

Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclo- sures





Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (hereinafter “RTS”) on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (hereinafter Sustainable Finance Disclosure Regulation “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:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- 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.
- 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.
- 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.
- 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 12 May 2021.
- 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) 2018/1725¹. 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	Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

Deutsche Börse Group (DBG) welcomes the opportunity to provide a response to the ESAs' consultation on taxonomy related sustainability disclosures.

We welcome the ESAs' proposed approach to amend the existing SFDR RTS. However, as regards the KPI for the disclosure, we believe choosing the same KPI for all investments makes mixed strategies difficult to display. Furthermore, we believe that the proposed KPI for disclosure of the extent to which investments are aligned with the taxonomy should also include derivatives, as ESG derivatives are increasingly playing a role in channelling more capital into sustainable investments. However, it might make sense to, in some instances, differentiate between short and long positions.

In addition, we welcome the approach on including all investments of the financial product in the denominator for the KPI, as it would paint a more true-to-life picture. It would be a misrepresentation to display the percentage only of those assets that can be assessed for Taxonomy-alignment. As regards the disclosure templates, we have some concerns that they may be difficult to read and understand for end-users that are not familiar with the specific definitions contained in the SFDR and Taxonomy Regulations. A particular source of confusion will be the subtle differences between investments categorised as "sustainable investments" according to SFDR and those that are aligned with the Taxonomy. We recommend that such categories be clarified in the templates in simple terms, and if possible, with examples. This should be done in a way that is easy to read, as there is also a need to reduce some of the complexity and density of the information contained in the templates (as shown in the ESAs' consumer testing).

Finally, as the goal of the taxonomy is to create a common understanding of what counts as sustainable, external verification of statement of taxonomy compliance is key. If there is no external verification of statements, we could see divergence in outcomes depending on how different parties determine taxonomy alignment, with a resulting high risk of greenwashing. To prevent this, not only third-party verification is needed but also a clarification that all the criteria developed and set out by the legislative text need to be adhered to in the assessment of taxonomy alignment.<ESA_COMMENT_ESG_1>

Q1 : Do you have any views regarding the ESAs' proposed approach to amend the existing SFDR RTS instead of drafting a new set of draft RTS?

<ESA_QUESTION_ESG_1>

DBG welcomes the approach of having only one set of RTS. We have observed issues in the incoming regulations regarding discrepancies of requirements and overlaps (both minor and major ones). Consolidating these into one RTS would provide more consistency which would be very helpful.

We also believe that further work should be undertaken to align the SFDR and Taxonomy RTS in the future, as and when new taxonomies and standards are developed (e.g. social Taxonomy, significant harm Taxonomy, etc).

<ESA_QUESTION_ESG_1>

Q2 : Do you have any views on the KPI for the disclosure of the extent to which investments are aligned with the taxonomy, which is based on the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies? Do you agree with that the same approach should apply to all investments made by a given financial product?

<ESA_QUESTION_ESG_2>

Requiring investors to choose one KPI for all investments makes mixed strategies difficult to display. While turnover is more reflective of the status quo, CapEx and OpEx are rather future-oriented and thus give investors the ability to also label investments into companies which are transitioning as taxonomy aligned. Given the current lack of data on CapEx and OpEx, we would anticipate that turnover will mainly be chosen, which would undermine the efforts to use the taxonomy also as a tool to facilitate transition. While data availability will improve as reporting requirements for companies start to apply, for most portfolios this will only resolve the issue for a sub-set of companies included, meaning that – if the same KPI has to be chosen for all investee companies – using CapEx and OpEx will likely still not be a feasible option. We would however like to emphasise that we believe that OpEx and CapEx are nevertheless equally desirable metrics and that use of such should be encouraged.

<ESA_QUESTION_ESG_2>

Q3 : Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?

<ESA_QUESTION_ESG_3>

N/A

<ESA_QUESTION_ESG_3>

Q4 : The proposed KPI includes equity and debt instruments issued by financial and non-financial undertakings and real estate assets, do you agree that this could also be extended to derivatives such as contracts for differences?

<ESA_QUESTION_ESG_4>

We consider that, if extended, it could become more difficult to calculate and may be difficult to determine which assets to include.

However, as more and more asset owners incorporate ESG approaches into their portfolios, asset managers have the duty and challenge of presenting strategies and products that meet their clients' criteria. In this context, ESG indices are key for enhancing access to ESG strategies with liquidity and appropriate portfolio diversification. Over the last few years, customer demand for listed ESG derivatives has emerged, with mainly the asset-management industry seeking flexible solutions to align their ESG investment mandates, trade longer-dated maturities and manage the granularity of clients' risk exposure while reducing trading costs.

We therefore believe that the proposed KPI for disclosure of the extent to which investments are aligned with the taxonomy should also include derivatives, as ESG derivatives are increasingly playing a role in channelling more capital into sustainable investments. In some instances, it might however, make sense to differentiate between short and long positions. In the case of ESG index futures, for example, long positions are used to manage exposure to the benchmark index, as well as to manage efficiently the cash flows in a portfolio. Long positions should therefore be added to the ESAs' KPI. However, short positions could be treated equally to long position but only when they are used to better manage the risk of the portfolio, and not for speculative purposes.

<ESA_QUESTION_ESG_4>

Q5 : Is the use of “equities” and “debt instruments” sufficiently clear to capture relevant instruments issued by investee companies? If not, how could that be clarified? Are any specific valuation criteria necessary to ensure that the disclosures are comparable?

<ESA_QUESTION_ESG_5>

N/A

<ESA_QUESTION_ESG_5>

Q6 : Do you have any views about including all investments, including sovereign bonds and other assets that cannot be assessed for taxonomy-alignment, of the financial product in the denominator for the KPI?

<ESA_QUESTION_ESG_6>

We would be in favour of such approach as it paints a more true-to-life picture. The objective of the taxonomy is to channel financing towards the types of activities which we need to achieve the environmental objectives. It would be a misrepresentation to display the percentage only of those assets that can be assessed for Taxonomy-alignment. At the same time, it could of course be an option to have two KPIs: one where the denominator includes all investments and one where only those investments which can be assessed for Taxonomy-alignment are included. This could be done in an even more granular manner by including in the denominator only investments into activities which are currently in the scope of the Taxonomy. This last KPI would have the advantage that it allows for differentiation between investment products which have low proportions of Taxonomy-alignment because they invest in companies/activities which are not in scope vs. those which invest in relevant companies/activities but do not meet the criteria.

<ESA_QUESTION_ESG_6>

Q7 : Do you have any views on the statement of taxonomy compliance of the activities the financial product invests in and whether those statements should be subject to assessment by external or third parties?

<ESA_QUESTION_ESG_7>

The goal of the taxonomy is to create a common understanding of what counts as sustainable. If there is no external verification of these statements, we could see divergence in outcomes depending on how different parties determine taxonomy alignment, with a resulting high risk of greenwashing. To prevent this, not only third-party verification is needed but also a clarification that all the criteria developed and set out by the legislative text need to be adhered to in the assessment of taxonomy alignment. This needs to be put in place both for companies reporting on their alignment as well as financial market participants making assessments in the absence of company-reported data. In the absence of such specifications, we will continue to see broadly diverging approaches whereby some financial market participants check whether companies actually have in place the relevant measures required by the DNSH criteria, whereas others only perform a controversy check to assess DNSH compliance, or even only use sector-based standard coefficients without applying the substantial contribution criteria, the DNSH and the social safeguards.

External verification should thus look at the methodology applied, including which data was used, which assessment stages were applied and how they respond to the taxonomy requirements. This would make it possible to identify strong vs weak approaches and act accordingly.

<ESA_QUESTION_ESG_7>

Q8 : Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?

<ESA_QUESTION_ESG_8>

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<ESA_QUESTION_ESG_8>

Q9 : Do you have any views on the amended pre-contractual and periodic templates?

<ESA_QUESTION_ESG_9>

We are concerned that the pre-contractual and periodic templates will be difficult for users (both retail and institutional) to understand, particularly if they do not have a pre-existing understanding of the specific product categories laid out in SFDR and the Taxonomy Regulation. This is particularly the case for subtle distinctions between “sustainable investments” (under the SFDR definition) and investments that are Taxonomy-aligned. Many users unfamiliar with the legislation may assume these to be equivalent.

We recommend that such categories be clarified in the templates in simple terms, and if possible, with examples. This should be done in a way that is easy to read, as there is also a need to reduce some of the complexity and density of the information contained in the templates (as shown in the ESAs’ consumer testing). A user-friendly guidance document could also be developed to help end-users make sense of the Taxonomy-related pre-contractual and periodic disclosures.

Such simplification and user-friendliness is of particular importance as the information disclosed under SFDR may be decisive for the decision-making of end investors in application of the newly published Delegated Regulation amending *Delegated Regulation 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms*. The scope of the MiFID II suitability assessment will thereby be widened to also cover sustainability preferences of potential clients. End investors will have to make a choice with a view to, inter alia, the minimum proportion a financial instrument they invest in purports (environmentally) sustainable investments as defined in the EU Taxonomy or the SFDR, respectively. The distinction between

the concepts of environmentally sustainable investment (EU Taxonomy) on the one hand and sustainable investment (SFDR) on the other hand is not trivial for experts, let alone the end investor.

In both the pre-contractual and periodic disclosures, the quantitative Taxonomy-alignment ratio (pie chart) should be accompanied by a qualitative segment explaining how the FMP plans to increase its share of Taxonomy-aligned investments.

<ESA_QUESTION_ESG_9>

Q10 : The draft RTS propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products (including Article 5 and 6 TR products which are a sub-set of Article 8 and 9 SFDR products). Do you believe it would be preferable to have separate pre-contractual and periodic templates for Article 5-6 TR products, instead of using the same template for all Article 8-9 SFDR products?

<ESA_QUESTION_ESG_10>

N/A

<ESA_QUESTION_ESG_10>

Q11 : The draft RTS propose in the amended templates to identify whether products making sustainable investments do so according to the EU taxonomy. While this is done to clearly indicate whether Article 5 and 6 TR products (that make sustainable investments with environmental objectives) use the taxonomy, arguably this would have the effect of requiring Article 8 and 9 SFDR products making sustainable investments with social objectives to indicate that too. Do you agree with this proposal?

<ESA_QUESTION_ESG_11>

N/A

<ESA_QUESTION_ESG_11>

Q12 : 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_12>

N/A

<ESA_QUESTION_ESG_12>