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	European Association of Paritarian Institutions- AEIP
Activity	Insurance and Pension
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
We welcome the opportunity to provide feedback and we appreciate the challenge of developing Regulatory Technical Standards that apply to such a wide set of financial market participants.

We would like to address a few general issues, which are not necessarily captured and addressed by the questionnaire:

- **Implementation timeline.** AEIP appreciates the action of the ESAs to highlight to the European Commission the extremely tight implementation deadline. We urge the ESAs to continue to put forward this message, as no action to mitigate this issue has been taken yet. We are very concerned that our members will not be able to achieve compliance with the SFDR within the timespan between the adoption of the Regulatory Technical Timeline and the 11 of March 2021.
- **Consistency.** We believe that regulators should aim for consistent principles and requirements across different parts of the EU Sustainable Finance agenda. The proposed set of the so-called 'adverse impact indicators' is namely not aligned with the 'do-no-significant-harm' criteria introduced by the Taxonomy Regulation.
- **The best effort approach to obtain data** from companies does not reflect the operational realities of pension funds. Article 7(2)a implies that financial market participants should first aim to obtain any missing data on the adverse impact indicators from investee companies. In reality, financial market participants will rely on external data suppliers that will collect data directly from investee companies or conduct their own research to arrive at reasonable estimates. It is simply inefficient to require every single asset manager, insurer and pension fund to reach out on their own.
- The RTS seem to be designed for fairly simple retail funds, consisting mainly of listed equity and fixed income securities, for which a lot of data is already available. Pension funds' portfolios are more complex and encompass all types of (long, non-leveraged) assets, including private equity, real estate, infrastructure, private debt, securitized assets and commodities. While these alternative assets only represent a minor part of the portfolio, reporting is required against all assets. While recognize the benefit of considering the social and environmental impact of some of these categories of assets, data is often completely missing. Moreover, the administrative burden of full compliance against the concept RTS therefore may be much higher for a pension funds than e.g. retail fund managers.
- In recital 21 of the RTS, the ESAs describe their understanding of "financial products promoting ESG". This goes beyond the Regulation and we question the competence of the ESAs on this matter. In this recital it should also be made clear that this only applies to information provided to the end-investors to enable them to make an informed investment decisions.

<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>
We do not agree with proposed approach. In summary, we have the following suggestions or remarks:

- Allow a materiality assessment to apply or disapply indicators to sectors.
- Apply mandatory indicators only to listed equity portfolios only, as data is lacking for other types of assets.
- It is difficult to argue for some indicators that any positive score is considered an adverse impact, particularly when it concerns the indicators that are ratios.

Although we see merit in using a number of indicators included in Annex I Table 1, we do not agree that these indicators will always lead to 'principal' adverse impacts. The articles of the Disclosure Regulation are to a large extent inspired by the OECD guidelines on responsible business conduct for institutional investors. At the very core of OECD-style due diligence lies the notion that it is impossible for an institutional investor to address all adverse impacts of their investments. Hence, there is a need for prioritization. This need for prioritization is also reflected in the notion of materiality for non-financial reporting under the NFRD.

This means that not all indicators are relevant for all sectors and context is needed to understand whether impact is indeed 'principal'. Not all impacts should be considered as adverse impacts to be prioritized when assessed at a portfolio level. This assessment would lead to the prioritization of the relatively most severe potential or actual adverse impacts across all sectors represented in the portfolio. For example, it is clear that many of the environmental indicators will be less relevant for services industries and will de facto not lead to mitigation through engagement or divestments. Another example is that, under the proposed methodology, the CO2 emissions involved in producing solar panels amounts to a principal adverse impact, whereas the activity overall may be Taxonomy compliant and leading to a reduction of emissions. Adverse impacts and their prioritization are inherently tied to a portfolio or an asset class, not the whole entity.

Moreover, it is clear that for some of the indicators, it cannot be argued that the "any positive value" indicates adverse impact (whether principal or not). This is the case, for example, when it comes to indicators which use ratios, such as executive pay or board diversity.

Also, it is important to note that the Disclosure Regulation does not define what is considered to be an adverse impact. While Article 4(6) does empower the ESAs to specify the details of the indicators in relation to adverse impacts, it can be questioned whether this mandate implies mandatory reporting against a full set of 32 indicators. This would entail filling in a central, but undefined, concept through a regulatory technical standard. Provided the choice of the legislator not to define the concept, there should remain choice for financial market participants to select indicators most material for their portfolio, or most aligned with preferences of end-investors (i.e. members and beneficiaries).

Taking into account that the Regulation only requires reporting on adverse impact policies and not actual actions for mitigation, it is a step too far to require such a comprehensive set of indicators to be reported for the entire portfolio. We propose that financial market participants can choose which indicators are most relevant for their portfolio and mitigation policies and use different indicators for different sectors or parts of the portfolio. The RTS could require a minimum amount of indicators to be used in order to achieve a decent level of reporting.
<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>
No, it does not because there is a ‘one size fits all approach’ without any consideration of the size, nature and scale of financial market participants or the type of products.

It is important to highlight that the Disclosure Regulation requires reporting of the due diligence policies that are in place and does not put any requirements on the outcomes and actions. This means that the information reported should be useful for the actual mitigation of adverse impacts. It is simply true that smaller financial market participants will have less ability to dedicate resource to engagement. Many pension funds have no or only a relatively small staff in order to keep the costs of investments low. Having more limited resource, pension funds who implement due diligence need to prioritize mitigation efforts and only pick those issues were the impact is most principally adverse. In doing so, they often want to make thematic choices linked to the preferences of members and beneficiaries. The concept RTS provide no possibility to limit the financial and administrative burden of data collection by allowing to focus on indicators and sectors the pension funds where the pension funds deem the impact of investment to be most ‘principal’.

As a result, there is insufficient consideration of the principle of proportionality. It is important to note that no pension fund that is part of our member organizations has more than 500 employees and therefore they are able to rely on the opt-out provided by Article 4(1)b SFDR. Given the high cost of compliance and the fact that the indicators are designed in a way that does not actually support the due diligence process, pension funds may be inclined to opt-out, even if they have a strong interest in the OECD guidelines.

The European Commission is considering setting up a public data base with ESG data. If such a platform were to be successfully installed, the administrative burden of reporting would go down and proportionality considerations become less relevant. We would advocate that this platform is accessible to all financial market participants and end investors at no cost. The ESAs could then increase the level of reporting required under the RTS.
<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>
Comparability of data is currently very challenging, whether financial market participants are required to report along the same indicators or not. The correlation of data provided by ESG data providers is often low. This means that reporting under the concept RTS may seem comparable, but still would entail comparing apples to oranges. The key to comparability is more reliable and streamlined corporate reporting. If corporate reporting would be reliable and comparable, pension funds would find it much easier to meet the proposed requirements and the results between pension funds would be comparable. However, we are currently a long way off from this situation. The NFRD review may provide some respite, but as pension funds are global investors, it will not cover the entire portfolio. Besides a geographical scope gap, the NFRD will also not apply to all asset classes. Finally, pension funds will have to comply with the Disclosure Regulation for at least a number of years before a revised NFRD will get into force. There is always the risk of the review getting bogged down in political divides in Parliament or Council, so it is not correct to model legal requirements for financial market participants on an expected revision of corporate reporting that may happen.

As a result of the fact that comparability is not a realistic objective at the moment anyway, there should be more freedom for each financial market participant how to disclose adverse impacts. There should be alignment with current market standards.

There should be choice related to the following elements:

- Financial market participants should be able to choose which indicators are material for which sectors. The disclosure of environmental characteristics against the whole portfolio is not useful, as it does not show which investments have the biggest impact and large part of the portfolio have very limited scope to improve.
- Pension funds should continue to be able to make thematic choices based on the preferences of members and beneficiaries, instead of having the themes decided top down by the EU. If members want to see concrete mitigation efforts on some themes, it should be possible to only report against those.

<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
The lay-out of the template itself is not very crucial for pension funds. More important is the feasibility and availability of data.
<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>
The feasibility impact assessment of the reporting indicators, as performed by one of our member organizations, shows that the indicators' application might be possible for listed equity and fixed income portfolios, but only a limited extent. Our assessment of currently available ESG data from two large and widely used ESG data providers shows the following coverage across the 32 indicators:

- Full coverage: 14 (44%)
- Some coverage: 6 (19%)
- At least some limited coverage *or* coverage expected soon: 3 (9%)
- No coverage: 9 (28%)

More specifically, we have following feedback on individual indicators:

- **Indicators 1-4 (GHG)** are relevant but there is not much (reliable) scope 3 emissions data. For example, the largest pension fund asset managers in the Netherlands currently report data associated with 3 and 4 of the mandatory indicators respectively. The reporting of scope 3 emissions is currently undesirable as data remains of low quality and low comparability across data providers (research shows close to no correlation between scope 3 data sets). Down the road we however believe that the reporting of scope 3 emissions might be desirable, but only for specific sectors where these are most material.
- Regarding the proposed greenhouse gas emissions indicator, if this needs to be reported for each portfolio holding, we expect to run into contractual challenges since company-specific emissions data remains the property of the provider from whom the data is sourced. We do not believe it would be possible to disclose holding-specific information for the whole portfolio.
- **Indicators 5-7** (energy consumption and CO2): although relevant there is an overlap with previous indicators. Not many companies disclose on these indicators or have energy consumption

data per NACE sector. There is limited benefit next to existing and forward looking CO2 disclosures. Moreover, this seems to assume that all non-renewable sources of energy cause adverse impacts. We believe that not to be the case.

- **Indicator 8:** Energy consumption of investee companies per million EUR of revenue of those companies (in GWh), expressed as a weighted average. This indicator seems to make no distinction between different sectors (those that are energy intensive and those that are not), the uses of energy and the sources of energy. We are not sure what useful information this indicator is intending to show or the adverse impacts that it is supposed to substantiate or underline.
- **Indicators 9-11** (biodiversity & ecosystem): data is not available and if it is available it is general info. In addition, deforestation (11) is only relevant for some investment and is not useful in all cases. It makes no distinction between companies/sectors for which deforestation is a material issues and those for which it is not. This may differ significantly not only per sector, but also the region in which a company or its suppliers operate. It would not justify the mandatory obligation to use this one.
- **Indicators 12-14 (water)**. Water emission (12) is relevant and data available in m3. We recommend deleting 13 & 14. They are difficult to define and leave room for interpretation.
- **Indicators 15 & 16** (generated waste versus generated non-recycled waste): potentially relevant.
- **Indicators 17-22** (Social and employee matters) ILO Conventions, whistleblower protection and workplace accident prevention policies relevant. What does Excessive CEO pay ratio and Board gender diversity say? Could be very different per country but could be relevant as part of engagement plan. Gender pay gap is currently not available, although EU legislation may change this going forward
- **Indicators 23-29** (human rights): most are relevant but some only in relation to certain high risk companies and sectors such as preventing trafficking in human beings. What are controversial weapons? Land mines and cluster bombs are excluded by law.
- **Indicators 30-32** (corruption and bribery): in indicator 31 ‘insufficient action’ is very vague and will lead to very divergent outcomes. Data seems missing for indicator 32.

<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>
No, adding more complexity does not lead to a better understanding by the average pension fund participant or retail investor. If you want to keep things understandable it is necessary to reduce amount of indicators. For retail investors it will actually be more difficult to compare and therefore take investment decisions on the basis of KPIs if more indicators are added.
<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>
We understand that this differentiation is made. Based on our observations, most likely larger companies have policies on particular issues, so the (2) share of all companies in the investments will most likely be larger than the (1) share of investments in companies.
The question is whether this additional information will not confuse end investors this information and whether the difference in drivers of (1) and (2) is sufficiently understood.

<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>
We would not object as long as these more advanced indicators are voluntary by nature. Please keep in mind that metrics such as ‘avoided emissions’ are largely a theoretical concept, and the calculation is heavily dependent on the assumptions used in that calculation. Hence, these advanced metrics are prone to green washing if used loosely.
<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>
Yes, we agree that adverse impact metrics should cover the full spectrum of ESG issues. Social issues should not be underrepresented compared to environmental issues. However, the number of indicators should be reduced across environmental, social and governance issues. It’s also important to consider the materiality of the indicators.
<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>
We recommend a timespan of 5 to 7 years in keeping with statutory requirements for audits.
<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>
We are not entirely sure we understand the issue. The feedback given during the hearing on these RTS seemed to indicate that FMP should ‘weight’ their exposure to an investment (and therefore the adverse impacts) with the time that the asset is held during the reference period. Although this may give rise to all sorts of practical challenges, this would avoid window dressing by changing the portfolio around the reference date.<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>
The pension fund member in countries such as the Netherlands and Belgium is obliged to join and will not be comparing different ‘products’. When there are no investment decisions to be made by the pension

plan members these pension plans should not fall within the scope of Article 8 of SFDR. Hence, there is little rationale for having comparability and therefore a template. However, having said that, a fixed template would probably also not be problematic to use. Much more relevant is the type of information that is required to be disclosed, which is currently not useful or understandable for the average pension fund member.

There may be a stronger rational for comparability of periodic disclosures. Internal (representatives of employees) and external stakeholders of the pension funds may want to compare the pension funds against peers and a template could help. AEIP feels that the RTS should allow attaching the template to the annual report or a specific annual sustainability report which exists in a few countries, which several of the larger pension funds there provide.
<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>
They should be designed in such a way that they are easy readable for consumers and the information should be limited as e.g. stated in the PRIPP KIDs. AEIP recommends allowing the layering of information. We also recommend consumer testing to verify whether average retail clients or pension funds participants understand the information.
<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>
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<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>
It is our understanding that pre-contractual information to members can be communicated through the website due to the reference of Article 15 of the Disclosure Regulation, which refers to IORPII Article 36 par. 2(f), depending on the national implementation of the IORPII Directive. Nevertheless, the draft RTS would still inhibit pension funds to communicate in an understandable way to members on their website, by having too much and too detailed information there.

In case a pension fund indeed falls within the scope of Article 8, they will need to provide disclosures to members who are obliged to enroll and have no investment choice. The ‘greenwashing’ objective of the Regulation is irrelevant as ESG is not being used as a selling point. Moreover, the members are employees from nearly all sectors of the economy, so the vast majority of them have limited financial literacy relating to the functioning of capital markets, corporate governance and sustainable finance. Insights from behavioural economics show that in the real world, people do not engage with information they cannot act upon or struggle to understand. Information overload leads to loss of interest and disenfranchises people from their pensions more generally, as they feel that the communication from their pension fund is too complicated. This may make it more difficult for pension funds to engage members when trying to inform them of situations where action is required. Therefore, we feel that the disclosures to mandatory pension fund members should be made much simpler. We recommend allowing as much as possible the layering of information.

We feel that the following information items that need to be reported pre-contractually will not be understood by pension fund members:

- **The 'no sustainable investment objective'.** The average member of the public will not understand the difference between 'environmental and social characteristics' and 'sustainable investments'. In fact, the Regulation hardly defines the difference and the terminology does not even resonate with ESG investment practitioners as these terms are not used in the world of finance either. The disclaimer would lead to confusion as to whether the pension fund would have a responsible investment policy or not.
- The difference in direct and indirect holdings.
- What it means to reduce the investment universe
- What is a 'derivative'.
- What is a reference benchmark or its role.

In case these elements are kept, it is best to allow the layering of information.

This does not mean there should be no scrutiny of pension funds responsible investment policies. This scrutiny comes from internal and external stakeholders such as member representative committees (some bigger funds have committees specifically designated to ESG), trade unions and NGOs. We recommend using the annual report (or a responsible investment report attached to the annual report) as the location for as much of the disclosure requirements. This will make it easy to find and collect for internal and external stakeholders, while not overburdening individual members that look for a succinct and understandable description of the responsible investment policy in a vocabulary that makes sense to them.
<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>
Pension funds certainly will not provide Article 9 products, as the objective of a pension fund is to deliver good risk-weighted returns for members. They may have specific impact investment mandates as a very small part of the portfolio, but even there the pension funds will not invest if not expecting a reasonable return.
As mentioned, we believe that the disclosures under Article 8 are too detailed and complicated. We have no opinion about Article 9 disclosures, as pension funds will not offer these.
<ESA_QUESTION_ESG_16>

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

<ESA_QUESTION_ESG_17>
We are not sure the split between 'direct holdings' and 'other holdings' is useful and understood by pension fund members. The pension service providers and asset managers investing on behalf of pension funds often establish investment vehicles solely for their pension fund clients. Recital 30 of the draft RTS seems to imply that investing via funds is considered indirect investing. Therefore, a pension fund may not have any 'direct investments', as it holds shares in a collective investment vehicle, even if this vehicle is set up by a wholly-owned investment manager solely for purpose of investments by the pension fund. In any case, an average pension fund member will not understand it, but at least consider investments through investment vehicles as 'direct' investment.
We would like mention to that pension funds do not invest indirectly in companies through e.g. equity swaps.
<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>
Given that the concept of 'the promotion of environmental and social characteristics' is undefined, it is difficult to image how the requirement for a graphical representation could work in a consistent way. In some countries like in the Netherlands, pension funds typically apply multiple exclusion screens (e.g. controversial weapons, human rights abuse, tobacco), but may also employ a best-in-class approach in certain sectors. It is impossible to capture all these different elements in a single graphical representation. For example, in some countries pension funds are required by law to exclude investment in companies that produce cluster bombs, so should the graphical representation show that the entire equity and corporate bond portfolio contributes to the characteristics promoted by the product?

Moreover, pension funds have to invest a significant share of premiums in highly-rated government bonds in order to deliver the promised pension with a high degree of certainty and to hedge interest rate risk. While, for instance, many pension funds invest in green government bonds where possible, the amount of green bond principal issued is still very low. Beyond green bonds, the scope to implement environmental or social characteristics is quite limited. This also applies other part of the portfolio, such as the interest rate swap portfolio and some (but typically quite small) holdings in money market funds. This means that even the most ambitious pension fund will always have a significant part of the portfolio that cannot be used for the attainment of environmental or social characteristics. However, the vast majority of pension fund members will not understand the purpose of different parts of the balance sheet, even if allowed to explain in the narrative part, which cannot be captured by a single graphical representation.

Because of these reasons we recommend not to require any graphical representation. It would indeed invite to greenwashing, because a relatively unambitious retail product with a single screen could be made to look better than an ambitious ESG product that still has some government bonds for risk-management purposes. It could also be argued this would push retail investors to riskier and less diversified products.
<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>
In case a financial market participant is offering a product that promotes environmental characteristics specifically, disclosing exposure to solid fossil-fuel sectors seems to make sense. In case the product targets social characteristics, it does not.
<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 invest-**

ment 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>
There seems to be some tension between the objective of Article 8 being a 'catch-all' category and setting a certain level of minimum standard for governance. In fact, the governance element may present some kind of loophole, whereby the FMP does use the marketing language of a sustainable financial product, but escapes the requirements of the Disclosure Regulation by not having a policy on governance. It is currently unclear, for example, what should happen if one company in the portfolio has an incident showing failing governance practices. Although pension funds have their investment due diligence processes, with thousands of investee companies in the portfolios, it is hard to avoid to have a bad apple from time to time. Specifying in more detail the requirements for 'good governance practices' will make it more likely FMPs will have to disqualify their product as falling within the scope of Article 8.
<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>
As set out above, pension funds do not make sustainable investments under Article 9.
Nevertheless, it is unclear how to use the adverse impact indicators to identify what is significant harm, as there is no level defined at which point harm will be done. For example, which CEO/employee pay ratio is so excessive that the investment can no longer be considered a 'sustainable investment'?
Moreover, having to check any investment that aims to have a positive sustainability effect against 32 indicators sets the bar for 'sustainable investments' very high, if not at a nearly impossible level.
Also, all represented pension funds have less than 500 employees, meaning under Article 4(3) that they are not required to use the adverse impact indicators. Should they ever want to make a 'sustainable investment', this requirement could act as a threshold, as this pension fund would now need to engage a third party data provider for information on these 32 indicators.
<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>
For the average pension fund member (and retail client) this type of information would be too difficult to understand. Investment professionals working for pension funds are well aware of the different strategies. There is no added benefit of regulating these definitions for pension fund participants and no clear mandate in Level 1.<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>
We are not entirely sure how this list would inform a pension fund participant about the sustainable investment policy and as such whether such a list would fit with the Level 1 mandate. This would entail quite a

lot of information and the more pages precontractual information there are, the less likely consumers or pension fund participants are likely to actually read it.
On the other hand, pension funds in several countries, such as the Netherlands, are transparent about their investments and such disclosures in some cases are already on the website for participants and external stakeholders who are looking proactively for this information. So we do not feel this disclosure would be particularly burdensome.
<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>
In regards to point a): We recommend only including this type of information in the periodic report or annual responsible investment report. As explained, individuals who are required to enroll in a pension fund cannot take a decision based on this information and in any case will receive the information after they have signed the labour contract.
However, the periodic report often is a focal point for discussions by representative bodies about the pension fund in general and the responsible investment policy in particular. Similarly, these reports are a valuable source of information for external stakeholders who take an interest in the responsible investment policy

In regards to point b): We recommend only including this type of information in the periodic report or annual responsible investment report. As explained, individuals who are required to enroll in a pension fund cannot take a decision based on this information and in any case will receive the information after they have signed the labour contract.
However, the periodic report often is a focal point for discussions by representative bodies about the pension fund in general and the responsible investment policy in particular. Similarly, these reports are a valuable source of information for external stakeholders who take an interest in the responsible investment policy.

In regards to point c): We recommend only including this type of information in the periodic report or annual responsible investment report. As explained, individuals who are required to enroll in a pension fund cannot take a decision based on this information and in any case will receive the information after they have signed the labour contract. This type is also very technical and pension fund participants who are proactively looking into the responsible investment policy on the website will likely disengage if they struggle to understand it.

However, the periodic report often is a focal point for discussions by representative bodies about the pension fund in general and the responsible investment policy in particular. Similarly, these reports are a valuable source of information for external stakeholders who take an interest in the responsible investment policy.

In regards to point d): We recommend only including this type of information in the periodic report or annual responsible investment report. As explained, individuals who are required to enroll in a pension fund cannot take a decision based on this information and in any case will receive the information after they have signed the labour contract. This type is also very technical and pension fund participants who are proactively looking into the responsible investment policy on the website will likely disengage if they struggle to understand it.
However, the periodic report often is a focal point for discussions by representative bodies about the pension fund in general and the responsible investment policy in particular. Similarly, these reports are a valuable source of information for external stakeholders who take an interest in the responsible investment policy. .<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>
The average pension fund members (and retail investor for that matter) does not understand what a derivative is. Requiring referring to concepts that are not relevant and not understood, only disengages members. Pension funds only use derivatives to hedge interest and currency risk, which is irrelevant for the responsible investment strategy.
<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>
If pension funds were to incur these costs themselves directly, the impact on overall costs is much higher than the percentages reported in the impact assessment (0.0001%), at least for smaller and medium-sized funds. For example, a fund with 500 million of AUM incurring an annual cost of EUR 100 000, will see its costs rise with 0,02 percentage points. This relates only to obtaining ESG data and not to the time spent preparing the disclosures
As the data coming from one of our national member organization shows, the average annual costs of a Dutch pension fund stands at 0,65% (including all asset management, administrative and transaction cost), which amounts to a 3% estimated increase of annual costs. Bearing in mind that across Europe, there are hundreds of IORPs smaller than this example, this cost element is not insignificant. It is fair to acknowledge that for the biggest Dutch pension fund, the EUR 100 000 annual cost would amount to an estimated 0,00002 percentage points. This shows that the RTS currently do not properly incorporate proportionality considerations as required by Level 1.<ESA_QUESTION_ESG_27>