Dutch Banking Association reaction on proposed environmental, social and governance (ESG) disclosure standards for financial market participants, advisers and products.

Consultation Paper (‘CP’) on the Sustainable Finance Disclosure Regulation (‘SFDR’) - hyperlink

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The Dutch Banking Association (hereafter ‘NVB’, ‘banks’ or ‘we’) welcomes the opportunity to respond to the proposed environmental, social and governance (ESG) disclosure standards for financial market participants, advisers and products.

The NVB represents all commercial and semi-public, Dutch and foreign banks and credit institutions operating in the Netherlands (approximately 70). The NVB strives to achieve a strong, internationally competitive and sustainable banking system in the Netherlands. Promoting a sustainable economy is currently one of the focal points of the Association’s work programme. The NVB fully supports the Commission’s ambition and has already taken various initiatives to increase the Dutch banking sector’s contribution to the UN and Paris goals. These include i.a. joint efforts to increase transparency of the (positive and negative) impact of loans and investments on climate change, to promote the respect for human rights in international value chains financed by Dutch banks, and to collectively design innovative financing solutions for the energy efficiency projects and circular business models.

The NVB also works closely with the sector associations of insurers, pension funds and asset managers in the Netherlands, united in the Dutch part of the Sustainability Finance Platform, which is hosted by the Dutch Central Bank (DNB). Especially interesting regarding this consultation paper, most Dutch banks already focus on integrating ESG in their retail investment products where relevant.

In the first section, we highlight general remarks that do not fit very well under specific questions of the CP. We mention for example issues around timing, cross-sectoral alignment, the effect on retail customers and proportionality. In the second section, we describe more technical issues on an article-by-article basis. We highlight for example our issues regarding definitions on level 1 (although strictly seen, not consulted) and concerns on proposed level 2 measures. In the third section of this document, we answer the questions the ESA’s have asked stakeholders regarding the proposed regulatory technical standards.

In general, we understand both the importance and urgence of setting standards for ESG disclosures, and therefore we agree with the goals of the Sustainable Finance Disclosure Regulation (‘SFDR’). Nevertheless, we would like to highlight our concerns regarding the granular, detailed approached taken by the European Supervisory Authorities (‘ESA’s’).

Some sections in this paper align with the reaction of our European parent association, the European Banking Federation.

Nederlandse Vereniging van Banken

Section 1 – General remarks

1. Complexity of the matter and practical concerns

The Commission's EU Sustainable Finance Action Plan was published in 2018. With the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (Disclosure Regulation or SFDR) published only in December 2019, and the level 2 text not ready in draft before the end of January 2021 (we have analysed what has been published up until this point. We believe that the regulatory texts are:

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

2. More than challenging timelines

Under the SFDR, financial market participants ('FMP's') must comply with additional disclosure requirements from 10 March 2021. The draft RTS that are required to assist financial market participants in complying with these disclosure requirements do not have to be submitted to the Commission until 30 December 2020 (end of January 2021 according to the ESAs letter dated 28 April 2020), which already potentially leaves financial market participants with very little time to implement any changes to their systems and procedures that are necessary in order to provide the applicable information. In the meantime, the ESA's have indicated in their letter to the EC of 28 April 2020 that their current objective is to deliver these draft RTS to the European Commission by end of January 2021. Furthermore, the ESAs have encouraged the EC in their aforementioned letter to consider re-visiting the application deadline in SFDR, 10 March 2021, to allow financial market participants sufficient time to properly implement the provisions in the technical standards. Until now, it is unclear if and to what extent the request of the ESA's will be honoured.

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

- There is no entry into force of the Taxonomy yet, and RTS of the Taxonomy are far from finalised. It is not only logical to first have the taxonomy available, but for some parts of the SFDR it is essential (for example: regarding certain disclaimers or methods to define the greenness of an economic activity under SFDR article 9).
- The MiFID ESG amendments regarding Product Governance and Suitability have only recently been consulted and are far from published in the OJEU. This could mean that no client ESG preferences are registered and accumulated as of March 2021, but investment firms do need to include descriptions of the following in pre-contractual disclosures: (a) the manner in which sustainability risks are integrated into their investment advice / investment decisions; and (b) the result of the assessment of the likely impacts of sustainability risks on the returns of the financial products they advise on / make available.
- For investment firms to make a disclosure that has any relevance or significance, they need to base their assessment on data. Data is simply lacking. The Non-Financial Reporting Directive (NFRD) is still under revision and was only recently consulted. The scope (only a minor portion of the total investable landscape) is too limited for portfolio managers to disclose anything about most companies with any certainty. If companies are not subject to certain disclosure requirements (either by the NFRD or the SFDR), it will remain impossible for FMP's to disclose sustainability risk/factors/indicators, with any relevance. Furthermore, states (i.e. issuers of government bonds) form a completely different obstacle to SFDR compliance, as they are by no means subject to the NFRD.

- While SFDR level 2 Chapter VI art. 53 states:” In respect of a financial market participant that first considered the principal adverse impacts of its investment decisions before 10 March 2021, from that date until 30 June 2022, by way of derogation from Article 4(1), that financial market participant shall publish the information in Articles 5 to 10 except for the information that relates to a reference period”, it is not clear why the formal inception is march 2021 when the first disclosure document will refer to the previous fiscal year and will be issued rolling on base June, year by year.
- Ref. Table 1 page 53. Because of the lack of reliable systematic data, the ESAs should consider a grace period before applying scope 3 in the compulsory disclosure requirements on carbon emissions.
- At present, credit institutions would totally depend on a restricted number of info providers, of which, the 3 largest in size are all characterized by being controlled by US capital. The present inability of the market to provide accurate and reliable numbers on a plethora of indicators suggests that market participants will likely be encouraged (where relevant) to not consider adverse impacts of investment decisions on sustainability factors, according to SFDR article 4(1b), or not report on too many of those indicators as expressed by RTS art 7.2.

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

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

These costs are likely to be incurred by the end investor. The unclear and continuously changing legislation on the topic of ESG leads to implementations by banks that must be redone over and over (as the legislation is continuously changing) and therefore could drive overall costs for investors to a substantial higher level. The analysis of the ESA’s under point 4 in section 5 (‘Preliminary Impact Assessment’) regarding costs/benefits, is insufficient and lacks a solid base (i.e.: only a handful of interviews have been conducted to conclude the impact assessment).

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

We would like to highlight that, according to ESMA, costs are the most significant detriment on retail investors return. Thus, banks have to offer cost efficient products. With the new ESG requirements, offering cost efficient products will prove to be more and more difficult, as the costs for ESG data might rise significantly.

4. Information overload

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

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

5. Sustainable Finance does not stop at the EU border

From a portfolio management perspective, the investable landscape covers all available securities. European financial market participants make use of a wide array of securities with good reasons, for example for diversification and hedging purposes (and subsequently, their duty of care). Not investing in stocks or funds that are not subject to the EU's sustainable finance legislation, in the short-term, is not a possibility. Furthermore, from the perspective of spreading/concentration of investments risks, it is questionable whether it is in the interest of the clients to limit investments in scope to the EU.

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

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

6. Flawed cross-sectorial legislation

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

- **MiFID II ESG amendments**. As of July 2020 no Product Governance or Suitability ESG amendments had been published in the OJEU. We expect that, when these amendments are published, they will become effective 12 months later. In any circumstance this means that the MiFID amendments will not become effective before the SFDR will become effective (10 March 2021). This could bring FMP's in precarious situations for example regarding periodic reporting: no ESG preferences of the client have been aggregated, whilst periodic reporting on how ESG preferences have been incorporated already has been started.

  Regarding periodic reporting, there is also the issue that the Commission has hinted that ESG suitability assessment will only be necessary for new clients, and not for already existing clients. The Commission wrote: "to enhance legal certainty, it was clarified that a new suitability assessment for existing contracts will generally not be necessary".[1] Furthermore, we see a risk that the Commission is already hinting on further guidance on or amendments of the to be published MiFID II amendments. In the recently published 'Renewed Sustainable Finance Strategy' consultation the Commission explicitly mentions that: 'to ensure that retail investors

[1] We highlighted our concerns in reaction to the EC consultations on Product Governance and Suitability. Please find our statement here.

are asked about their sustainability preferences in a simple, adequate and sufficiently granular way, would detailed guidance for financial advisers be useful when they ask questions to retail investors seeking financial advice?'. For the sake of efficiency, we would like to see one change (the publication of the Product Governance and Suitability amendments) now or later, but not a change now and within one or two years another.

- **Non-Financial Reporting Directive** – as mentioned under point 1, the NFRD has only recently been consulted and might be revised soon. Therefore reporting non-financial data is for most companies still not compulsory. If these companies do report, they do so with significant flexibility: these companies can choose the most 'useful' way to disclose relevant information (i.e. UN Global Compact, OECD guidelines, ISO 26000). With current timelines, FMP's under the SFDR will have to disclose information that has to come from investee companies, but that is not available yet, or that is highly doubtful (as the investee companies have a wide flexibility to choose more or less the form of reporting they see most fit). In the most favorable scenario, in 2022 investee companies might report over data stemming from 2021. NFRD already aims to provide data for investment decisions but both the SFDR and the Taxonomy can only fully meet their objectives if relevant non-financial information is available from investee companies.
- **Non-Financial Reporting Directive** – European companies bound by NFRD are also deemed to assess compliance with "do no significant harm" criteria and minimum safeguards. In June 2019, as a supplement to 2017 NFRD guidelines, the European Commission published Guidelines on reporting climate-related information which integrates the recommendations by the Financial Stability Board's Taskforce on Climate related Financial Disclosures (TCFD). Both these guidelines are voluntary (non-binding) and do not create any new legal obligations. Therefore, in this phase, liabilities lay with the distributor and/or product manufacturer, rather than the investee company. We believe this balance is rather unfair.
- **Non-Financial Reporting Directive –** For example, if a FMP itself is a listed company on a stock exchange, this means that under Directive 2014/95/EU (that amends the accounting directive 2013/34/EU) this FMP is already required to include non-financial statements in their annual reports from 2018 onwards. So the FMP already must publish entity-level reports on a wide array of policies they implement in relation to:
    - environmental protection
    - social responsibility and treatment of employees
    - respect for human rights
    - anti-corruption and bribery
    - diversity on company boards (in terms of age, gender, educational and professional background)

  We believe that the SFDR might overlap on some significant areas of the NFRD (when the company is in scope of the NFRD). For example, the requirements as set out in art. 3 and art. 4 might be already covered by requirements in the NFRD. More clarification on this topic is desired.
- **Taxonomy** – In Article 2 (17) of the SFDR we find a definition of a sustainable investment (as an investment in an economic activity that contributes to environmental or social objective). Such investments must not significantly harm any of those objectives. In addition, companies where money is invested in must follow good governance practices, with respect to sound management structures, employee relations, remuneration of staff and tax compliance. We would like to highlight that the above definition provides examples of what can be considered an environmental objective, but it is the Taxonomy Regulation - that has not yet entered into force - that defines, at the EU level, the concept of environmental objectives in more detail.
- **Taxonomy** – Furthermore, we would like to see clarifications on the overlap between the Taxonomy's DNSH-criteria and the Principle Adverse Risk Impacts from the SFDR. The Do No Significant Harm definition is included in both the taxonomy and disclosure regulation, but they differ in scope. This effectively means non-alignment. This in turn might prove to be very difficult for both regulated companies and regulators, as the DNSH criterion is embedded in the definition of sustainable investment in the SFDR. So, DNSH seem to *always* apply when a firm in SFDR scope must disclose. Basically, a firm must describe DNSH criteria for E, S and G under the definition of a sustainable investment of the SFDR. For example, in a global equity

fund, it might almost be impossible to safeguard social standards throughout the supply chain (and thus adhere to DNSH). Importantly, the definition of "sustainable investment" introduces a new "do no significant harm" (DNSH) principle that is broader than the DNSH principle in the Taxonomy in that the scope here goes beyond the six environmental objectives.

- **Taxonomy** - Process wise, we also believe it is undesirable to have the Taxonomy Regulation changing the already published SFDR (see Taxonomy art. 4 alpha, gamma etc.). The natural order should follow the taxonomy regulation first, and SFDR second (and not vice versa).
- **Upcoming regulation on ESG rating agencies** – the new EU Sustainable Finance Strategy consultation hints at further requirements for ESG rating agencies, as they question the EC questions the current comparability, quality, and reliability of ESG data from sustainability providers/rating agencies. As most investment firms use these agencies, they should be made aware of upcoming changes when they implement the DR.

  As financial market participants will have to rely further on third-party data providers (that, according to the commission, might use non comparable, reliable, and qualitative data), something the European Commission portrays as a possible (concentration) risk. The Commission is therefore investigating whether it may be useful to ensure open and centralized access not only to company reporting under the NFRD, but also to relevant company information on other available ESG metrics and data points. To this end, a common database would ease transparency and comparability, while avoiding duplication of data collection efforts. Unfortunately for FMP's under scope of this SFDR, this initiative will come too late.

7. Proportionality

The SFDR is very clear in the need to ensure that the regulation and the RTS do not go beyond what is strictly necessary to achieve the objectives to strengthen protection for end investors and improve disclosures to them. We believe that proportionality is essential for smaller market participants to be able to implement the disclosure requirements.

Although the SFDR texts mention proportionality, we would like to highlight again that for smaller market participants (and especially, those that just exceed the 500 employees limit) it might be very costly to implement all the necessary requirements. Supervisors should be made aware of this in an early stage (before the evaluation of the application of the SFDR by 30 December 2022).

8. Legal uncertainty

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

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

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

Section 2 – Technical Remarks

Table 1 – summary of technical issues

Article	Issue	Solution
Level 1 Article 2(17) (Not for consultation)	Nonalignment with taxonomy (i.e. environmental objectives and DNSH-criteria)	
Level 1 Definition of Article 2 (22) (Not for consultation)	Unclear definition	Clarification on definition of Sustainability Risk
Definition/Scope of Level 1 Art. 6-9 (Not for consultation)	Specific issues regarding tailor made managed portfolios	Possibly: work with threshold for individual portfolios.
Definition of Article 8 and Article 9 products (for consultation on level 2)	Unclear definition	Clarification on definitions of SFDR art. 8 and art. 9 'products' or MiFID 'instruments'

Article	Issue	Solution
Level 2 Article 1.	Narrow interpretation of "fossil fuel"	Follow the definition by Eurostat
Level 2 Article 4 (referring to SFDR art. 4)	Table 1: non-alignment with level 1, data issue, always considering PAI's	Drastically reduce table one. Focus on 1) material and 2) available data. Possibly: phased in approach
Level 2 Article 5	Unclear definition of 'language customary in the sphere of international finance'	Clarification of definition
Level 2 Article 6	Historical comparison of principal adverse impact	
Level 2 Chapter II-IV (referring to SFDR art. 8-9)	Differences between MiFID "financial instrument" versus SFDR "financial product". Interpretation issues around art. 8/9 products.	
Level 2, Chapter II ('Table 1')	Nonalignment with level 1, non-alignment with international standards	Align with international standards as described
Level 2 Art. 11	Definition of "make available	Clarification of definition

Level 2 Art. 12	Confusion on the scope in terms of financial products	Clarify 'products' in scope
Level 2 Article 14 para 1b and Art 16	Information to be provided as in art. 16 when "no sustainable investment objective"	Clarification of requirements
Level 2 Article 19	Derivatives	Clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable
Level 2 Article 53	First date of publication	Change wording, align with taxonomy timelines

Level 1

1. **Definition of Level 1 Article 2(17)** of the Disclosure Regulation defines a sustainable investment as an investment in an economic activity that contributes to an environmental objective or a social objective. Although not for discussion in this RTS CP, we believe it is worth mentioning that such investments must not significantly harm any of those objectives. In addition, companies where money is invested in must follow good governance practices, particularly with respect to sound management structures, employee relations, remuneration of staff and tax compliance. We would like to highlight that the above definition provides examples of what can be considered an environmental objective but, in theory, it is the Taxonomy, which has not entered into force yet, that defines an environmental objective in more detail. Furthermore, as described under the general issues as well, we would like to see clarifications on the overlap between the Taxonomy's DNSH-criteria and the Principle Adverse Impacts from the SFDR.

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

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

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

4. **Definition of Article 8 and Article 9 products.** We have questions around the definitions of both ‘promoting ESG characteristics’ and ‘Sustainable Investment as its objective’. And as the definition of sustainable investment is rather vague (and not linked to the taxonomy in the SFDR), what is the precise definition of an article 9 product? And what is the exact definition of an article 8 product ‘promoting’ an ‘ESG characteristic’?

Level 2

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

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

7. **Level Article 4.** As the Principle Adverse Impact statement based on article 4 is an entity level requirement, the information should be relevant on an entity level and therefore more generic. For example regarding policies and engagements in relation to sustainability, relevant for investment decisions and investment advice. However especially the information to be provided under article 4 paragraph 2 under b is very detailed and specified along 32 indicators dealing with a wide area of specific issues. This kind of information would be expected on a product level. There is a structural mismatch of an entity level statement on all services of the entity in scope of the SFRD and therefore normally more generic and aggregated information, and the very specific and detailed information that has to be provided. The costs for being able to issue such statements are very high and the added information value for the clients might proof to be very limited. We wonder whether client information needs in this area have been investigated and confirmed.

8. **Level 2 Article 4.** Regarding the list of adverse impacts: FMP’s shall adopt a risk-based approach to assess which adverse impacts identified qualify as principal. This assessment and prioritization shall be based on the probability of occurrence and severity. The definition of a principal adverse impact under the SFDR should be clarified regarding the materiality underneath and the needed assessment by FMP, taking due the size nature and scale of their activities, as mentioned in SFDR recitals 12 and 18 and Article 4 (1).

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

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

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

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

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

   Does this entail that for Member states in which the official language is not customary in the sphere of international finance, the summary must be published in two languages?

10. **Level 2 Article 6**: historical comparison of principal adverse impact disclosures up to ten years is potentially excessive for items that are constantly and rapidly evolving. We understand the motivation behind the possible historical comparison of principal adverse impact disclosures up to ten years, but this has to be well designed in order not to prejudice the comparison in such a long-term period.

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

11. **Level 1 (art. 8, art. 9) / Level 2 chapter II-IV - Financial instrument (MiFID) vs. Financial Product (SFDR)**
    In general, the difference between the term "financial instrument" according to MiFID and the term "financial product" acc. to the SFDR causes confusion. As financial products contain different financial instruments, but manufacturers of financial instruments are not generally obliged to disclose sustainability related information, it will be difficult for financial market participants offering financial products to obtain the necessary data.

    We would also like to comment that, there are differences between the MiFID II definition of "sustainability preferences" and SFDR art. 8 and art. 9 (question 16) definitions. NVB members find that this new definition which refers to "financial instruments", to article 2(17) or indicators have made things even more confusing than before.

    Strictly seen, shares and bonds are no financial 'products' and have no 'manufacturer'. Companies issuing shares or bonds, share no target market information (for example if ESG will be incorporated in Product Governance and Suitability this will become a major issue). So, shares/bonds, a critical component of most portfolios, cannot be considered as products and therefore not qualify as either an art. 8 or art. 9 product. If in the previous paragraph, a wealth management portfolio does apply to the DR requirements, they need information of the underlying financial instruments. These financial instruments in turn, are not considered as financial products and thus do not fall under the DR, unless if under a managed portfolio. In addition, smaller issuers, as well as issuers in registered non-EU jurisdictions are not subject to the NFRD disclosure requirements. This leaves FMP's rather in the dark on the ESG characteristics of the underlying securities.

In this scenario, we would evaluate service providers and Financial reports the only usable source of information updated on a regular base, considering that the final purpose is also extended to force all listed companies to accurately report on sustainability issues. As we already had the opportunity to raise this issue, in ESMA's Consultation Paper on integrating sustainability risks and factors in MiFID II, the MiFID/Delegated Directive relates to investment services and in principle not to the offering/issuance of financial instruments. Only manufacturers are in scope that qualify as investment firms, meaning investment firms that produce a financial instrument and provide an investment service regarding to that same financial instrument. This is an exception to the rule that "manufacturers do not exist". Several investment products (shares, bonds and funds) are not manufactured by investment firms. This is a conceptual error in MiFID/Delegated Directive. Result is that most (nearly all?) "producers" of financial instruments are not legally required to provide target market information. This puts the burden on distributors to collect ESG related information.

If the 'producers' of financial instruments are not legally required to provide information regarding to the ESG factors, it is not legitimate to put the obligation to provide the same information on the distributors. In this context it seems that, if investment products are offered directly to the investors without the intervention of an investment firm, the ESG-factors do not have to be disclosed.

12. **Level 2, Chapter II ('Table 1'):**
As a minimum standard, the ESAs should align the metrics in the Annex 1 Table 1 with references to the main relevant international standards and frameworks, included:
    - Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)
    - Global Reporting Initiative (GRI)
    - Objectives of Sustainable Development (SDGs)
    - Corporate reporting dialogue
    - Climate Disclosure Project (CDP)
    - Climate Disclosure Standards Board (CDSB),
    - Sustainability Accounting Standards Board (SASB)
    - International Integrated Reporting Council (IIRC)
    - Eco-management system EMAS
    - United Nations Guiding Principles on Business and Human Rights (UNGPs)
    - OECD Guidelines for multinational enterprises
    - Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)
    - ISO 26000 – Social Responsibility

    As far as it regards the reference to the NACE (Nomenclature des Activités Économiques dans la Communauté Européenne) we believe it is necessary to provide a matching table to the economic classifications used in practice by the financial world. These classifications are those of data providers such as MSCI, Bloomberg, Thomson Reuters, and others. At European level, similar work has been done for climate benchmarks (EU) 2019/2089.

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

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

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

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

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

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

16. **Level 2 Article 19**: it would be necessary to clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable (“admitted derivatives”).

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

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

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

Section 3 – Answers to CP questions

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

No, we do not agree with the approach proposed

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

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

Opt-in regime
We do not see how an opt-in regime could be useful for end-investors. First, the underlying methodologies of the table fields are non-identical and therefore hardly comparable. Second, with the opt-in possibility firms are required to minimally add one indicator from table 2 and one indicator from table 3. This means, that most firms will not disclose the same indicators from table 2 and 3 as they have a choice of freedom. This means the aggregate for an investor is hardly comparable (note: if the same key indicators are disclosed, their underlying methodologies are still possibly non-identical and therefore non-comparable). The phasing-in of several key indicators seems more feasible (i.e. 5 table 2 indicators and 5 table 3 indicators; and work on comparable and aligned disclosures for these indicators).

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

Question 2: Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?

Aggregated principal adverse impacts have no added value for individual investors

The proposed level 2 text is a one-size-fits-all approach that does hardly differentiate between the size, nature and scale of FMP's and the types of products they make available. The SFDR covers a wide range of financial products and financial market participants, including, i.e. PEPPs, AIFMs, UCITs and investment firms authorized under MiFID II providing portfolio management. Bearing the end-investor in mind, a disclosure on entity level might make sense for an IORP, as their AUM is bulk and different underlying pension schemes might not differ greatly in their asset allocation. Whilst for individual investors (opposite to their collective pension), they are interested in the material adverse impacts of products they invest in.

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

Disclosing aggregated amounts to all investors might even lead to a confusing overview for individual investors (i.e. a client that has invested in non ESG-related products, is disclosed an ESG impact or a client that has invested in ESG related products ex-fossil fuels, will be showed the principal adverse impacts regarding fossil fuels that investment firms have aggregated on entity/company level). We wonder what the utility of such a quantitative and complex disclosure for both end-investors and financial advisers is.

We therefore believe that:

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

Question 3: If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?

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

To note that we think that the "greener" the product the more information should be provided. Under the current proposals, a large FMP (>500 employees) will automatically have to disclose a complete table 1, whilst it may not offer any ESG products or services.

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

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

Non-alignment level 1 with level 2
The SFDR level 1 text requires FMP's to disclose 1) policies and 2) actions. Table I in the level 2 text, however, is mostly about quantitative indicators. An indicator is not a policy and, in our opinion, nor is a good representation of a policy. We therefore believe this set of indicators does not fit well with the mandate the ESA's have been provided with by the level 1 text.

Decrease the number of principle adverse impact indicators

First of all, although a level 1 requirement, we believe disclosure should take place on a product by product basis, and not on entity level. If disclosure on entity level indeed has to take place, we believe Table 1 should be drastically minimised, and Table 2 and 3 should be deleted (see opt-in paragraph in our answer to question 1). Better would be to assess the most viable and important indicators, where the data challenge is of least concern at this point in time. With the current proposals, Table 1 contains too many indicators. The focus should be on a few indicators, that are meaningful. More information is, in this case, not always better: the table should contain understandable and reliable information. With the current number of indicators that is not the case.[2] Furthermore, we believe the ESA's should test with (retail) client's what information adds value for them. As mentioned before, more detailed information can be provided in disclosure on product-level.

Taxonomy alignment
Some elements of the taxonomy have already been developed (i.e. climate change mitigation and adaptation). Other environmental objectives (like sustainable use of and protection of water and marine resources, transition to a circular economy, waste prevention and recycling, pollution prevention and control, protection of healthy ecosystems) are still under development. Therefore, we do not expect these taxonomy objectives to become effective before 2023. Also, the taxonomy as of now, only refers to environmental issues, carving out the social and governance factors that FMP's will need to disclose from march 2021 under SFDR. We believe more alignment should be found between the different parts of the Sustainable Finance Action Plan (**please also see the paragraphs in our general remarks around cross-sectoral alignment**).

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

Proportionality
Policy option 1.3 (detailed rules on *all* adverse impacts) would require very granular, detailed information that in majority, is not available or meaningful yet (see table 2 below). The ESA's also believe that this is the most resource intensive and expensive option for FMP's. This very strict and granular approach leaves little room to the initial proposed proportionality in the level 1 text. We believe that proportionality is essential for market participants to be able to implement the disclosure requirements. Although the SFDR text mentions proportionality, we would like to highlight again that for market participants it might be very costly to implement all the necessary requirements.

Furthermore, the quality and availability of data will become more important with this regulation. Parties with a large budget can invest more in data providers and can therefore possibly provide more reliable data. Financial market participants must make choices for data and the reliability of the data. This may be at the expense of overall reliability, and thus at the expense of the comparability of data between FMP's and for end consumers. We do not think this is desirable. We are in favor of the EU providing a database of all the data for all companies that we need to report on if this data is to be released. In this way, all asset managers have the same data and the reports are more comparable. As mentioned in our general remarks point 6, a common database would ease transparency and comparability, while avoiding duplication of data collection efforts.

Materiality of the data

[2] Please see table 2 in our answer to question 3 below for a more elaborate view on indicators.

Table 1 does not consider “materiality” of an indicator for a company or sector. We have also responded to this issue in our answer to questions 11. Please find below a more elaborate answer per principal adverse sustainability indicator, and the subsequent metric the ESA’s propose. We based this information on both public and non-public information of multiple data providers and data rating agencies.

Table 2 - comments on adverse sustainability indicators

		Adverse sustainability indicator	**Comments[3]**
Environmental	Greenhouse gas emissions	1. Carbon emissions (broken down by scope 1, 2 and 3 carbon emissions - including agriculture, forestry and other land use (AFOLU) emissions - and in total)	See our answer to question 11. Data for scope 3 is not available. If available, it could lead to double counting. Scope 1 and 2 are not always available, even scope 2 will lead to double counting. Furthermore, we do see from year to year big differences in reported emissions from companies.
		2. Carbon footprint	Possibilities in this area.
		3. Weighted average carbon intensity	Possibilities in this area.
		4. Solid fossil fuel sector exposure	Data is not available. Furthermore, We disagree with the narrow interpretation of "fossil fuel” in the definition in article 1(1). In our view, “fossil fuel” for compliance with the SFDR must follow the definition by Eurostat.
	Energy performance	5. Total energy consumption from non-renewable sources and share of non-renewable energy consumption	Data is not available. For 5-8 we would rather see indicators for % portfolio invested in sustainable energy with a 'visible trend'.
		6. Breakdown of energy consumption by type of non-renewable sources of energy	Data is not available. Doubts if investee companies themselves have insights in this breakdown
		7. Energy consumption intensity	Non-availability of data. Only a small selection of companies provides the GHG data to CDP. Even if they do, it does not mean that energy consumption is available. Furthermore, against what should energy consumption be weighted?
		8. Energy consumption intensity per sector	Not covered by most data rating agencies.
	Biodiversity	9. Biodiversity and ecosystem preservation practices	As there is no data, the share of all investments in investee companies that do not assess, monitor or control the pressures corresponding to the indirect and direct drivers of biodiversity and ecosystems changes, is 100%. For both 9 and 10 ESA's could ask what % in high risk companies that have policies in the field of soil degradation, deforestation (% certified forest products), sustainable palm oil (% certified palmoil) and perhaps also a % portfolio that invests in non-organic pesticides.
		10. Natural species and protected areas	Hardly any company will provide this information. Reliability is very questionable as well. So FMP's will have to make use of third parties who are going to investigate this and estimate it. Most of these companies are not listed. So data raters have to dig into the supply chain and then come up with unreliable, uncomparable figures.

[3] Based on information of multiple data vendors or rating agencies, like Sustainalytics and Clarity AI. Please note: these agencies have an incentive to report more than what could objectively be available in the market. Therefore we believe that these these third parties stating the data is not available or reliable, is of specific value to the ESA’s.

		11. Deforestation	A typical example of materiality vs. sector. Most companies do not have a deforestation policy. As for many companies this is not relevant (e.g. software technology company). So once you are solely invested in IT companies you score 100%?
	Water	12. Water emissions	A handful of companies have provided this data to CDP. Most data providers do not even provide assumptions or estimations.
		13. Exposure to areas of high water stress	A handful of companies have provided this data to CDP. Most data providers do not even provide assumptions or estimations.
		14. Untreated discharged waste water	Non availability of data.
	Waste	15. Hazardous waste ratio	Are companies under NFRD obliged to provide this data? We do not believe so. Relying on estimates has many limitations. Possibly better to focus on i.e. landfill waste and exposure to materials on the UN POP list (instead of hazardous waste ratio).
		16. Non-recycled waste ratio	Non availability of data.
Social	Social and employee matters	17. Implementation of fundamental ILO Conventions	Not available in most cases. If available, what does this data reflect? Are the companies with policies either good or bad? Or did the company just not have the resources to make it available to the public? Materiality issue is relevant for 17, 21 and 22.
		18. Gender pay gap	Non availability of data.
		19. Excessive CEO pay ratio	We would like to link questions 19 and 20 to engagement of FMP's. So for question 18, % voting against board remuneration. And for question 19, % board member (re) appointment. Then question 19 is not only about gender, but broader board diversity and also board independence.
		20. Board gender diversity	Is available, although not by all data providers.
		21. Insufficient whistleblower protection	Is available, although not by all data providers. Materiality issue is relevant for 17, 21 and 22.
		22. Investment in investee companies without workplace accident prevention policies	Is available, although not by all data providers. Materiality issue is relevant for 17, 21 and 22.
	Human Rights	23. Human rights policy	Is mostly only available for companies where human rights are an issue (i.e. material). So only high-risk sectors and/or companies are relevant to be disclosed.
		24. Due diligence	Is mostly only available for companies where human rights issues are an issue (i.e. material). So only high-risk sectors and/or companies are relevant to be disclosed.
		25. Processes and measures for preventing trafficking in human beings	Is mostly only available for companies where human rights issues are an issue (i.e. material). So only high-risk sectors and/or companies are relevant to be disclosed.
		26. Operations and suppliers at significant risk of incidents of child labour	Non availability of data. Furthermore questions around the definition of the ESA's: what 'operations and suppliers' are to be included?
		27. Operations and suppliers at significant risk of incidents of forced or compulsory labour	Non availability of data.
		28. Number and nature of identified cases of severe human rights issues and incidents	Data is somewhat available, but in most cases unreliable.
		29. Exposure to controversial weapons (land mines and cluster bombs)	Data is available, but significant differences are observed between interpretations of data providers
	Anti-	30. Anti-corruption and anti-bribery policies	Materiality issue, this is only relevant for high-

	corruption and anti-bribery		level risk companies/sectors.
		31. Cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery	Is more or less available with at least one data provider, though not ready to distribute. The wording of 31 is very complex. It would be better to focus on 'severe cases' only.
		32. Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws	Not readily available by at least one data provider. Furthermore, we question what time period should be used? I.e. the past year. If so, if you have to report a positive number here you just have bad luck.
		Table 2 and Table 3: we do not believe an opt-in policy is a good solution. Phasing in other indicators compulsory in a later stage is a better alternative. We have stated this in our answer to question 1 as well	

Reference period
According to Art. 6 RTS FMP's will have to assess the adverse impacts of investment decisions for the 'reference period'. Could FMP's report on the portfolio at the last day of the reference period? Will FMP's have to calculate the impact when an investment decision is taken (i.e., that is continuously)? Or will FMP's have to take an average over the reference period? The answers of the ESA's to questions of stakeholders (in the public hearing on July 2nd) did not fully grasp the complexity of this matter. Therefore, more guidance is needed what this 'reference period' in practical terms means.

Question 5: Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies´ GHG emissions)?

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

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

Materiality
As mentioned before. Table 1 does not consider "materiality" of an indicator for a company or sector **(also see our answer to question 4).** We urge the ESA's to align the proposed indicators with the proposed 'double-materiality' standard in the NFRD.[4]

Data
Data on policy-indicators is available, but data on metrics is not widely available (low coverage). We and data providers only have access to this data if companies report on it publicly. Data coverage of companies in the EU may improve with the update of the NFRD, but this does not apply to companies outside the EU. With thousands of (potential) investee companies it is unrealistic to expect that FMP's can approach those companies actively. As mentioned earlier in Section 1 (NFRD), we would like to highlight that governments are not obliged to report on the ESG indicators and that FMP's have no leverage to obtain this data from governments. Government bonds can be a material part of portfolios. Therefore, more guidance is needed on this topic.

Forward-looking climate scenario's

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

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

Question 6: In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?

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

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

Question 7: The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?

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

Question 8: Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?

No, we do not believe more indicators should be added, because there are already (too) many indicators in Table 1.

Question 9: Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?

On the S and G more data (not hard data, but policies) seems to be available according to some data providers. Therefore, we believe E, S and G matters could indeed be included in the indicators from the start, if available and material. Issues will occur once the taxonomy will define S and G more into detail, leading to multiple rounds of implementation for FMP's.

Question 10: Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?

We should build up a database from March 2021, with no backward calculations required.[5] Historical comparison of principal adverse impact disclosures up to ten years is potentially excessive for items that are constantly and rapidly evolving We understand the motivation behind the possible historical comparison of principal adverse impact disclosures up to ten years, but this has to be well designed in order not to prejudice the comparison in such a long term period.

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

[5] Our view is that backward calculations are not required before March 2021, according to RTS Article 6(2)

Question 11: Are there any ways to discourage potential "window dressing" techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?

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

Data absence leads to nudging to certain investment styles or sectors
We have been informed by multiple data providers that many of the requested data points are not available (**see also table 2 in response to question 4**). In certain areas, data might be available but only for certain, specific sectors. Depending on the focus of the portfolio, a company may or may not be able to report on this. In some cases, this turns out to be positive if companies cannot report on this, in some cases it is negative if you cannot. This can lead to portfolio managers with a specific focus being in favour or disadvantage under the proposed SFDR (for example, thematic investors). So that is rather a matter of luck, and can lead to unintended investor bias for certain investment styles of asset managers / portfolio managers. For example, for a highly concentrated portfolio in technological start-ups (have low relative CO2 emissions, no impact on land degradation, and the CEO does not receive a salary, but has a large option package).

Data challenges
For many taxonomy activities the data required for the technical screening criteria is lacking because of limited corporate reporting. Both data providers and investors will have to use estimates, based on assumptions that give the end investor no certainty about the disclosed information and therefore, could be misleading.

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

Materiality
Most ESG scores include determining which factors are *material* to a company's financial performance. This (double) materiality standard is also part of the proposed NFRD, and we do not see why the SFDR does not make any reference to the materiality of adverse impacts to specific companies.[6] How different parties use materiality in practice in the end however, is based on differences how materiality is defined and unveiled.

Information is only of use when it is material to the company, to its shareholders, to society and the environment. We believe disclosing Table 1 on entity level does not qualify to all the before mentioned requirements.

Scope 1, 2, and 3 emissions
Some FMP's already publish the CO2 footprint of companies (equity only). Not disclosing other 'adverse impacts' is justified given other potentially interesting data are simply not available. And even with the current CO2 data, FMP's have encountered the necessary caveats. Partly, carbon emission data is estimated, but also over time FMP's have analysed rather large fluctuations in the CO2 data of a company itself. The use of CO2 footprint data (CO2 per market value) also benefits companies with high valuations. In addition, Scope 3 is not available, which in some cases, constitutes for the majority of emission impact (eg. car industry). Fund managers who invest in highly valued companies, and who may therefore take more financial risk, have an advantage under the proposed SFDR.

[6] Double materiality in the NFRD is defined as impact on both financial performance and 'societal' performance.

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

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

Policies
Data on policy-indicators is available, but data on metrics is not widely available (low coverage). We and data providers only have access to this data if companies report on it publicly. Data coverage of companies in the EU may improve with the update of NFRD, but this will take time and does not apply to companies outside the EU. With thousands of (potential) investee companies it is unrealistic to expect that individual FMP's could approach these companies actively from march 2021.

Data incomparability might lead to window dressing
Research from several think-tanks shows that highly specialised ESG data rating agencies hardly ever agree on the ESG performance of a company. It seems that the process of rating agencies is subject to subjectivity, which means that the process of determining - and reporting on - impact is also experienced as overly complicated. As the SFDR regulation is aimed at FMP's and not at rating agencies, the issue of incomparability is not solved as FMP's are still free to choose what data provider or rating agency they prefer.

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

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

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

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

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

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

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

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

Question 14: If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.

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

Question 15: Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?

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

Question 16: Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.

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

- According to the Background Analysis, the ESA's consider that the broad concept of 'ESG integration' should not be enough to justify that a product promotes environmental or social characteristics. We agree with this approach. FMPs should be allowed to continue to apply different ESG approaches for products that do not fall under Art. 8 or Art. 9. These approaches may vary in intensity. It is unclear where ESG Integration ends and promotion of environmental or social characteristics starts. Leading should be if the FMP promotes those products as Art. 8 or Art. 9.
- Art. 8: where a financial product promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics. What is the definition of 'promoting' an 'ESG characteristic'? Promoting is a non-defined qualification. For example, adhering to PRI or UN Global Compact on an entity level, could implicate that all products that the entity makes available, are Article 8 products. Or, if exclusion of certain underlying stocks (like cluster ammunition, that must be excluded by law) leads to the 'promotion' of ESG characteristics, this automatically would lead to qualifying as an Art. 8 product. The recent public SFDR hearing of the ESA's, did not clarify this matter.
- We would also like to comment that, there are inconsistencies between the MiFID II definition of "sustainability preferences" and art 8 and art 9 (question 16) definitions. EBF members find that this new definition which refers to "financial instruments", to SFDR article 2(17) or indicators have made things even more confusing than before.[7]

[7] Please see our statement around this issue here: https://www.nvb.nl/media/3365/nvb-reaction-esg-in-mifid-suitability-and-product-governance.pdf

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

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

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

Question 18: The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?

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

Graphical presentation should be tested prior to entry into force with (retail) clients. What are these consumers looking for? What do they understand? What is comprehensible for them? (**please also see the paragraph 'information overload' in the general remarks section of this paper**).

Question 19: Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?

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

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

Furthermore, we do not understand why sector (coal) is reported separately. There is also much debate on nuclear energy, even within the EU there is no clear answer if this is or is not sustainable. Therefore, we do not think at this point in time FMP's should report on this separately.

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

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

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

Moreover it is necessary to analyse better the specific characteristics of the individual portfolio management which under the SFDR is considered as a "financial product", but which is de facto an investment service provided to several individual investors taking into account their specific needs and investment objectives and which therefore pertains to several portfolios individually managed. What does the precontractual and web-site product disclosures should regard in this case must be balanced taking into consideration that there is not a real "product". Furthermore, underlying instruments consist mostly of shares and bonds. Shares are a critical component of most portfolios; they cannot be considered as products and therefore not qualify as either an art. 8 or art. 9 product. If a wealth management portfolio does apply to the SFDR requirements, FMP's need information on the underlying shares. These shares in turn, are no products and thus do not fall under the SFDR. This leaves FMP's rather in the dark on the ESG characteristics of the underlying securities.

The SFDR should be adjusted to the type of product, for example different disclosures for different products like funds-of-funds, multi-assets funds, government bond funds etc. How will banks have to combine the information? Each fund manager must make available information per fund. For a Fund mandate banks will have to present this information at aggregate level. But:

- Each fund manager can select a different indicator for from Annex I table 2 & 3
- Each fund manager can use a different data provider (comparability?)
- How can we collect the data from the different websites?

Fund managers have the same timelines as banks. That means there is no time left for banks to analyse this issue and to implement a methodology.

Question 21: While Article 8 SFDR suggests investee companies should have "good governance practices", Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including "sound management structures, employee relations, remuneration of staff and tax compliance". Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?

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

Furthermore, we believe the defintition of good goverance should be aligned with:
1) Taxonomy
2) Other EC initiatives on corporate governance. The European Commission classifies its governance policy activities in broad categories, including directors and board members, shareholder rights, employee share ownership, remuneration policies, transparency, and financial institutions.[8]

Question 22: What are your views on the preliminary proposals on "do not significantly harm" principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?

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

DNSH definition and use in SFDR
We believe the taxonomy is leading in defining and identifying DNSH criteria. As we cannot expect granulary DNSH criteria before 2022, we believe integrating DNSH criteria in article 2(17) of the SFDR,

[8] Full list : http://ec.europa.eu/justice/civil/company-law/corporate-governance/ index_en.html

and subsequently in the disclosure requirements for Article 9 products is premature and could lead to confusion.

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

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

Question 23: Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?

By providing a closed list of strategies financial market participants will be limited in the development of new products / strategies. If, however a list will be constructed, we believe defining these different strategies with great flexibility is key whilst adhering to already standing international principles:

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

Question 24: Do you agree with the approach on the disclosure of financial products' top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS? Specific questions on pre-contractual disclosure items in light of differences between types of disclosure documents. As highlighted in the background section above, the ESAs believe that finding the balance between pre-contractual and website disclosure is challenging given the different types of disclosure documents in Article 6(3) of Regulation (EU) 2019/2088. Therefore, specific feedback is sought from stakeholders in this regard.

We believe that the current practice of investment funds of monthly providing disclosure on the 10 top performer investments (instead of the 25 top proposed by the draft RTS) is sufficient. For banks that are both an FMP as well as a FA, the requirements how to position the information on websites entail the risk of duplication of information and an information overload while at the same time both intend to ensure the comprehensibility of the disclosure for the consumer.

Question 25: For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.

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

The question suggests that pre-contractual and website are contradictions, whilst we believe pre-contractual information can be pre-eminently published through the website. Since the introduction to the question refers to Article 6 (3) of the Disclosure Regulation, we expect that the word pre-contractual information was used to refer to retail information documents, such as the UCITS KIID and PRIIPS KID.

However, there is no such document for discretionary portfolio management. The information obligations for DPM are set out in Article 24 paragraph 4 MiFDII, which is elaborated in, inter alia, Articles 46 - 51 Delegated Regulation 2017/565. If that is now possible on the website, that could be beneficial. For the bank therefore, this question seems irrelevant.

We assume most FMP's buy the data and therefore do not have to look up in the KID or on the website and therefore have no specific preference.

In order to keep the information documents accessible to the retail investor, we believe it would be obvious to answer all questions with the website:

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

Question 26: Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?

First of all, we believe it would be necessary to clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable (“admitted derivatives”).

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

Question 27: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options? (please also see the paragraph ‘If costs will increase, return for retail investors will decrease’ in the general remarks section of this paper).

In targeted interviews the Commission asked FMP’s about costs of integrating ESG considerations. Only six firms provided numbers on the prospective costs of ESG disclosures. First of all, n=6 is not a significant analysis. The ranges of total costs based on these interviews, are estimated between maximum 0.0001% to maximum 0.0003%. In our view, this is a complete unrealistic, and misleading estimation.

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

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

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

An example of an impact assessment of a medium-sized bank:

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

One-off costs for implementation:

- Adjusting processes (4 FTE)
- Coordination adjustments (2 FTE)

Furthermore, we would like to highlight that these new requirements could have unintentional consequences. For example, because of behavioural effects, clients could drop out of onboarding processes. Clients could also fear that if costs rise significantly, investment returns will shrink, therefore not deciding to invest. According to ESMA, costs are one of the main detrimental factors to lagging retail investor return.

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

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