JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

# Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

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ESMA 34-45-904

esma European Securities and Markets Authority

EBA EUROPEAN BANKING AUTHORITY

eiopa EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

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:

- contain a clear rationale; and
- 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 | Eumedion |
| Activity | Insurance and Pension |
| Are you representing an association? | ☒ |
| Country/Region | Netherlands |

## Introduction

***Please make your introductory comments below, if any:***

<ESA_COMMENT_ESG_1>
Eumedion would like to point out that the success of consistent and comparable disclosures by financial market participants (FMPs) on the proposed indicators will be highly dependent on data availability and data quality. As we will indicate below, much of the data needed is simply not available, which can sometimes also be due to the fact that the indicators are methodologically not aligned with other current reporting requirements. In this light, we would also like to stress the importance of consistency between reporting indicators required under various EU legislative proposals and delegated technical standards, and we would expect the ESAs to conduct and present a thorough analysis outlining such consistency and harmonisation, as well as addressing any inconsistencies and lack of harmonisation that might have surfaced in such an analysis. A case in point is e.g. the calculation of carbon intensity (based on revenue), which does not seem to match the calculation in the delegated acts on the climate benchmarks (which is based on enterprise value including cash). Such inconsistencies will potentially create an undesired and costly administrative burden on FMPs. At the same time, such an analysis could also include a clear overview of how the development and selection of indicators by the ESAs match the proven and/or promising work of prevailing reporting frameworks for FMPs and corporates, which for now remains unclear.

Also, the principle of (double) materiality appears not to have been a starting point for the selection of the adverse impact indicators. We understand that the principle of adverse impact takes a slightly different perspective on materiality or relevance, but here we do see a potential practical obstacle with the common practice of corporate reporting (also promoted as such under the European non-financial information directive), where (double) materiality is a starting point for compulsory disclosure. We would prefer the concept of materiality to be integrated into the Principal Adverse Impact (PAI) indicators, so that it will be easier to analyze which indicators are meaningful and material for investment decision.

Given these concerns, we would like to call on the ESAs to actively try to prevent a situation in which a considerable amount of potentially incomplete, inconsistent, unreliable and incomparable data will need to be disclosed on a compulsory basis. A smaller (core) set of indicators, with a focus on materiality, is perhaps to be preferred. This will increase meaningfulness and relevance of the information provided to investors, while still promoting a certain degree of comparability between financial products.

Additionally, it is unclear to us how, at this stage, an effective process of supervision and verification can be developed. The data used for reporting on the principal adverse impact indicators needs verification in its different stages, by e.g. issuers as well as FMPs who process issuer information. Such verification touches upon the whole chain of ESG data, where issues such as availability, comparability and quality have not yet been fully resolved. Currently, reliable and efficient verification throughout virtually the whole chain of ESG data is still very far from being reality. Especially when availability or quality is wanting, this also puts extra responsibility on FMPs and unduly emphasises the 'best effort'-principle for FMPs to gather additional information, as referred to in the draft RTS.

We also noted that the considerations 5 and 6 of the preamble to the draft RTS overlap, with the distinction between them remaining unclear.
<ESA_COMMENT_ESG_1>

**(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>
Yes, we agree with the overall approach. Generally speaking, there is need for many of the indicators in table 1, outlining important factors potentially contributing to adverse impact, to be presented in a consistent and comparable way by financial market participants (FMPs). However, disclosure on such factors (as well as the regulatory initiatives supporting this) should be harmonised throughout the whole chain, from corporate disclosure to disclosure to end-investors. We would like to address some issues that we see with regard to the useful and reliable disclosure on the impact indicators.

In their present form, the indicators seem to lack the context of the investment strategy. For example, many indicators can be directly connected to transition-related issues increasingly successfully addressed by responsible engagement strategies of institutional investors. Mere point-in-time presentation of current indicator values do not necessarily reflect the important work done in those areas and may unduly harm the importance of these efforts. We would favour a disclosure format in which disclosure on both impact indicators and investment strategy can be mutually reinforcing. Such would help to put the actual level of adverse impact into the right perspective.

The proposed indicators on non-environmental factors appear to be more variable in quality (or less mature) than the environmental indicators. E.g., gap indicators such as the internal pay ratio (CEO pay versus average pay of the whole workforce) or the gender pay gap can potentially signal an adverse impact at certain values or in a certain context. Such indicators clearly differ from certain environmental indicators always deemed harmful to the degree corresponding with the value. Other social indicators are furthermore more qualitative than quantitative, or rather: more policy-oriented than outcome-oriented. While these differences between environmental and other indicators are probably explained because a taxonomy for non-environmental factors has not (yet) been developed, it nonetheless potentially weakens the overall usability of the ESG-disclosures.

Also, the principle of (double) materiality appears not to have been a starting point for the selection of the adverse impact indicators. We understand that the principle of adverse impact takes a slightly different perspective on materiality or relevance, but here we do see a potential practical obstacle with the common practice of corporate reporting (also promoted as such under the European non-financial information directive), where (double) materiality is a starting point for compulsory disclosure. We would prefer the concept of materiality to be integrated into the Principal Adverse Impact (PAI) indicators, so that it will be easier to analyze which indicators are meaningful and material for investment decision.
<ESA_QUESTION_ESG_1>

**(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?**

<ESA_QUESTION_ESG_2>
No, we think the approach does not clearly and distinctly allow for variations in size, nature and scale of FMPs where it comes to disclosure requirements for article 8 and article 9 products. As the ESAs acknowledge, much of the data that are needed for accurate and consistent reporting by FMPs will, for the foreseeable future, most likely be lacking or wanting in quality. This will already be the case within the EU, but even more so for the many non-EU investments. The 'best-effort clause' in article 7.2 a and b draft RTS (in case certain data are e.g. not available and more research or even estimation on the part of the FMP is required to fill the blanks) aims to allow for an approach matching the size, nature and scale of an FMP. But since indeed there will be huge differences between the resources available to various FMPs, a 'best effort' is therefore always defined in a relative way. However, the draft RTS does not clearly define

best effort in these terms, leaving it unclear what the bar is for complying with article 7.2. In this light, we also feel it would be necessary to explicitly enable FMPs to, where relevant, rely on certain third party information or on publicly available ESG-information databases if and when they have been established.

Furthermore, with ESG data already being fairly expensive, and extra research (under the 'best effort' clause, in order to fill potential blanks) requiring additional FTEs – while at the same time not all of the data sourced will prove equally relevant – FMPs will incur extra costs, even though they are often required to keep costs low. Also, given the current and ongoing consolidation in the market for ESG data, we would expect a thorough analysis being conducted by the ESAs into the potential effects on the market for ESG data. So, while the ESAs anticipate a more focused development in terms of very specific data supply and demand, what do they expect in terms of costs for FMPs, in terms of foreseeable data lock-in situations for FMPs, and/or in terms of (other) market failures? Such an analysis seems warranted to substantiate and justify considerable and very specific reporting requirements.

Finally, we would like to point out that transparency on adverse impact indicators not necessarily provides insight into the level of positive impact within a portfolio, e.g. a lower value on adverse impact indicators (which indicates a lower level of 'harm') does not per se indicate a higher positive impact. Therefore, a 'negative' approach might not fit FMPs that offer products not only intended to limit adverse impact, but to increase positive impact as well, for example with regard to the SDGs.
<ESA_QUESTION_ESG_2>

**(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?**

<ESA_QUESTION_ESG_3>
While there will in any case be a need to define 'best effort' (as we argued under question 2), we wonder if sufficient comparability can ever be realised if at least corporate reporting requirements are not globally harmonised. Such harmonisation will eliminate to a greater extent the discretionary efforts of individual FMPs to acquire, gather and/or process ESG data for major asset classes.
<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
We understand that both the reporting template and the proposed indicators have not been tested in terms of primary target audience (end investors and/or financial consumers). The template, once filled, will be an extensive document containing an enormous amount of both quantitative and qualitative information (potential information overload). We wonder if any such extensive disclosure template should in any case not be tested with and set up according to the needs of the target audience. In its current form it seems primarily useful for other (societal) stakeholders than financial consumers.

We would furthermore like to point out that several internal references to the draft RTS in Annex I (page 63) are not accurate, e.g. engagements policies are mentioned in article 9 (not in 10) and international standards in article 10 (not in 11).
<ESA_QUESTION_ESG_4>

**(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)?**

<ESA_QUESTION_ESG_5>
We support the ESAs in developing a comprehensive list of indicators spanning the broader spectrum of ESG-factors. Unfortunately, the lack of a taxonomy on all material ESG matters might create a hurdle for practical and consistent reporting on all relevant factors for FMPs. Still, we support the ESAs in defining

also social indicators, and we encourage the ESAs to further elaborate on the requirements for governance factors, which we feel is sufficiently warranted by the definition provided in article 2(17). We do wonder if the ESAs have considered whether many of the indicators are equally relevant for reporting on both entity level and on product level for asset managers. We feel that disclosure of most of the proposed indicators on an entity level will not lead to meaningful disclosure for investors.

The success of consistent and comparable reporting by FMPs on the proposed indicators will be dependent on data availability, on definition of indicators, and on calculation methods. E.g. with regard to biodiversity factors, we observe that many of the required data on these indicators are not available. Other information required under the draft RTS, for instance scope 3 emission data, are not only widely unavailable, but are also not necessarily provided for under the calculation methods of various up-taking reporting frameworks such as TCFD. For this particular example, we would like to suggest to align calculation of carbon emissions with other prevailing methods, which should in time include scope 3 emissions as well. With regard to definition, we e.g. find that indicator 13 (exposure to areas of high water stress) might be subject to various interpretation. While we understand that the ESAs are actually trying to drive data availability through these disclosure requirements, we also feel that FMPs should not be put in a position where compliance with these requirements will be too dependent on or complicated by factors over which they have limited control (especially where it regards non-EU investments).

We would also like to point out that there is a great need for consistency between reporting indicators required under various EU legislative proposals and delegated technical standards, and we would expect the ESAs to conduct and present a thorough analysis outlining such consistency and harmonisation, as well as addressing any inconsistencies and lack of harmonisation that might have surfaced in such an analysis. A case in point is e.g. the calculation of carbon intensity (based on revenue), which does not seem to match the calculation in the delegated acts on the climate benchmarks (which is based on enterprise value including cash). Such inconsistencies will potentially create an undesired and costly administrative burden on FMPs.

Given these concerns, we would like to call on the ESAs to actively try to prevent a situation in which a considerable amount of potentially incomplete, inconsistent, unreliable and incomparable data will need to be disclosed on a compulsory basis. A smaller (core) set of indicators, with a focus on materiality (as we discussed under question 1), is perhaps to be preferred. This will increase meaningfulness and relevance of the data provided to investors, while still maintaining a degree of comparability between products.

With regard to forward-looking indicators, while we understand the desire and perhaps (at a given point) the need for more forward looking indicators, we believe that the present difficulties in reliably assessing and reporting on current corporate ESG-performance (in the EU, let alone worldwide), already poses such difficulties that any proposals on forward-looking indicators are currently not warranted and potentially counter-productive.
<ESA_QUESTION_ESG_5>

**(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?**

<ESA_QUESTION_ESG_6>
To a): No. The path to EU2030 targets will not always be linear and varying from sector to sector and varying also with different approaches. Therefore a relative measure focusing merely on current performance relative to the 2030 target might be problematic. E.g. a company with a current ‘better’ relative performance at year-n but not improving substantially in the coming decade, might be outperformed by a company with a different but more successful approach at year n+5. A current-year relative measure would not show this difference in projected trajectory. That means that any proposed measure relative to the EU2030 framework should be able to provide clear insight in these variations in projected emission trajectories of different assets, for else such a relative measure will hardly be informative. We find this not a very

feasible approach given the current ESG data issues. Also, regarding such a measure relative to the EU 2030 climate targets, there will clearly also be a need to distinguish between EU and non-EU investments.

To b): No. A realistic carbon price is a powerful policy instrument for a speedy and effective transition to a sustainable future, and as such a carbon price will impact company performance and investment decisions. However, we think that a measure relative to carbon price is not something FMPs should report on and is easily considered out of context. FMPs and other investors can, with information on e.g. emission performance and on company strategy, analyse which impact carbon prices now and in the future can have on a company's valuation. Presenting out-of-context and current year relative measures of emissions and carbon prices, might have disproportional and unfounded effects on the valuation of certain instruments, both too positive and too negative. We therefore are not convinced that such a disclosure measure contributes to a transition to sustainable financial markets.
<ESA_QUESTION_ESG_6>

**(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?**

<ESA_QUESTION_ESG_7>
We agree that this seems to be a logical and objective way to prevent potential greenwashing issues stemming from either one of those ratios not accurately reflecting the portfolio exposure. We do wonder whether the difference between the two measurements can be easily understood.
<ESA_QUESTION_ESG_7>

**(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?**

<ESA_QUESTION_ESG_8>
See also Q1. As stated earlier, the effect of many long-term efforts in ESG-investing cannot be accurately reflected by year-n metrics, but need to be seen in context of e.g. investment or engagement policy, and/or in a multi-year comparison. In this light, also the emission reduction *potential* and realised emission reduction of investee companies are highly relevant. This is also underlined by the Taxonomy Regulation approach, which captures the potential of economic activities in contributing to climate change prevention and adaptation. In that sense, it would be helpful if FMPs could report on how their investment strategies and portfolios actively contribute to e.g. climate change mitigation in the longer term. It is in any case potentially harmful for the sustainability transition and economically unsound if any proposal for ESG-disclosures would insufficiently support long-term engagement efforts with relevant companies. The question is if advanced indicators can and should be developed and included under the SFDR to capture such an approach. We already pointed out under question 1 that transparency on adverse impact indicators not necessarily provides insight into the level of positive impact within a portfolio, e.g. a lower value on adverse impact indicators (which indicates a lower level of 'harm') does not per se indicate a higher positive impact. Therefore, a 'negative' approach might not fit FMPs that offer products not only intended to limit adverse impact, but to increase positive impact as well, for example with regard to the SDGs.
<ESA_QUESTION_ESG_8>

**(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?**

<ESA_QUESTION_ESG_9>
Yes, we agree. Eumedion has always been of the opinion that ESG-factors should not be considered (and addressed) individually, but always in conjunction. For example, many ecological issues have a social dimension, and good governance is a pre-condition for a company to meaningfully address its ecological

and social challenges and opportunities. While we are strongly in favour of the development of a taxonomy on environmental, social AND governance issues, we do realise that such an integral taxonomy will not readily be available. Still, by engaging experts on both social and governance factors and making use of existing reporting frameworks, we feel that the ESAs can provide a solid foundation for FMP reporting on these issues.

We are also of the opinion that the ESAs should at least more precisely define the provisions for disclosure on specific governance factors, which we feel is mandated by the more detailed definition of good governance as found in article 2(17). We refer also to our answer on question 21, where we additionally reiterate the importance of alignment with the (by now published) delegated acts on transparency by benchmark administrators, in which – while rather thin – also various governance factors are included in the transparency requirements.
<ESA_QUESTION_ESG_9>

**(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?**

<ESA_QUESTION_ESG_10>
We understand that the inclusion of a historical comparison is an attempt to more accurately capture historical development of portfolio ESG-values. While we do see the added value of this proposal, we also have some practical concerns.

First, it is important that this requirement is merely used to aggregate information from completed reporting cycles, in a sense that FMPs are only required to disclose historical comparisons (for up to ten years) for years in which they were required to report following the SFDR, and not in retrospect. In that way, it would also not matter to a great extent which timespan is chosen. The exact nature of the historical comparison and how it is mandated does not immediately become clear to us from the level 1 text.

Second, realistically speaking, the evolving landscape of ESG data will most likely complicate the usability of year-on-year or multi-year comparisons. It is therefore important that the current proposal does not a priori require FMPs to re-calibrate past reporting cycle values due to this evolving nature of the ESG data landscape. This would cause substantial additional administrative burdens.
<ESA_QUESTION_ESG_10>

**(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?**

<ESA_QUESTION_ESG_11>
We are of the opinion that in any case a fixed reporting date would to a certain extent help in limiting the possibilities for ‘window dressing’.
<ESA_QUESTION_ESG_11>

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

<ESA_QUESTION_ESG_12>
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<ESA_QUESTION_ESG_12>

**(13) : 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>
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<ESA_QUESTION_ESG_13>

**(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.**

<ESA_QUESTION_ESG_14>
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<ESA_QUESTION_ESG_14>

**(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?**

<ESA_QUESTION_ESG_15>
We feel that the balance of information is shifting too far towards pre-contractual information requirements. In case of funds, this would require a revision of the prospectus, which is a lengthy process partially due to the involvement of national regulators. Given the importance of up-to-date information, shifting the balance more towards website disclosures would be more pragmatic.
<ESA_QUESTION_ESG_15>

**(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.**

<ESA_QUESTION_ESG_16>
The exact nature of the differences between article 6, 8 and 9 products has not yet been completely satisfactorily resolved. For example, the definition of ‘promotion’ as linked to article 8 products includes the presentation of mandatory disclosures, while such disclosure can perhaps not a priori be considered as promotion of a financial product. Also, this definition implies application to most, if not all, financial products. In as far as this is a level 1 issue, the draft RTS can perhaps not fully resolve it. Clear distinction as regards product classification will contribute to the prevention of greenwashing, one of the main objectives of this legislation.
<ESA_QUESTION_ESG_16>

**(17) : 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>

**(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?**

<ESA_QUESTION_ESG_18>
Generally speaking, we are of the opinion that graphical presentations in general have a strong potential to mislead end-investors, since such presentations – even when kept as simple as possible and presented with the best of intentions – will fail to capture the complexities of sustainable investing strategies. For example, a green pie chart showing a high proportion of investments for which a carbon footprint has been calculated, will *suggest* a high level of environmental performance, but really does not tell an end-investor anything about the actual environmental performance of a portfolio. The same will apply to the draft RTS' proposal on graphic representations of a proportion of investments that have been screened, if not carefully designed to avoid suggestive performance characteristics. The question related to whether such graphical representations should be adapted for different types of products, seems therefore only secondary at this stage.
<ESA_QUESTION_ESG_18>

**(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?**

<ESA_QUESTION_ESG_19>
While we understand why the ESAs take this approach and while we are not per se against this specific and obvious example of highlighting solid fossil fuel exposure, we in general feel that singling out certain sectors or activities for disclosure seems to deviate from the overarching approach to principal adverse impact indicators on a higher (non-sectoral) ESG level. Indeed, exposure to solid fossil fuel activities would in any case already be captured by other (carbon emission) indicators. Perhaps the ESAs should consider to only require specific sectoral disclosure if any adverse impact of this sector is well specified, (largely) undisputed, and (most of all) not already captured by other non-sector-specific indicators.
<ESA_QUESTION_ESG_19>

**(20) : 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>

**(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?**

<ESA_QUESTION_ESG_21>
Yes, we are of the opinion that the requirements for article 8 should also capture the elements of good governance as specified in article 2(17). Eumedion has always been of the opinion that ESG-factors should not be considered (and addressed) individually, but always in conjunction. For example, many ecological issues have a social dimension, and good governance is a pre-condition for a company to meaningfully address its ecological and social challenges and opportunities. Since both article 2(17) and 8 imply that good governance practices are a necessary pre-condition for any type of credible sustainability-linked

investment, we consider the intention of the level 1 text clear. Therefore we deem it unavoidable that these practices, both with regard to article 8 and to article 9 products, need to be reported on.

However, we are also of the opinion that because of the importance of governance factors and because of the practical need to operationalize governance factors for disclosure, this requires these factors to be more precisely and more broader defined in the RTS. Ideally, this would involve the development of a taxonomy on the full spectrum of E, S and G factors, but this will most likely not be realised in the next few years. We realise that the level 1 text (article 2(17)) leaves the specification of good governance practices rather thin, and – contrary to environmental and social factors - the ESAs have not been explicitly mandated to further specify governance factors. And while we support the ESAs intention to align disclosure requirements with the (by now published) delegated acts on transparency by benchmark administrators, said delegated acts also leave the area of governance factors for equity investments rather thin. But the SFDR does provide at least a limited stepping stone for governance factors in article 2(17). We therefore encourage the ESAs to at least adopt and/or further specify the reporting requirements around the definition of article 2(17), i.e. sound management structures, employee relations, remuneration of staff and tax compliance. Such will be a necessary step to operationalize disclosure on these factors.
<ESA_QUESTION_ESG_21>

**(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?**

<ESA_QUESTION_ESG_22>
Since the Taxonomy Regulation has introduced the 'do no significant harm' (DNSH) principle into the SFDR, we interpret this introduction into the SFDR as an attempt to align both regulations. That means that the specification of the DNSH approach should be fully aligned between both regulations. This is especially crucial since the Taxonomy Regulation draws on DNSH as one of its key elements, and which seems to imply that the SFDR should follow development of the taxonomy (and not the other way around). However, since the taxonomy is currently primarily limited to environmental factors and has not (yet) been developed for the full spectrum of ESG factors, this poses a problem for specifying DNSH within the more broadly defined SFDR.

Additionally, the environmental principal adverse impact indicators within the draft SFDR RTS do not per se fully capture the same factors as laid out in the preliminary taxonomy on environmental factors. It will be up to FMPs to present their own view on the DNSH-process and performance in relation to the draft RTS indicators, while at the same time putting effort into compliance with the Taxonomy Regulation requirements. This will lead to slightly diverging parallel information streams, and could hamper consistent and reliable DNSH disclosure within the SFDR.
<ESA_QUESTION_ESG_22>

**(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?**

<ESA_QUESTION_ESG_23>
No, we do not see merit in the ESAs prescribing definitions of ESG-investment strategies per se, but we do see merit in providing FMPs with an opportunity to disclose on the use of various strategies. However, we feel that the disclosure on impact indicators and the information on investment strategy should ideally be mutually reinforcing. As we stated above, mere current-year metrics of certain indicators do not necessarily reflect the efforts and potential long term impact of an investment strategy. At least in the short to mid-long term, a prescribed set of (limiting?) definitions might even provide a disincentive for investors to responsibly engage with e.g. lagging issuers in a way that best suits their investment beliefs.
<ESA_QUESTION_ESG_23>

**(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?**

<ESA_QUESTION_ESG_24>
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<ESA_QUESTION_ESG_24>

**(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.**

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>
Point 1: We wonder if committing to a rate of reducing the scope of investments prior to the application of the investment strategy at all makes sense.

Point 2: Pre-contractual disclosure, as per the draft RTS. We consider the assessment of good governance practices a vital part of sustainable investment, which warrants inclusion in pre-contractual disclosures.

Point 3: Website disclosure, as per the draft RTS. We do wonder why the ESAs chose to formulate 'how such limitations do not (sic) affect the attainment of any environmental or social characteristics', while in practice the limitations in data availability and quality will potentially affect said attainment or at least provide a lower level of reliability regarding the realisation of sustainable objectives or characteristics. Limitations in data and methodology are the reality of most current sustainable investment practices and the possibility of such limitations negatively affecting the attainment of objectives should not a priori lead to exclusion of certain investments or hamper innovation in sustainable investing. We assume therefore that this is also not the ESAs intention. We can imagine that it would be better to primarily require a brief but realistic description of 'how limitations in data and methodology are addressed in light of a product's environmental or social characteristics or sustainable investment objectives.'

Point 4: We fail to see how specified disclosure on proportions of external and internal data sources are relevant for end-investors.
<ESA_QUESTION_ESG_25>

**(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)?**

<ESA_QUESTION_ESG_26>
We are of the opinion that it would be better to include a separation section on information regarding derivatives. Including such information especially within the graphical explanation – on which we shared some doubts under question 18 - would make this explanation unduly complex.
<ESA_QUESTION_ESG_26>

**(27) : 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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