JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

Date: 23 April 2020
ESMA 34-45-904

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

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

Comments are most helpful if they:

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

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

Instructions

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

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

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

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

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

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

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

Publication of responses

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

Data protection

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

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

General information about respondent

Name of the company / organisation	ShareAction Europe ASBL
Activity	Non-financial counterparty
Are you representing an association?	☒
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
ShareAction has long advocated for a financial system that is transparent and provides its investors and society with meaningful information about its impacts on communities and the environment. After all, effective disclosure is the first step towards building a financial system that fully integrates sustainability factors to unleash its positive potential. To this end, the draft Regulatory Technical Standards (RTS) are a very significant step in the right direction, and introduce a useful conceptual framework for disclosure.

We welcome the approach of defining mandatory indicators that are considered to always lead to a principal adverse impact and then to guide Financial Market Participants (FMPs) on how to disclose on additional adverse impacts in a harmonised and comparable manner. We are however concerned on the lack of requirements to justify the choice of the two additional adverse impact indicators FMPs will have to report against.

We urge the ESAs to consider adding a number of additional indicators to the Principal Adverse Impacts table (Table I, Annex II), in particular climate indicators that are forward-looking.

<ESA_COMMENT_ESG_1>

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

<ESA_QUESTION_ESG_1>
ShareAction welcomes the innovative conceptual framework proposed in Chapter II and Annex I and believes it can represent a turning point in how Financial Market Participants (FMPs) disclose their adverse impacts.

- It allows to raise the bar across the industry by introducing standardised and mandatory indicators. Conceptually, the shift to requiring disclosure regardless of financial materiality or severity by establishing that any positive value in certain indicators should be classified as having a principal adverse impact is a very welcome innovation that recognises impacts.
- It allows virtuous FMPs to continue disclosing additional information that they either believe is relevant to a particular product or simply to do so in a guided way (with indicators), that ensures comparability among disclosers opting into those additional indicators.
- We appreciate the requirement to disclose on at least one indicator for tables 2 (environment) and 3 (social) respectively, though we do not fully understand the rationale behind this choice. If FMPs realise they are exposed/contributing to a number of adverse impact indicators other than the principal ones (Table I), then surely they should be required to disclose on those indicators as well. Neither is there an indication or guidance for FMPs on how they would be expected to select those two additional indicators (Table II and III) in the presence of multiple adverse impacts, or a requirement for them to disclose the process by which they have come to that conclusion. It thus seems arbitrary and in contrast with the approach in Table I, and could potentially lead to perverse incentives to identify not-significant indicators for FMPs to discharge their obligation to disclose on one indicator for table 2 and one for table 3.

It is essential that the proposed indicators are aligned with the Taxonomy Regulation and with the review of the Non-Financial Reporting Directive, realising the difficulties posed by the different regulatory time-frames. As we approve of the framework presented for the ESAs for the disclosure of adverse impacts, we hope it will serve as a basis for the definition of the "impact" direction of double-materiality in the development of a European Non-Financial Reporting Standard as part of the NFRD-review, to ensure the source of the data is appropriately linked with the disclosure requirements of users. This would also inform decision-making for instance in engagement strategies by providing an early-warning system for ESG-risks that investee companies do not yet deem to be financially material (as beyond their time-horizon) but that could, for instance if aggregated at portfolio level, pose material risks.

The disclosure of 'engagement policies' as part of the adverse sustainability impacts statement, as defined in Art.4(2) should be aligned with the requirement on asset owners and managers to develop and publicly disclose (on a comply-or-explain basis) their engagement policy and its implementation on an annual basis as set out in the revised Shareholder Rights Directive (SRD II).

Finally, we explicitly applaud the mandated use of Enterprise Value-weighted metrics, as defined in Annex I (1).

<ESA_QUESTION_ESG_1>

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

<ESA_QUESTION_ESG_2>
While any chosen approach will likely better suit certain types of products and asset classes than others, we believe the proposed approach to provide a reasonable trade-off between a harmonised framework

across the industry that will provide adequate comparability and the ability of FMPs to provide comments to contextualise certain indicators.

We are concerned however that the high threshold in the personal scope for entity-level disclosures and the opt-in nature for firms below 500 employee will not lead to consistent disclosure practices in the market. A workforce-based threshold is not as indicative of the size of a company's operations (and thus potential impact) in the financial sector compared to industrial or even other firms in the service sector, as we have argued for in our response to the consultation on the review of the NFRD as well. We thus regret the co-legislators' choice to define the scope in this way in the Regulation.

It must be said however, that this high threshold more than sufficiently takes into account the size of FMPs more than satisfying proportionality requirements. Only a small number of very large FMPs will be subject to the full spectrum of requirements (product + entity level), and those that both have the resources to do so (benefitting from economies of scale) and that at the same time are likely to have a very significant impact on society and the environment. This is why we believe that the way the draft RTS are constructed, the introduction of additional proportionality (in the sense of loosening certain requirements or introducing transition periods) would not be justifiable as they would in all effect go against the objective of the level 1 regulation. Additionally, as the ESAs recognise in the consultation document (p.11) there are limited possibilities to address proportionality.

Given the relevance of sovereign bond holdings in institutional investors' portfolios we hope that these new disclosure requirements will lead sovereign issuers to coordinate on improving ESG data availability for these securities. In this context however, recognising that various indicators are derived from or better suited to listed equities or corporate bonds, the ESAs should not proceed by restricting the scope of asset classes to be considered, as recital (3) is in the spirit of the level 1 text. Instead the ESAs could be looking at developing guidance and methodologies for specific situations such as sovereign bonds or derivatives.

<ESA_QUESTION_ESG_2>

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

<ESA_QUESTION_ESG_3>
ShareAction agrees with the approach in Chapter II and Annex I, believing it will lead to a significant improvement in the comparability of disclosures and the extent to which adverse impacts are disclosed.

See our responses to questions 2, 4, and 5 for our recommendations on how to improve the tables and indicators.

We acknowledge FMPs' concerns around data availability, particularly in the first reporting periods. However, not only will it be addressed by the NFRD-review, but expecting meaningful data from investee companies should be a foundation of engagement strategies – even more so if the data investors need is harmonised by these RTS.

Financial Market Participants (FMPs) will ultimately have to resort to third-party data providers for a large proportion of their data. This could lead to greenwashing or at least reported values that are not representative. Even with an NFRD-review that effectively aligns indicators, several data points will be modelled/estimated (e.g. non-listed companies, other jurisdictions, missing indicators etc.) using methodologies that do not allow to discern between companies within the same sector and country. We thus suggest that apart from the overall disclosure on data sources set out in Article 34(1)(k), Article 35(1)(k), FMPs should disclose in the Annex I tables (1, 2, and 3) when an indicator is based on estimated underlying data for more than a given proportion, for instance by using an asterisk.

<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
As we have already expressed, we believe the approach of Table 1, Annex I is a very positive development as it sets out with clarity and in a schematic way the disclosure requirements.

Additional guidance on the indicators (e.g. where they don't already clearly reference existing international standards) could help prevent the disclosure of PAIs from becoming a box-ticking exercise for FMPs.

We welcome the inclusion of the requirement to disclose "engagement policies" as part of Table 1, Annex I, as set out in point (e) of Article 4(2). ShareAction's survey on the world's leading asset managers' practices on responsible investment has shown that 36 per cent of the assessed leading asset managers (global sample) disclose no information about their ESG-related engagement activities publicly, so perhaps this disclosure requirement could still not provide meaningful insight into the engagement activities carried out by the FMP.

<ESA_QUESTION_ESG_4>

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

<ESA_QUESTION_ESG_5>
We welcome the inclusion of indicators on social factors in Table 1, and at this stage. However, we think that given the changing nature of workforce practices especially across the so-called gig-economy but in many other sectors as well, referring to investee companies' 'workforce' rather than 'employees' would help better capture adverse impacts on contingent, seasonal, contracted workers in these situations. This should also be reflected in the methodology for indicator 18. – gender pay gap. As we understand that few investee companies are reporting this information extensively, as a minimum we suggest the introduction of an indicator of the percentage of direct operations workforce not engaged on a permanent contract (see p.38-39 of our Workforce Disclosure in 2019 report). Not only would this provide an indication of the adverse impact of an insecure workforce, but could also provide useful context to other indicators, such as 19. "Excessive CEO pay ratio", by not mischaracterising companies with a higher ratio because of a much higher proportion of lower-income staff on the payroll and with permanent contracts (as opposed to externally contracted for instance).

For the disclosed information to be decision-useful it needs to include forward looking indicators such as emission reduction pathways. This way end-investors can compare the year-on-year performance to the trajectory rather than rely solely on end-targets.

In this sense, the current list of Table I indicators (especially with regards to climate) is only focused on approaches such as carbon footprinting.

We thus suggest including the disclosure of TCFD-based scenario analysis to show alignment with transition pathways and (mis)alignment to the Paris Agreement.

However, we're adamant that there is transparency about the use of Carbon Capture and Storage (CCS) and Carbon Capture and Utilisation (CCU), with the relative data being reported separately as it could pollute the data and mislead investors. Additionally, while these technologies mitigate the contribution to climate change they also incentivise carbon lock-in.

Another indicator we suggest including as a forward-looking proxy of the intention and implementation of strategies to reduce the portfolio's carbon footprint is the share of taxonomy-eligible capital expenditures (or rather the share of those that aren't).

We are not convinced of the validity of the inclusion of indicator 11, Table 2 ("share of securities not certified as green") as an indicator for an adverse impact. While it could in theory provide an indication of the flows (not) flowing to green projects (due to prevalence of use-of-proceeds bonds, among green bonds), we are doubtful about the degree of additionality these funds really provide, even more so in the case of sovereign green bonds. Regardless of the additionality discussion however, there is no indication that the absence of a significant share of green securities in a portfolio is directly linked to an adverse impact on the environment. In the absence of an EU Green Bond Standard yet it is even more problematic. Finally, we could accept the inclusion on a mandatory basis (though as outlined it's not a proxy for a PAI) but we think it is particularly problematic due to our concerns we have outlined in question 1 (3rd bullet point) regarding the inclusion of this indicator in Table 2. FMPs could select this indicator as the only required indicator for Table 2, effectively not disclosing an adverse impact. A similar reasoning could apply to indicator 7 in Table 3 "Share of securities not certified as social".

As we outline in our response to question 19, alongside requiring exposure to the solid fossil fuel sector (indicator 4), the proposed indicator should be complemented by a separate indicator requiring the disclosure of exposure to the liquid and gaseous fossil fuel sector. This would ensure investors have a more granular understanding of the real PAI. At the very minimum the ESAs should amend indicator 4 to become "solid, liquid, and gaseous fossil fuel sector exposure".

Another indicator we suggest to include is the "Extent of production or use of substances potentially harmful to biodiversity"

While there has been, rightly, a great deal of attention on the soft commodities such as palm oil and soy, there has been less done to highlight the impact that agro-chemicals play in enabling the most intensive forms of agriculture in forest systems. Areas with high concentrations of industrial agriculture and subsequent deforestation, like the Cerrado or the Amazon rainforest, are also areas where a significant proportion of agro-chemicals are sold and used. In 2018, over US$2.2 billion of Highly Hazardous Pesticides (HHP) were sold to Brazilian farmers, 2/3s of which were used in soy production.4 HHPs have a harmful impact on surrounding ecosystems and local biodiversity. As 20% of the world's biodiversity resides in Brazil, the widespread use of HHPs is especially harmful in this region.

Finally, antimicrobial resistance is a global concern and pose extremely high health risks on individuals and society by threatening our ability to treat common infectious diseases, resulting in prolonged illness, disability, and death (e.g. cost of healthcare with lengthier stays in hospitals and more intensive care required) as well as endangering achievement of the Sustainable Development Goals (more info here). We thus call on the ESAs to consider including the indicator "Extent of production or use of antimicrobial substances" in Annex I, Table I.

<ESA_QUESTION_ESG_5>

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

<ESA_QUESTION_ESG_6>
Indicators such as the relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and a relative measure of carbon emissions relative to the prevailing carbon price would provide investors with clarity as to the degree of alignment with EU targets and to assess carbon pricing risk exposure, and if it is being reduced over time.

<ESA_QUESTION_ESG_6>

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

<ESA_QUESTION_ESG_7>
ShareAction agrees with the ESAs' proposed requirement of indicating both the value of investments and the number of companies without a particular issue.

This will not lead to information overload in our opinion, but rather allow investors to discern between portfolios. It would help contextualise PAIs, and give a general indication of the potential for divestment or engagement strategies, and as such can be decision-useful, as long as users have access to the total number of investee companies/issuers. In fact, with the combination of both values it is possible to both understand the extent of the PAI (and, depending on the indicator, the financial exposure to them) as well as the concentration of these impacts. This can be an indication of the FMP's ability to address these impacts through engagement activities, or whether the only meaningful option would be divestment and in that case an investor could evaluate the FMP's approach to that regard.

For the sake of consistency we recommend the ESAs align this metric in indicator 25 (Table I).

Also, we noticed this differentiation is not present in some indicators such as 18. Gender pay gap (Table I) and 20. Board gender diversity (Table I). To maintain alignment with the aforementioned approach, we recommend requiring disclosure of both the weighted (1.) and unweighted (2.) averages.

<ESA_QUESTION_ESG_7>

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

<ESA_QUESTION_ESG_8>
In our answer to question 5 we have outlined a number of additional indicators that would serve this aim.

Science-based forward-looking indicators are necessary for capturing the ability and intention of FMPs to mitigate impacts and investors rely on this information to reorient funds by rewarding GHG-reductions, and as such are decision-useful and should be included. Metrics such as the degree of mis-alignment with the Paris Agreement would capture an adverse impact.

<ESA_QUESTION_ESG_8>

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

<ESA_QUESTION_ESG_9>
ShareAction strongly welcomes the parallel introduction by the ESAs of indicators on Social and Governance factors at the same time as environmental factors. Not only are issues often interlinked, and thus should be considered jointly by investors, but delivering social indicators at a later stage (as allowed by the empowerment) could promote greenwashing and hamper legal certainty. In fact, some art. 9

products ("sustainable investments") would end up being pulled from the market to adapt to the indicators delivered at a second stage, and as such should be avoided.
<ESA_QUESTION_ESG_9>

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

<ESA_QUESTION_ESG_10>
The historical comparison of PAI disclosures is crucial in understanding their evolution and the effectiveness of policies and actions adopted by the FMP and even by investee companies. Before these are devised, fully implemented and start affecting the overall product or even entity disclosure significantly, considerable time could pass.

We therefore agree with Art. 6(2) introducing a ten-year period or since the product was first marketed in the case of product-level disclosures. However, the clause in letter (C) (the reference period starting in March 2021) should only apply when a historical comparison is not possible due to the lack of data.

<ESA_QUESTION_ESG_10>

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

<ESA_QUESTION_ESG_11>
The expectation expressed in the ESAs public hearing on 2nd July by ESMA of disclosures accurately representing a portfolio's composition during the reference period (instead of a point-in-time at the end of the period) seems very fair to us, and to be in line with the objective of the Regulation. However this does not adequately seem to be expressed in the RTS.

We also recognise the difficulties that would come with this interpretation, and while it could seem appropriate to subject at least product-level disclosures to it, this would create additional issues in the aggregation for entity-level disclosures. The incentives to engage in window-dressing by substantially modifying the composition of portfolios ahead of the reporting period/end of reference period are likely not proportionate to the introduction of such a system.

<ESA_QUESTION_ESG_11>

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

<ESA_QUESTION_ESG_12>
While developing harmonized pre-contractual and periodic templates for different types of financial products under different regulatory requirements is no easy task, it is necessary in order to provide comparability across product categories and to create a level playing field for FMPs.
<ESA_QUESTION_ESG_12>

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

<ESA_QUESTION_ESG_13>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_13>

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

<ESA_QUESTION_ESG_14>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_14>

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

<ESA_QUESTION_ESG_15>
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<ESA_QUESTION_ESG_15>

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

<ESA_QUESTION_ESG_16>
While the conceptual distinction between Article 8 and Article 9 products is more or less clear, as it is intended by the legislators and outlined in the consultation document (p.10) the ESAs should clarify the requirements especially for what concerns Article 8 products to ensure a consistent understanding both by FMPs and supervisors.

These clarifications should be consistent with the ESAs' interpretation that Art.8 products should be a "catch-all category to cover all financial products with different environmental or social ambitions that do not qualify as sustainable investments according to Article 9 SFDR", as set out in the consultation document. An investment strategy that includes ESG considerations and practices such as ESG-based negative screening, should qualify as an art.8 product. Article 8 products that do not only promote some environmental or social characteristics but have sustainable investment as their objective (and thus qualify as Art. 9) should have their disclosure reflect this difference.

While a significant differentiation between the two product categories on the disclosure of PAIs would be counterproductive and could constitute greenwashing (by reducing requirements for Art.8 products), it could be appropriate to further differentiate the requirements under Art. 43, Art. 44 and art. 49 and have the graphical and narrative descriptions of how the products aims to attain the different nature of their sustainability objectives.

<ESA_QUESTION_ESG_16>

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

<ESA_QUESTION_ESG_17>
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<ESA_QUESTION_ESG_17>

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

<ESA_QUESTION_ESG_18>
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<ESA_QUESTION_ESG_18>

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

<ESA_QUESTION_ESG_19>

As we outline in our response to question 5, alongside requiring exposure to the solid fossil fuel sector (indicator 4), the proposed indicator should be complemented by separate indicators requiring the disclosure of exposure to the liquid and gaseous fossil fuel sector. This would ensure investors have a more granular understanding of the real PAI.

For the same reason of discerning between the severity and type of PAIs that a generic aggregation of fossil fuel exposure would not allow for, we also recommend disclosing exposure to unconventional fossil fuels (fracking, shale gas, tar sands, arctic drilling, deep-sea drilling).

Exposure to nuclear energy and woody biomass should also be disclosed.

<ESA_QUESTION_ESG_19>

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

<ESA_QUESTION_ESG_20>
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<ESA_QUESTION_ESG_20>

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

<ESA_QUESTION_ESG_21>
Yes.

The original Commission proposal had proposed to define "sustainable investments" in Article 2 as having a positive impact on the E, S or G domain. However, the co-legislators changed this three-criteria definition to reflect that in reality products do not target a "positive" G impact as such, but do so in combination with positive E and/or S impacts. We understand that the main reason for this is that the metrics in the G domain are typically not continuous but discrete, based on the absence of negative impacts ("events"). One does not invest in companies "with a positive G impact" but in companies that follow good governance principles and therefore do not show negative events in the G domain, e.g. related to corruption.

When drafting the new Article 4a that became Article 8, the revised Article 2 definition was combined and summarized into one textual paragraph, the introductory paragraph of Article 8. There is no evidence of legislative intent to exclude good governance concepts from the definition of Article 8 products.

As such, we do not see any inconsistency between Article 8 and Article 2(17), and support the view that the more detailed definition in Article 2(17) can indeed be used to help define the scope of Article 8. It is important that the interpretation of good governance practises is consistent through the SFDR and its RTS, and that Article 2(17) is read as an indicative list of what (ES)G indicators typically look like, as further detailed in Annex I of the proposed RTS

<ESA_QUESTION_ESG_21>

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

<ESA_QUESTION_ESG_22>
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<ESA_QUESTION_ESG_22>

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

<ESA_QUESTION_ESG_23>
No. By defining these common practices, ESAs risk promoting sustainability as a matter of product strategy. While different strategies will certainly lead to different adverse impact objectives, the process for managing and reporting on adverse impacts should not differ between products.

It is however fair to require, as the RTS do in Art. 17 (a), that selection criteria for underlying assets that apply on a binding basis should be disclosed as part of pre-contractual information.

<ESA_QUESTION_ESG_23>

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

<ESA_QUESTION_ESG_24>
The requirement set out in Articles 39 and 46 to disclose the top 25 holdings (with the derogation) is a higher requirement than what is currently market practice or sectoral regulatory requirement. However, we believe it is necessary for Art. 8 and Art. 9 products, as in this case it is not intended as a portfolio risk tool, but to reflect the multi-dimensional nature of (principal) adverse impacts. Significant exposure to one (or more) adverse impact(s) is more likely to relate to an investee company beyond the top 10 holdings, than it is for a portfolio risk.

This also underpins our justification for maintaining the requirement for art. 8 as well, as the rationale is really about linking sizeable PAIs or adverse impacts to top holdings, and Art. 8 products are subject to the same PAI disclosure requirements.
<ESA_QUESTION_ESG_24>

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

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

<ESA_QUESTION_ESG_25>
It is important that end-investors are have access to the four elements (1-4) as part of different mandatory disclosures.

We believe that all four elements (1-4) should be included in the website disclosure for financial products, and appropriately linked in the pre-contractual disclosure.
<ESA_QUESTION_ESG_25>

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

<ESA_QUESTION_ESG_26>
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<ESA_QUESTION_ESG_26>

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

<ESA_QUESTION_ESG_27>
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<ESA_QUESTION_ESG_27>