The Dutch Banking Association (Nederlandse Vereniging van Banken, or 'NVB') welcomes the opportunity to provide input on the European Supervisory Authorities' Survey on templates for Environmental and/or Social financial products under sustainability-related disclosures in the financial services ('SFDR'), more specifically regarding the details of the presentation of the information to be disclosed pursuant to SFDR Article 8(3), Article 9(5) and Article 11(4).

In essence, this document should be read as a response to the draft templates the ESAs have developed regarding sustainability disclosures in pre-contractual, periodic and website reporting for certain financial (investment) products. To be precise, our response should be read from a perspective of a MIFID investment firm that offers portfolio management or from the perspective of financial advisors that offer services to (retail) clients.

As the ESAs seek answers for very specific questions, we have tried to summarize our more general (but relevant) comments under Q1. Where possible, we answered more specific questions under Q2-Q7.

Q1. How useful is the highly standardised presentation of the information in this format?

Neither useless nor useful

Information overload

We cannot reiterate this too many times. 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 by means of periodic and pre-contractual disclosures. As Dutch banks have experienced with MiFID II and PRIIPs, most clients feel overwhelmed by the sheer amount of detailed information they receive, which they can hardly process. 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.[1]

Like the Commission, we believe retail investors should be appropriately shielded from the complexities of the financial system. The documents produced under different rules are often perceived as long, complex, difficult to understand and inconsistent, therefore not providing retail investors with a good basis for their decisions. After years of conducting research the Commission has concluded that most investment products which institutions make available to investors are overly complex. Products often contain too much jargon and can be difficult to use for comparisons between different investment products.[2] Because of exactly these abovementioned reasons, PRIIPs stipulates a maximum of 3 pages to be disclosed to clients in the Key Investor Document ('KID'). Therefore, we believe it is difficult to argue that 6 pages (i.e. Mock-Up 2) could still be regarded as a 'summary'.

Entity level vs. product level disclosure are out of sync

As mentioned in our previous consultation reaction, we expect that clients are more interested in the impact of the product than the impact on entity level. However, the entity-template (RTS Annex I) requires more extensive disclosure than the proposed product level template. We believe the requirements of product vs. entity level are therefore out of sync. 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 have chosen to invest in. This should be reflected in the product-level templates, which we believe is not the case now.

[1] Please also see our MiFID 'Quick Fix' response and our SFDR L2 response

[2] See for example EC PRIIPs announcements here

Relationship between SFDR draft RTS and draft templates for pre-contractual and periodic reporting

As described by the ESAs, the final content of the templates is subject to the outcome of the final report of the ESAs on the draft RTS under SFDR and possible delay of level 2 provisions. As the proposed templates in some areas seem to go beyond what was mandated (for example “What is the minimum asset allocation planned for this product?” and “In which economic sectors are the investments made?” apparently may not be connected directly to the draft RTS requirements as set forth in the consultation document of the ESAs dated 22 April 2020), market participants are left rather in the dark which draft articles in level 2 served as a basis for these product templates. We reiterate that the templates by no means should go beyond what the SFDR RTS will propose. As the SFDR RTS are still in draft, we have no assurance regarding this and we cannot trace all mandatory content from the templates back to the draft RTS. It would be useful if the ESAs provided more clarity on this.

Possibilities for manufacturers to deviate from product templates with additional information

The proposed headers of the templates are prescribed. We wonder whether, and if so to what degree, deviations are possible? Are deviations possible in case of client specific (tailor made) products? Or are separate reporting formats still possible, that could exist besides the prescribed templates?

Alignment with existing sectorial periodic and pre-contractual disclosures is limited

We believe coherence is – also for clarity and understandability towards investors - important. In the proposed approach coherence with other product information is insufficiently aligned in our view. For example, the periodic disclosure template will exist besides the already existing sectoral periodic requirements towards investors. This manifold of reporting will, as described earlier, lead to an information overload and to ESG related information that is not in sync and is not well balanced with other (mandatory) pre contractual information requirements.

Publishing versus available in secured part of website in the light of different portfolio management ‘services’

What do the ESAs mean by ‘publicly available’ and/or ‘publishing on website’. As mentioned before in our SFDR RTS consultation paper response, we believe that information on individually managed portfolios (or tailor made portfolios) should not be made publicly available, as this is against bank secrecy laws and may conflict with other relevant regulations (MiFID/MAR) on investment recommendations (amongst others).

If the proposed product templates also must be produced for customised/individually managed portfolios, and must be ‘published’, this is highly burdensome for both bank and customer and therefore undesirable.

In their draft RTS the ESAs have already discussed the above difficulties relating to disclosure requirements linked to portfolio management services, considered as a financial product under Article 2(12) SFDR, and as a result subject to product-by-product disclosures. Although the ESAs state that they are fully aware of the difficulties both in terms of the burden imposed on financial market participants managing a high number of portfolios, as well as in terms of privacy, we believe no safeguards have been constructed to protect these customers. It is practically impossible to have website disclosures on (individual) portfolio management services that are both compliant with SFDR, GDPR provisions, bank secrecy laws and are ‘publicly available’.

In the case of model portfolios, what should be disclosed; a model portfolio, or all underlying individually/automatically managed portfolios?

Reference period / Calendar use

We believe March is a confusing reference date in the mock-ups provided. FMPs might also use other dates than March if they start to incorporate PAIs from that other date. For the sake of clarity to end investors and alignment with other legislation, we propose to use end-of-year/full year reference dates (i.e. January – December).

Furthermore, the historical comparison (March 31, 2019) goes back in time, it therefore seems that the regulations have a 'retroactive' effect. We would like to see clarity on this topic as we believe this is undesirable and probably unintentional.

Monitoring / up to date-keeping of templates

If the templates only require annual updates, templates might become out-dated and therefore misleading. How will (potential) investors be protected against this risk? Could this be done by means of a disclaimer?

Unclear distinction between article 8 and article 9 product

A particular concern of the Dutch banks is that there is unclarity about what exactly is meant by Article 8 and Article 9 products. While Art. 8 invokes uncertainty and confusion, there are also uncertainties surrounding Article 9 products. The Level 1 legislation (SFDR, Article 9) refers to article 9 as: "where a financial product has sustainable investment as objective". The draft RTS refers to "sustainable investment objective of the product", and also to "the" sustainable investment objective. We would suggest aligning the wording with the level 1 text (i.e. sustainable investment as objective).

Some questions and concerns regarding the above unclarity:

- Are these templates intended to give substance to Annex II and III respectively for so-called Article 8 and 9 products?
- And is the choice always one of the two options in the checkbox or can a product meet both? Or will FMPs have to make a distinction between Article 8 and Article 9 products?
- If the templates are designed to be used in the future by both Art. 8 and Art. 9 products, we find the 'checkbox' misleading and not very-well positioned in the lay-out of the document. More in general, we are surprised to see one template for both product categories (especially since Art. 8 is so vaguely and broadly defined, a specific template for Art. 9 might have been desirable to clearly indicate the distinction to end-investors);
- If the templates are designed to be used in the future by both Art. 8 and Art. 9 products, we suggest the ESAs align the wording in the templates with the SFDR regulation text:
  - Art. 8 – 'a financial product [that] promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices' or simply 'a product that promotes ESG characteristics' instead of 'ESG characteristics';
  - Art. 9 – 'a financial product [that] has sustainable investment as its objective' or simply 'sustainable investment objective' instead of 'ESG objective'.
- Dutch banks are inclined to believe that SFDR DNSH-criteria only need to be incorporated in Art. 9 product reporting.[3] Why do we see DNSH criteria coming back in an Art. 8 periodic disclosure template? For example, if an Art. 8 product does not invest in sustainable investments, it should not disclose DNSH criteria. But the templates require such a product to use the header DNSH, which could be misleading. Or is this not the case?

Regarding the unclear distinction between SFDR Art. 8 and Art. 9 products we call on the Commission and on the ESA's in cooperation to provide further clarification as soon as possible.

PAI's – How were PAI's considered?

Neither the level 1 text, nor the draft RTS *explicitly* contains the provision that the indicators in Annex 1 are to be described or quantified at product level. We ask for further clarification why this is incorporated in the mock-ups provided.

Top 25 holdings

We believe the added value of disclosing top 25 investments (max 50% of the total) to investors is of little added value as he/she might recognise only a handful of investments. Besides that, we believe disclosing top holdings is not very well aligned with other sectoral practices like UCITS factsheets (i.e.

[3] Or SFDR Art. 8 products that include 'sustainable invesments'

top 10 holdings) or wealth management reporting (some banks indicate they report all holdings to clients, on a non-public basis). For the latter example, disclosing top-25 holdings is sensitive from a competition perspective: disclosing top-25 holdings on a public basis might lead to other investors copying the investment strategy of the specific firm.

Furthermore, and may be even more important, the reporting of top holdings in itself does not give the (retail) investor any certainty about the degree of sustainability of these holdings.

We believe it is sufficient to disclose graphical (i.e. disk diagrams) regarding holdings and to leave out top holdings (textual) from the (public) disclosure.

RTS Art. 22, 32
What is meant by 'investment options'? Are Multi-Option Products (like certain investment insurance products) in scope of draft RTS Art. 22, 23?

If certain products include 'investment options', and the underlying investment option results in the choice for certain underlying Art. 8 and/or Art. 9 products, further disclosure is necessary pursuant RTS Art. 22, 32. The above is not reflected in the draft product templates and should somehow be included.

Definition of 'highest ESG ratings'
What is the definition of 'highest ESG rating'? What article in the draft RTS refers to the inclusion of this definition?

Q2. More specifically, how useful is the presentation of the information with the use of icons as visual aids (in mock-up 1 and 3)?

Neither useless nor useful

We have no strong preference for the use of icons.

However, we are not in favour of the use of icons if their meaning is not completely clear. In our view, the presented icons are not completely clear and therefore do not provide added value at this point in time. For example, it might be hard for retail investors to fully grasp the direct relationship an icon has with the presented content.

Q3. More specifically, how useful is the presentation of the information with the use of graphs as visual aids?

Q4. More specifically, how useful is the presentation of the information with the use of explanatory notes, in the column at the right side of the document, which are presented on a grey background)?

Neither useless nor useful

A more general note is that preferably the information is already sufficient clear without the need of explanatory notes. However, at this moment we are afraid that this is not the case and that the use explanatory notes is indispensable.

Q5. Are there any presentational aspects that might make it hard to understand the sustainability-aspects of products? For example, with regards the distinction between the sub-categories of investments, namely between #1A and #1B?

Q6. Do you have any other suggestions or comments to improve the presentation of these disclosure documents?

A more general note is that there seems to be repetition of information in the mock-ups. As we have learned from previous information documents, clients could be discouraged by the sheer amount of information that is provided to them. In this sense, leaving out any repetition could be beneficial.

Q7. When the templates are presented via digital media, can you foresee any particular challenges? Can you suggest how these challenges could be overcome while retaining the core aspects of the standardised template format?

In general, some banks have experienced problems with challenges in disclosing compulsory information through mobile applications. For example, providing customers with UCITS KIIDs or PRIIPs KID's has proved to be challenging, especially on a product-by-product basis.

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