i.e. the products) are ESG-compliant or not. **It is the product level where a quantitative approach (i.e. the value of the metrics of PAI) is more appropriate.** The manager selection may rather be based on qualitative due diligence.
- There are **too many indicators** (32 mandatory + 18 voluntary, 50 in sum). Less but really "key" or principal indicators would be a better approach, if ever one would rely on metrics. The number of indicators combined with inhomogeneous data make ESG results interpretative to whom-ever is conducting the analysis. The information asymmetries mean the industry will not always unilaterally reach the same ESG conclusions at product or entity-level. We are not convinced that so many indicators are needed whether to indicate if investment decisions lead to adverse impacts or not.
- **Not every indicator is "key" or principal**, as aforementioned, and in our view, not every mandatory indicator is deemed to always lead to PAI.
- **Leading to PAI "irrespective of the value of the metrics" is not an appropriate approach**, there is no evidence for it. There is no "black" or "white" when doing due diligence for investments or FMPs.
- **The chosen approach with regard to the additional indicators is not convincing** in our view and rather leads to "whateverism".
- Although we favour, in general, a holistic approach for ESG disclosure and investments, i.e. the consideration of E**&**S**&**G, this Level **2** RTS are not the appropriate legal instrument to implement "S" or "G" indicators before the completion of the Taxonomy which focuses on environmental ("E") definitions actually. We firstly need more clarity on Level **1** with regard to social or governance indicators.
- **The proposed approach for all FMPs and products all over the very different asset classes is too schematic.** We strongly plea for **more discretion for FMPs to decide whether an indicator leads to PAIs or not**, whether a financial product is sustainable or not. In our days it is far more difficult to "just declare" investment decisions sustainable (i.e. doing greenwashing) if in fact they are not sustainable – due to the pressure of NGOs, financial activists, a more attentive public, competitors, supervisors and fare more informed investors than some years ago.

In more detail:

This is one of the potentially most significant obligations imposed on asset managers (and indeed other FMPs) **by the SFDR**. The requirement to disclose, both at an entity-level (Article 4) and at a financial product level (Article 7) the PAIs of investment decisions on sustainability factors will be very onerous. This obligation applies mandatorily to FMPs with more than 500 employees, or on a "comply or explain" basis to smaller FMPs, irrespective of whether the relevant product is classified as an Article 8 Product, an Article 9 Product or neither.

In order to assist with making these disclosures, the ESAs had been mandated to develop these draft RTS in respect of the sustainability indicators in relation to: (i) adverse impacts on the climate and other environment-related adverse impacts (by 30 December 2020); and (ii) adverse impacts in the field of social and employee matters, respect for human rights, anti-corruption and anti-bribery matters (by 30 December 2021). Pursuant to this mandate, the draft RTS provide: (i) a **mandatory** reporting template to use for the statement on considering PAIs of investment decisions on sustainability factors; and (ii) a set of sustainability indicators for both climate and environment-related adverse impacts and adverse impacts in the field of social and employee matters, respect for human rights, anticorruption and anti-bribery matters.
This initiative is welcome in principle. However the approach in the draft RTS is, in our view, very problematic.

The RTS appear, through rigid prescription, to have modified the basis on which the 'adverse impacts' disclosure is required to be made under the SFDR, and in cases, could now require detailed disclosures on adverse impacts which the FMP may not consider "principal". Under the SFDR, FMPs are required to determine whether their investment decisions had "principal adverse impacts on sustainability factors". If so, they are required to disclose these principal adverse impacts. The natural interpretation of this obligation is that the assessment of whether a particular impact is "principal" would be made by the relevant FMP (selection bias), and Recital 18 to the SFDR appears to confirm that "materiality" is a relevant factor in determining whether an adverse impact is "principal". If it concludes that its investment decisions could have some impact on sustainability factors, if this wasn't a "principal" impact, the impact did not need to be disclosed (or even calculated in any significant detail).

This approach appears to have been, in effect, modified by the draft RTS. The draft RTS provide a non-exhaustive list of sustainability indicators against which adverse impacts are to be measured. The list of sustainability indicators has been split into: (i) a core set of mandatory indicators (set out in Table 1 of Annex I) that are deemed to always lead to principal adverse impacts, irrespective of the result of the assessment by the financial market participant; and (ii) additional indicators for environmental and social factors (set out in Tables 2 and 3 of Annex II), to be used to identify, assess and prioritise additional principal adverse impacts.

Article 4 of the SFDR requires (on a "comply or explain" basis) for an asset manager's websites to communicate its policies for diligencing the adverse impacts of its investment decisions on sustainability factors.
Article 4 of the draft RTS prescribes a template format for this entity-level "Adverse sustainability impacts statement". **The SFDR provides that the disclosure must include a "description"** of the adverse impacts of the asset manager's investment decisions on sustainability. However, **the draft RTS proposes that this "description", would entail a Key Performace Indicators (KPI) grid comprising up to 50 separate quantitative disclosures on complex ESG metrics** (32 mandatory data items, and a further 18 optional data items).

Since the **mandatory** indicators are deemed to always lead to principal adverse impacts, any impact on these sustainability indicators needs to be disclosed by the FMP. Therefore, irrespective of whether a sustainability factor is relevant to the operations of a FMP, each FMP will be required to disclose on each indicator. This consequence is recognised in the impact assessment accompanying the Consultation Paper, which acknowledges that a disadvantage of the proposed approach is "mandatory indicators may not be relevant for all financial market participants". This approach is quite bureaucratic, surely costly, is in our view not appropriate to achieve the planned aims and leads to a huge information overload.

In relation to the additional indicators, the draft RTS require the FMP to PAIs on at least one of the sustainability indicators in each of Tables 2 and 3. The rationale for this is not clear. The sustainability indicators in Tables 2 and 3 are those on which an adverse impact is not per se "principal". It is for FMP to determine if the adverse impact is "principal" and requires disclosure. Therefore, it seems odd that FMP is nevertheless required to disclose an adverse impact on at least one of these additional indicators, potentially even in a situation where it doesn't consider the adverse impact on any of those indicators to be material. Although the ESAs acknowledge that it is left to the FMPs to determine which of the indicators

should be disclosed against and although the ESAs indicated in the Public Hearing that they would expect the FMPs to select the indicator on which the investment had the most material impact, this approach leads in our view to a “whateverism”. **There is no added value the disclosure of optional or additional indicators is left to the FMPs. In our view, the additional indicators should really be additional: If an indicator is relevant in the FMP’s view, it might be disclosed, if not, not.**

We understand that this departure is because the ESAs wish to provide comparable disclosure across FMPs in terms of their impact on the mandatory indicators. However, the end result of these new proposals is that FMPs are in effect being required to disclose “adverse impacts on principal sustainability indicators” rather than “principal adverse impacts on sustainability indicators”.

Under the SFDR, by 30 December 2022, a FMP that discloses principal adverse sustainability impacts (either voluntarily or mandatorily) also needs to make these disclosures at the level of individual financial products. These periodic disclosures need to include: (a) a clear and reasoned explanation of whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors; and (b) a statement that information on PAIs on sustainability factors is available in the periodic disclosures. The draft RTS doesn’t expressly provide any further detail on this financial-product specific disclosure obligation, including on what would qualify as a “clear and reasoned explanation” and what the format should be followed for disclosing the principal adverse impacts in the periodic disclosures.

The current proposals treat any adverse impact as material, and do not therefore enable customers to understand relative impact or performance that may be reasonable. The focus on quantifying all adverse impacts at any level risks obscuring where such impacts should be truly considered ‘principal’. The volume of quantified information disclosed may also not result in information that is meaningful or comprehensible to customers of financial products.

The approach to provision of quantified information also does not adequately reflect where investors are taking action to influence the trajectory of these adverse impacts. **Quantification of the indicators may provide a potentially misleading and inaccurate understanding of the impact of a financial firm or portfolio.** Putting greater emphasis on **how** investors conduct due diligence and **how** adverse impacts are being addressed through investor action, **instead of encouraging a focus on calculating, estimating and reporting the snapshot of quantified impact information** would encourage action by investors that lead to positive sustainability outcomes over time.

The draft RTS requires asset managers to include in their **quantitative** website disclosure all **32 mandatory indicators/metrics** (Table 1 of Annex I), at least one of the **11 additional indicators/metrics** on adverse climate/environment impacts (Table 2 of Annex I) that qualifies as principal, at least one of the **seven additional indicators/metrics** on a social/employee/ human rights/anti-corruption/anti-bribery adverse impacts (Table 3 of Annex I) that qualify as principal, and any other adverse impact on a sustainability factor that qualifies as principal.
The draft RTS does not specify how an asset manager should determine whether an adverse impact qualifies as a “principal” adverse impact and/or how to select from the 18 non-mandatory indicators.
The core set of indicators are deemed to always lead to PAIs, irrespective of the result of the assessment by the FMP. Though disclosure against those indicators is mandatory, the ESAs acknowledged in the Public Hearing, that where an indicator is irrelevant to a given investment, the FMP might be permitted to disclose a score of zero against that indicator and explain why it is irrelevant. What isn’t clear, however, is the extent of due diligence to be carried out by the FMP before concluding that an indicator is not relevant to any given investment and whether a ‘zero’ value can be entered if it had not been verified.

In sum, the whole approach proposed is not convincing. **There seem to be largely too many indicators.** In our view, there should only be a small core set of indicators. There should not be an automatism that the indicators always lead to PAIs irrespective of the metrics. This point should be in the discretion of the FMP, depending also on respective the asset class, etc.

In addition to the quantitative disclosures, asset managers would be required to **include four detailed narrative (qualitative) disclosures** on prescribed areas. Asset managers would also be required to provide an overarching summary of the qualitative and quantitative disclosures which must be no more than two sides of A4-sized paper when printed.
Asset managers may "comply or explain". Those that choose not to comply must publish a website disclosure headed "No consideration of sustainability adverse impacts", including a prominent statement that the firm does not consider the adverse impacts of its investment decisions on sustainability factors and why it does not do so.
From 30 June 2021, the "comply or explain" obligation would become a simple "comply" obligation for asset managers that have more than 500 employees (or asset managers which are the parent undertaking of a group with more than 500 employees). In other words, it will then be mandatory for asset managers with more than 500 employees to implement the due diligence policy and provide the quantitative and qualitative disclosures on their website. There is still no clarity on how the 500 employees test works in groups headed by an entity which is not a financial market participant but which has an aggregate of more than 500 employees.
As may be apparent, complying with these draft RTS requirements will be a significant undertaking for firms. **In practice, it may be that some firms will be put-off from choosing to comply by how onerous the disclosure requirements are.**

Asset managers will recognise that there may be a (potentially significant) challenge to obtain all relevant data across all portfolio holdings to make the required disclosures. For those querying how they will obtain the underlying data for the disclosures (e.g. calculating the carbon footprint across the firm's investments) the draft RTS suggests that, in addition to direct engagement with investee companies, methods may include internal financial analysts and specialists in the area of sustainable investments, external market research providers, specifically commissioned studies, publicly available information or shared information from peer networks or collaborative initiatives.

Once published, the quantitative data from each annual disclosure must remain on the website for ten years to provide comparison for subsequent annual disclosures.

We have noted when discussing with our members from the alternative funds industry that there has been a significant adverse reaction to the draft RTS, as the quantitative disclosures are significantly more detailed and dramatically more onerous to prepare than firms had anticipated and are likely to represent a significant undertaking in too short time. Smaller firms without a refined process for quantitatively analysing ESG data may have trouble adhering to this.

We strongly believe that achieving the objectives of transparency and action in relation to material impacts is not possible with the proposed approach.

The current proposals treat any adverse impact as material, and do not therefore enable customers (i.e. investors – which means retail and institutional investors) to understand relative impact or performance that may be reasonable. The focus on quantifying all adverse impacts at any level risks obscuring where such impacts should be truly considered 'principal'. The volume of quantified information disclosed may also not result in information that is meaningful or comprehensible to customers of financial products.

We would suggest consideration of the balance between quantitative and qualitative information, and whether materiality thresholds would be beneficial.
<ESA_QUESTION_ESG_1>

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

<ESA_QUESTION_ESG_2>

In view of the enormous burden of reporting obligations that are to be imposed on all FMPs and financial advisors, the question of proportionality is increasingly being raised. The question of feasibility is also overriding, at least until the taxonomy regulation and the NFRD are completed, in view of the meagre data available on ESG information. It is also questionable whether the level of detail that the ESAs display with their RTSs was laid out in the SFDR, or whether the ESAs are again acting as co-legislators.
In sum and clearly: the approach laid out in Chapter II and Annex I, takes not sufficiently into account the size, nature, and scale of FMPs activities and the type of products they make available.
<ESA_QUESTION_ESG_2>

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

<ESA_QUESTION_ESG_3>
Cf. our answer to Q1. Our detailed criticism to the proposed approach in Chapter II and Annex I is itself our proposal for other ways to ensure sufficiently comparable disclosure against key indicators. With regard to the timeline, we stated above that it is necessary to first make available the data of the real economy/from non-financial companies subject to the NFRD, then oblige FMPs to disclose such data. There should be no ESG reporting obligation until then at all based on a quantitative approach as proposed in the draft RTS.

We also kindly invite the ESAs to consider existing industry practice**. In our view, it would be worthwhile to base disclosure on existing and accepted industry standards rather than create completely new standards like the draft RTS which follows also a "one standard fits all asset classes" approach instead of considering the various differences between asset classes – from liquid securities traded on stock exchanges to illiquid asset classes such as private debt, private equity and infrastructure.** In order to reflect the true value of PAI of investment decisions, the materiality assessment should be taken into account with a sufficient consideration of sector/asset class specific issues. Established and broadly accepted industry standards allow this differentiation. Investors are increasingly applying these non-financial factors as part of their analysis process to identify material risks and growth opportunities. ESG metrics are not commonly part of mandatory financial reporting, though companies are increasingly making disclosures in their annual report or in a standalone sustainability report. Numerous institutions, such as the Sustainable Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), and CDP are working to form standards and define materiality to facilitate incorporation of these factors into the investment process.

We would, for instance, like to draw the attention of the ESAs to the consultation paper of the **CFA Institute**, published in August 2020 only and thus after the publication of the draft RTS: CFA Institute is developing **ESG Disclosure Standards for Investment Products** that aim to build a framework for investment managers to better communicate, and their clients to better understand, the nature and characteristics of ESG-centric funds and investment strategies.

There are many disclosure standards, mostly driven by investors and therefore broadly accepted within investor's universe. For example – as an alternative investments fund's association we focus on the AIF industry – for more than ten years, there are **standards for real assets like infrastructure or real estate**: **GRESB** as the "Investor-driven Global ESG Benchmark for the Real Estate Sector". Established in 2009 by a group of large pension funds who wanted to have access to comparable and reliable data on the ESG performance of their investments, the GRESB standards have grown to become the leading Environmental, Social and Governance (ESG) benchmark for real estate and infrastructure investments across the world. GRESB assesses and benchmarks the ESG performance of real assets, providing standardized and validated data to the capital markets.
The assessments are guided by what investors and the industry consider to be material issues in the sustainability performance of real asset investments, and are aligned with international reporting frameworks, such as GRI, PRI, SASB, DJSI, TCFD recommendations, the Paris Climate Agreement, UN SDGs, region and country specific disclosure guidelines. Investors use these ESG data and analytical tools to monitor their investments, engage with their managers, and make decisions that lead to a more sustainable and resilient real asset industry and disclose them – so, exactly what is intended by the draft RTS.

In the **private equity** area limited partners (LPs), i.e. the investors in private equity, are increasingly asking general partners (GPs) to demonstrate they have a structured approach to managing ESG risks and opportunities. There are various investor-led and self-regulatory ESG initiatives (e.g. the **PRI, ESG Disclosure Framework for private equity**), which are increasingly required practice by LPs, peers, and the industry at large to stay competitive. The "ESG Disclosure Framework for Private Equity" is a tool developed by an international group of LPs, GPs and private equity associations to **provide guidance on the disclosure of ESG considerations** between LPs and GPs. By applying this guidance, GPs can provide LPs with clarity that (i) the fund is being managed in accordance with ESG policies agreed at fund formation, (ii) be informed of any **material changes to the ESG risks and opportunities** facing the portfolio, and (iii) be informed of any **material incidents** and how these were addressed.
<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
Cf. our answer to Q1. In our view, there is no need for such a mandatory, detailed template based on quantitative 50 indicators and metrics on entity-level of FMPs. If metrics are used, then on product level. On entity-level, we suggest a qualitative approach, i.e. a description, as it is laid down in the SFRD itself. If ever such a template should become mandatory, then with a largely reduced number of really key indicators, focussing first on environmental aspects as does the Taxonomy and taking into consideration in a mandatory manner social or governance indicators only when the Taxonomy will have been completed. The question is also whether all of the indicators within the reporting template are essential and do lead to PAIs. The proposed mandatory use of the reporting template is less flexible and too schematic and would lead, in our view, only to an apparent correctness and an apparent comparability of sustainability. Any attempted reporting standardisation should take into account lapses in data quality.
<ESA_QUESTION_ESG_4>

- **: Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies´ GHG emissions)?**

<ESA_QUESTION_ESG_5>
Cf. also our answer to Q1. In sum, we do not agree with the indicators. We do not see merit in including forward-looking indicators based on quantitative elements because of the forecast uncertainty of any forward-looking indicators. Qualitative forward-looking indicators might be useful from a risk management perspective. But we do not see merit at all in the large number of indicators and the granularity of (metric) information required by the draft RTS. In our view, some of the 32 mandatory indicators are fare away from being essential and, if applicable, should not lead "automatically" in a schematic manner to PAIs "irrespective of the value of the metrics". If the ESAs are of the opinion to achieve comparability and standardization of sustainability only by a mandatory set of indicators (which is, in our view, not an appropriate approach on entity-level which should rather be based on descriptive elements than quantitative ones), then there should be much less indicators. There is too much granularity that would lead to information overload. Investors do not need more than indicator with regard to Greenhouse gas emissions (the draft RTS contain four!) or another four indicators with regard to energy. Much more flexibility is needed, too. Not every indicator is relevant for each investment (biodiversity is important with regard to agriculture-related investments for instance, and rather not for IT-based companies or pure service providers), and instead of "ticking the box" in a schematic manner, it should be a more discretionary approach for FMPs. As mentioned in Q1 and elsewhere, quantitative indicators are much more relevant on product level than on entity or portfolio level. On the latter level, a more qualitative or descriptive approach seems to be more appropriate. There is, within the draft RTS, not sufficient distinction between entity and product level.
<ESA_QUESTION_ESG_5>

- **: In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?**

<ESA_QUESTION_ESG_6>
No, as mentioned in Q5, we do not see merit in further or forward-looking indicators. There are too many indicators already.
<ESA_QUESTION_ESG_6>

- **: The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?**

<ESA_QUESTION_ESG_7>
Unlike the ESAs we rather do not see merit in such measurements. The ESAs should understand that there is a lot more than principal-agent relationships, and providing information on a look-through basis is not a means to an end. We doubt on the feasibility of such measurement and calculations. The question is also to what extent one have to “look through”. As we know from many financial products, this is a challenge per se (derivatives, fund of funds, private debt funds, private equity funds, etc.). The basis of the value of the investments seems to make more sense than the basis of the number of companies.
<ESA_QUESTION_ESG_7>

- : **Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?**

<ESA_QUESTION_ESG_8>
If there will be such indicators or metrics one day, we maybe will see merit in also including them, otherwise no. In fact, it is hardly affordable until the taxonomy level 2 measures and renewed NFRD rules are adapted. A key challenge we see is that many of the causal pathways between ESG and the financial impact – or the corporate benefit – are indirect. There are, of course, direct pathways: for example, by boosting energy efficiency, you reduce costs, which improves financial performance (the “E” from ESG). But if there’s a human resources scandal within a company, the way that impacts financial performance is indirect. That’s why it’s hard to mitigate. But if a company has good management structures, so good governance (the “G” from ESG), it’s possible to avoid the financial impact of material environmental and social risks (the “S” from ESG). Even if those risks are always present, they only become a financial reality when the company’s management systems fail. This where empirical data comes in: academics, ESG experts, data providers develop even metrics that we're testing metrics around management system quality, control system quality, accountability, and governance. They are important predictors of financial impact for environmental and social risks.

Engineering companies, data analytics, rating agencies etc. are developing more and more “smart” or intelligent metrics for the measurement of GHG emissions and other indicators, especially with regard to environmental factors. But also with regard to social or governance aspects, we might have advanced indicators in the near future, as the aforementioned examples show. Only then we see merit in including such advanced indicators, but not now.
<ESA_QUESTION_ESG_8>

- **: Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?**

<ESA_QUESTION_ESG_9>
ESG means "E" and "S" and "G" in a holistic sense. Already during the development of the Taxonomy, we strongly argued that this Level 1 Regulation should be completed by social and governance matters and not focus only on environmental matters, especially as there is some evidence that the governance factors are most important with regard to the risk-adjusted return of investments. In this respect, since the discussion about Taxonomy, which focuses almost exclusively on "E", it would have been appropriate to clarify all three aspects that only in combination stands for sustainability.

In the context of this draft RTS, however, it is the wrong time and also the wrong "place" to develop criteria or indicators for "S" or "G" before the primary acts have been developed and completed. Therefore we do not agree with the proposed goal except there would be a timely alignment (i.e. postponement) of the environmental indicators with the social and governance indicators in the sense that the environmental indicators are delayed/that there is deferral until the completion of the social and governance indicators. In sum: Not under the circumstances known today, but yes in general and in case the RTS would be deferred in toto.
<ESA_QUESTION_ESG_9>

- **: Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?**

<ESA_QUESTION_ESG_10>
In general, if there would be useful disclosures and information, this proposal might indeed provide a certain historical comparison. But against the background of the proposed – in in our view not useful set of mandatory indicators – approach, we do not see merit in disclosing so many data at all. Ten times more data would rather make it worse and aggravate the information overload. But if once an appropriate approach for disclosing ESG indicators will be in place, a historical comparison might be supportable. When discussing this questions with our members, they told us to not see any basis for a ten year comparison. Our members don't think that FMPs should and can reliably provide a decade's worth of ESG data.
We propose amending Article 6(2)(a) and replacing "the previous ten years" by "the previous **five** years".
<ESA_QUESTION_ESG_10>

- **: Are there any ways to discourage potential "window dressing" techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?**

<ESA_QUESTION_ESG_11>
The premise of this question is that deliberate or intentional "window-dressing" exists or may come to exist. We would argue rather the opposite. Our members operate in a heavily regulated industry built on trust, alternative fund's business is a people business. "Window dressing" is not something a reputable FMP does. In general, it is important that the reporting obligations under the SFDR/these draft RTS follow the same reporting periods as for other reporting. Reporting during the year should be avoided and reporting dates should not be different – e.g. no reporting obligations for assets held during the year. With regard to "window dressing" it should be noted that for illiquid assets – such as infrastructure, real estate, private equity, private debt, i.e. many alternative asset classes – do not really suffer from window dressing due to the long-term and illiquid nature of the assets and investments. If ever the ESAs think of discouraging techniques, they might have in mind aspects like proportionality and differences between asset classes.
<ESA_QUESTION_ESG_11>

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

<ESA_QUESTION_ESG_12>
Periodic reports are more important than pre-contractual templates, as investors might consult periodic reports or templates even before an investment. Experiences with the PRIIPs KID and MiFID II have caused serious doubts in the past years on whether standardized forms for sales and pre-contractual information really do deliver the benefits that ESAs expect. Standardization would be desirable in principle for comparability, but if so, then only if the data for ESG were standardized, i.e. after unified taxonomy and renewed NFRD. At present, a standardized form seems to be more of a rigid solution in view of the lack of availability, let alone comparability, of ESG data. The proposed mandatory templates base on the use of the proposed indicators – as mentioned above, we do not agree with this approach either.
<ESA_QUESTION_ESG_12>

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

<ESA_QUESTION_ESG_13>
Cf. Q12 with regard to mandatory templates. In our view, it is very important that the ESAs be aware of the existing disclosure and reporting requirements and templates under the AIFMD and other sector-specific regulations. Eventually, any amendments or supplements of the respective reporting and disclosure templates already meet the needs for ESG disclosures. With regard to the question of formatting any templates, the ESAs should also think of digital/IT-based solutions and not be too focused on paper-based formats. <ESA_QUESTION_ESG_13>

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

<ESA_QUESTION_ESG_14>
WHAT has to be disclosed should indeed be harmonised, but less so, HOW exactly and in what format. We prefer, as mentioned above, in general a more qualitative approach. Cf. also Q3 with regard to another approach we suggest: We strongly recommend the ESAs to closely align with industry initiatives such as the “ESG Disclosure Standards for Investment Products” set up by the CFA Institute, the GRESB standards or the PRI ESG Disclosure Framework for Private Equity.
<ESA_QUESTION_ESG_14>

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

<ESA_QUESTION_ESG_15>
In general: pre-contractual information shall not be too granular and detailed as experiences since the implementation of MiFID II and the PRIIPs KID have shown due to the risk of information overload.
<ESA_QUESTION_ESG_15>

- **: Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.**

<ESA_QUESTION_ESG_16>

No, the distinction and differences between "sustainable investment products" and "products that promote environmental or social characteristics" is too unclear. However, this differentiation is of fundamental importance, as investors, for example, pursue sustainability strategies as a means of managing/dealing with sustainability risks and not just influencing sustainability factors. For example, an exclusion policy for solid fossil fuels can be an example of a risk-reducing technique against the risk of stranded assets or transition risks due to regulatory changes etc. If such a strategy is implemented at entity-level, the specific product as such does not promote sustainability, therefore the product should not be considered as a sustainability-related product (according to Article 8 or 9 Product) unless the product is marketed as sustainable.

Article 9 requirements are much stricter than Article 8 requirements; but FMPs have to know and should be able to assess whether they are subject to Article 8 or 9. **Against this background, we propose also to eliminate the disclaimer in Article 16(1) of the draft RTS (i.e., "This product does not have as its objective sustainable investment."). This disclaimer is discriminatory and potentially misleading.**

Asset managers and other FMPs must determine whether a financial product is in or out of scope of Articles 8 and 9 of the SFDR. This categorisation exercise, looking across all of an asset manager's in-scope products and services becomes difficult when the differences between Article 8 and Article 9 products are not sufficiently well captured by provisions and definitions. The SFDR does not provide much colour on how these categories should be interpreted, which in itself presents an initial scoping challenge for FMPs.

There are concerns regarding the definitions of products that promote environmental or social characteristics (Article 8) and products that have sustainable investment as the objective (Article 9). Further clarity on the definition of such products would be beneficial and consideration of whether reporting against the 32 indicators is relevant in all cases. In particular, Article 8 products potentially capture a very large range of ESG characteristics. It is not clear, for example, whether it is proportionate or relevant to have reporting for all indicators where the aforementioned product characteristics relate to a very limited exclusion policy. This approach may discourage firms from offering certain types of ESG products, rather than encouraging appropriate transparency in which the consumer may have a legitimate interest. From our members' perspective, Article 8 risks to become a "death" provision due to the unclear definitions and differences. If FMPs have to determine whether a product is an "Article 8" product or an "Article 9" product, the difference in effort for this examination is rather small with the effect that there is no much sense to determine as an "Article 8" product, but to directly determine it as an "Article 9" product. Against this background, the differences between the two Articles are rather insufficiently captured and not much helpful.

However, the draft RTS includes some helpful guidance, for example that a financial product can be considered as "promoting environmental or social characteristics" for the purposes of Article 8, where information provided to clients, in marketing communications or in mandatory investor disclosures, references sustainability factors that are taken in consideration when allocating the capital invested of the product.

We would also note our ongoing concern regarding the emphasis on benchmarks that meet the criteria of EU Climate Transition Benchmark (CTB) and EU Paris Aligned Benchmark (PAB) as relevant for demonstrating sustainability characteristics. In this regard we would propose providing greater clarity on which types of ESG characteristics are relevant and how they should relate to disclosure requirements as well as reviewing the approach to benchmark requirements.
<ESA_QUESTION_ESG_16>

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

<ESA_QUESTION_ESG_17>
The justification for the requirement to distinguish between direct and indirect investments is not really understandable and the added value is not apparent.

Indirect investments can take the form of investment funds where the investor is not the owner of the underlying assets but is a unit holder of the collective investment fund. Indirect investments may also be

made in the form of derivatives. Given the wide range of derivatives, it is difficult to give an understandable graphic and narrative description of the investment units including indirect investments. At the very least, further guidance on how to consider indirect investments would be required.
<ESA_QUESTION_ESG_17>

- **: The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?**

<ESA_QUESTION_ESG_18>
Graphical descriptions can be helpful in understanding the relevant data, especially for retail investors. However, experience also shows that graphs are particularly prone to misinterpretation by consumers, as they imply a level of comparability that they often cannot provide. The attribution of different types of products to different financial instruments carries the risk of misleading customers, possibly at the expense of other relevant information that is relevant to an investment decision (e.g. a product that invests a large part of its funds in government bonds would tend to look less "sustainable" as government bonds would probably be classified as "rest"). Furthermore, the presentation of the same information in graphic form and as a narrative leads to duplication of effort, which should be avoided in the interest of the investor. In sum, we see more risks than advantages in both graphical and narrative descriptions for indirect investments.
<ESA_QUESTION_ESG_18>

- **: Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?**

<ESA_QUESTION_ESG_19>
The question is almost political, see the discussions about coal or nuclear energy under the taxonomy ordinance. This should, if, only be done in strict accordance with the taxonomy to avoid further inconsistencies across legal acts. We would like to remember that not even the TEG could fully agree on this. We know brown is likely to be the next frontier once the green sustainable finance initiatives are in effect. Before the ESAs use any resources to make interpretations on brown (and if nuclear is included or not) it would be good to get a conclusive picture of green.
<ESA_QUESTION_ESG_19>

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

<ESA_QUESTION_ESG_20>
Rather not, but it would depend primarily on the product.
<ESA_QUESTION_ESG_20>

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

<ESA_QUESTION_ESG_21>

It depends whether what is envisioned of the catch-all category. Currently these issues are secondary to those identified in Question 16.The list in Article 2(17) SFDR is not exhaustive, and the list is only part of the broader definition of a "sustainable investment". The application of only part of this definition to products under Article 8 is potentially confusing. In general, in our view the RTS to the SFDR should then capture (good) governance factors and practices, when they are defined and determined also in the Taxonomy as basic and Level 1 regulation for definitions.
<ESA_QUESTION_ESG_21>

- **: What are your views on the preliminary proposals on "do not significantly harm" principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?**

<ESA_QUESTION_ESG_22>
As noted by the ESAs there are linkages between the concept of principal adverse impacts and 'Do No Significant Harm' (DNSH). Given the divergence in timings between the development and entry into force of the SFDR and the Taxonomy there is a significant risk of conflicting reporting requirements and approaches, leading to lower transparency and clarity for clients and stakeholders. We would encourage the ESAs and EU Commission to review the linkages and revise reporting requirements as relevant to ensure an unintentional dual system is not created.
<ESA_QUESTION_ESG_22>

- **: Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?**

<ESA_QUESTION_ESG_23>
There is no reason to have this driven by regulatory definitions. It would not have the intended effect, i.e. making certain strategies more compelling than they otherwise would be. A further definition of such strategies is unlikely to add value, as they can already be defined in pre-contractual information under investment strategies, where reference can be made to additional information. In general, these widely used ESG investment strategies have been developed and defined by market standards and private standard setters. We see less merit in overlying these market practices by regulatory definitions (which would apply within the EU only, whereas the widely used ESG investment strategies have often worldwide acceptance and are often specific for certain asset classes like private equity, real estate etc.
<ESA_QUESTION_ESG_23>

- **: Do you agree with the approach on the disclosure of financial products' top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?**

<ESA_QUESTION_ESG_24>
A highly granular disclosure of the portfolio is required if the RTSs remain as they are proposed by the ESAs in the draft RTS.
One of the specific disclosures to be made in the periodic reporting for products under Article 8 and Article 9 is "a list, in descending order of size, of the 25 investments that represent on average the largest share of the investments of the financial product during the reference period, including the sector and location of these investments". To highlight the required granularity by the draft RTS, a comparison with the AIFMD Level 2 Regulation is helpful: The reporting template in Annex IV of the Regulation requires the **5 most important instruments and markets** to be reported as AIFM-specific information; with regard to AIF-specific information to be provided, the **5 main instruments** in which the AIF is trading, the **10 principal exposures of the AIF** at the reporting date and the **5 most important portfolio concentrations** have to be reported. **So, 25 instruments to be reported as required by the draft RTS seems to be a too large number.**

The SFDR does not indicate that such granular disclosure is required at the investment level in periodic reporting. Furthermore, the draft raises several questions:
How should the "average" be calculated?
How should reporting deal with investments that qualify for inclusion in the list but are sold before the end of the investment period?
How should the location of an investment be determined? Is it the location of the issuer, its underlying operations or, in the case of listed investments, the location of the stock exchange listing?
In the case of fund of funds investments or derivative exposures, how is the sector of the investment to be determined?
Do the names of the investments have to be disclosed? If so, how should FMPs address concerns about confidentiality or competitive advantages? While the draft RTS acknowledges that disclosures may be subject to conflicting confidentiality obligations, it is by no means clear how to deal with this conflict. Under the Prospectus Regulation and even under the Market Abuse Regulation, the naming of certain investments is not always required (although substantial shareholdings in public limited companies must be disclosed under the Transparency Directive). More clarity is desirable with regard to this approach.
<ESA_QUESTION_ESG_24>

- **: For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.**

1. **an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);**
2. **a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);**
3. **a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and**
4. **a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.**

<ESA_QUESTION_ESG_25>
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- **: Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?**

<ESA_QUESTION_ESG_26>
We do not see a point in providing separate disclosures on derivatives if already ESG statements for the product as a whole are made. There is no value-add in creating an industry-standard statement on this.
<ESA_QUESTION_ESG_26>

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

<ESA_QUESTION_ESG_27>
No, we are, as an association, not able to provide more granular examples of costs associated with the policy options? But we have serious doubts that the preliminary impact assessment had led to realistic results. The proposed approach of the draft RTS will lead to enormously onerous and costly, burdensome consequences for FMPs.
<ESA_QUESTION_ESG_27>