dutch fund and asset
MANAGEMENT ASSOCIATION

GENERAL COMMENTS

DUFAS (*the Dutch Fund and Asset Management Association*)[1] welcomes the opportunity to respond to the consultation of the ESAs Joint Consultation Paper on ESG disclosures, *Draft regulatory technical standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of Regulation (EU) 2019/2088*, as published by the ESAs on 23 April 2020.

In general DUFAS wishes to make the following preliminary comments:

- Support for SFDR: DUFAS welcomes and supports the notion on increased disclosures on sustainability factors and integration of sustainability risks in the investment process. Dutch asset managers in general have already for years now published their policy on sustainable risks and factors on their website. We do see merit in more standardization in disclosures order to create more comparability throughout the market and needless to say to avoid greenwashing, the main purpose of the EU legislation. However, we do have comments in relation to the amount of detail of prescribed in the draft RTS;

- Principal adverse impact indicators: DUFAS sees merit in using a number of indicators as included in Annex I Table 1 of the draft RTS for the purposes of disclosing principal adverse impact on entity level. However, we do not agree that any positive value in Table 1 should always lead to principal adverse impact irrespective of the value of the metric. Furthermore, we have the following principal comments on the proposed approach and the listed indicators:

    - ***Entity versus product level:*** First of all, we do think that disclosing indicators on principal adverse impact on an *entity level* for asset managers, contrary to disclosures on a product level, is less relevant or not relevant at all given the nature of asset managers. Only a few indicators may be relevant to disclose on an entity level, such as e.g. the greenhouse gas emissions indicators. In addition, in terms of providing templates, we urge the ESAs to create more flexibility of indicators and more principle based approach where it concerns principal adverse impact on *entity level*, whilst templates on product level could and should be limited to a small set of really relevant indicators;

[1] *The Dutch Fund and Asset Management Association (DUFAS) promotes the collective interests of asset managers, investment firms and custodians, operating on and from the Dutch market place – both Dutch and foreign parties. DUFAS has a commercial focus, aimed at creating both institutional and retail business opportunities for its members. Central to this is the promotion of an optimal business climate for asset management in the Netherlands. A level playing field for free supply of investment products and asset management services within the European Union and a broadening of the market for investment products are key. DUFAS represents over 95% of the Dutch asset management market, both retail and institutional business. Next to independent asset management firms, self-managed (real estate) funds and custodians, DUFAS membership is comprised of asset management firms that are linked to banking, insurance and pension funds. For more information, see: www.dufas.nl*

- ***Approach on mandatory indicators*:** Secondly, while in many cases value in Table I will imply adverse impact that will not necessarily always be the case. So we do not agree that any value in Table I should always lead to principle adverse impact irrespective of the value of the metric, and therefore do not support this mandatory approach on all indicators, as envisaged by the ESAs. In addition, we also questioning whether the adoption of mandatory indicators falls indeed within the mandate given to the ESAs set forth in article 4(6) SFDR;

- ***Existing initiatives:*** thirdly, we see it as a missed opportunity that the draft RTS did not build upon or refer to two relevant existing initiatives: (1) The World Federation of Exchanges: ESG Guidance & Metrics, developed in 2015. Reference guide for stock exchanges in setting ESG reporting guidance for their listed companies. The initiative introduced 30 disclosures (equally divided along the environmental, social and governance pillar) and maps these to TCFD, SASB and GRI; and (2) The World Economic Forum's International Business Council (IBC) together with the Big Four accounting firms is proposing a set of common metrics and reporting disclosures around ESG factors. Their aim is to bring the most material non-financial aspects into mainstream financial reports on a consistent basis. Four pillars have been defined (governance, planet, people and prosperity) and 22 metrics, drawn from existing standards and disclosures. Aside from the 22 core metrics - the minimum requirement - there are 30 additional metrics. It is the expectation of the IBC that many companies will report against these metrics from their annual reports on 2020 onwards. We strongly recommend that the indicators should be derived from already existing global frameworks, such as the framework of the World Economic Forum;

- ***Smaller list of indicators:*** fourthly, having considered the indicators as proposed by the ESAs, we do not think that all 32+2 principal adverse impact indicators as included in Annex I Table I are equally relevant, useful or material. **Therefore, we propose a smaller list of indicators, which list are commonly accepted in the market as being relevant and material which can be supplemented with those indicators which financial market participants deemed to be relevant and material indicators. From that perspective, we opt for option 2.2 as described the consultation paper (page 71), i.e. a mix of mandatory and opt-in indicators to assess adverse impacts. Our proposal is to start with 11 mandatory indicators, with also readily data availability as set forth in our response under Q5. Possibly with a phase in model.**

▪ <u>Availability, accessibility and comparability of data</u>: DUFAS stresses that the implementation of SFDR depends on the (i) availability, (ii) accessibility and (iii) comparability of *relevant, reliable* and *consistent* data. We therefore calling for the European Commission and the ESAs to establish a common open-source ESG data register in the EU to enhance the availability of relevant and reliable ESG data. Data which ultimately is crucial and needed for financial market parties to comply with the obligations under the SFDR.

As to the accessibility of data of investee companies, art. 7(2) RTS SFDR seems to contain a mandatory sequence. According to the draft RTS financial market participants have to do their best efforts to obtain the information *directly* from investee companies. Only in the event information of any of the indicators used is not readily available, then the financial market participant may rely on third party providers. Needless to say is that it is the responsibility of financial market parties to obtain accurate and reliable information on investee companies. However, in terms of costs and by applying any sort of proportionality principle, market parties should also be entitled to rely on data obtained from third party providers directly and on the long run from an open source ESG data register as advocated by a number of market parties, such as EFAMA. **Hence, we do not support the principle that a financial market participant should always do their best efforts to obtain data from the investee companies directly, before relying on third parties**. From the perspective of the investee company, where the financial market participant has the obligation to obtain the data directly, this may also create the burden to investee companies to provide such information to each financial market participant individually. Furthermore, for listed investee companies, where they are providing information to an individual financial market participation directly, they should be careful not to disclose any information that may be considered to be price sensitive information within the meaning of the EU market abuse regulation.

- <u>Classification of products:</u> In general we believe that differences between art. 8 and art. 9 products are not always sufficiently well captured by the proposed provisions. Key element of an art. 8 SFDR product is the *promotion* of financial products with ESG characteristics. We are of the opinion that not each reference to environmental or social characteristics in a mandatory investor disclosure of a financial product, such as recital (21) of the draft RTS seems to suggest, should considered to be 'promotion' within the meaning of article 8 SFDR. In that respect 'promotion' is defined in a too broad manner. This should be up to the discretion of the financial market participant. However, any marketing communication of a financial product where reference is made to environmental or social characteristics, or a combination thereof should always be considered to be 'promotion' within the context of article 8 SFDR. Promotion and marketing communications should then be interpreted and defined consistent with other existing EU financial legislation, such as e.g. MiFID. The key element of a marketing communication is whether the information invites of induces the reader to buy the financial product. We suggest to explicitly clarify in the draft RTS SFDR.

- <u>Use of benchmarks</u>**:** Recital 29 states the following: *Financial products should not pursue low-carbon investment objectives without using new Union climate-related benchmarks. If such benchmarks are not available, financial market participants should demonstrate how the financial product complies with the relevant standards applicable to EU Paris-aligned benchmarks or EU Climate Transition benchmarks as set out in the Regulation (EU) 2019/2089.*

  We have the following comments on this recital:
  - We believe this recital contradicts with the ratio of the amended Benchmark Regulation (EU/2019/2089) in which CTB and PAB are introduced. Therefore we suggest to remove this recital. The EU PAB/CTB were introduced to give more clarity/assurance to investors who want to align their investments with the objectives of the Paris Agreement. It's not that the amended BMR intention to stop administrators to call their benchmarks 'low carbon', irrespective from the transparency obligation; and

  - We believe that ESAs should not disregard the importance of the various existing low carbon benchmarks, all with their own characteristics and objectives, which are very instrumental for products managed by market participants. Provided, it is very clear and transparent how these benchmarks compare against the EU climate benchmarks in order to avoid the risk of greenwashing. The fact that (i) art 27(2) amended BMR requires administrators for each benchmarks to disclose their targeted carbon reduction emissions by 31 Dec 2021 and (ii) the Delegated Regulation on ESG disclosures in the benchmark statement (Annex, Section 3) additionally requires significant equity and bond benchmarks to disclose on their alignment with PAB minimum requirements, proves that there is still plenty of scope for benchmarks to have low carbon objectives, without qualifying as a CTB/PAB, and, subsequently, to be used by provider of financial products with low carbon objectives.

Costs of implementation: It is hard to assess what the costs of implementation will be at this stage. A substantial number of data is not available yet, therefore the costs are hard to estimate. However, we do believe overall that the costs may go beyond the costs estimates as indicated by the ESAs in their consultation paper amounting between EUR 80,000 and EUR 200,000. Costs may be considerable higher as a result of inter alia (i) the acquisition of external data from data vendors, (ii) additional internal research and engagement with companies, but also (iii) costs of implementation of SFDR, which includes all internal FTEs who are engaged and consulted, and (iv) at least annually maintaining obligations under the SFDR, such as periodic reporting. However, needless to say the costs will also depend on final obligations under the SFDR RTS. Where at the long run the EU wide ESG database will be established, we obviously anticipate that that will definitely contribute in lowering the costs of compliancy with SFDR.

Timing: we do foresee timing issues for complying with the SFDR in due course, particularly as we anticipate that the RTS will not be final before beginning 2021, and there is a strong interdependency with other pieces of legislation, including but not limited to the NFRD review, the taxonomy, all that follow a different time path than the SFDR. The sequence of the implementation of the various pieces of EU sustainable finance legislation also affect eventually the impact on costs for financial market participants and financial advisors. In other words, implementation of SFDR as per 10 March 2021 will continue on the following years, not only because some different timelines already envisaged in the SFDR, but also because of evolving developments on *inter alia* the taxonomy and NFRD.

DUFAS, 1 September 2020

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DUFAS COMMENTS ON ESAs QUESTIONS

Questions on principal adverse impact

Question 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?

DUFAS acknowledges that Annex I Table 1 is quite comprehensive. DUFAS sees merit in using a number of indicators as included in Annex I Table 1 of the draft RTS for the purposes of disclosing principal adverse impact on entity level of fund level as the case may be. A.

However, we have the following principal comments on the proposed approach and the listed indicators

- ***Entity level versus product level***
  First of all, we do think that disclosing indicators on principal adverse impact on an entity level for asset managers, contrary to disclosures on a product level, is less relevant or not relevant at all given the nature of asset managers. To achieve this adverse impact factors have to aggregated across all strategies resulting, which is a very burdensome exercise, and would not lead to any meaningful information for investors. We believe it would be much more appropriate to require quantitative adverse impact disclosures at *the level of the product*. Only a few indicators may be relevant to disclose on an entity level, such as e.g. the greenhouse gas emissions indicators. In addition, in terms of providing templates, we urge the ESAs to create more flexibility of indicators and more principle based approach where it concerns principal adverse impact on entity level, whilst templates on product level could and should be limited to a small set of really relevant indicators;

- ***Approach on mandatory indicators*:**
  Secondly, while in many cases value in Table 1 will imply adverse impact that will not necessarily always be the case. So we do <u>not</u> agree that any value in Table 1 should *always* lead to principle adverse impact irrespective of the value of the metric. For example, in some cases having carbon emissions in one sector can actually offset or reduce emissions in another sector (e.g. solar company can have CO2 emissions to produce solar panels, however, the use of solar panels can avoid emissions). Other case where it can be questioned whether some values lead to principal adverse impact is for example a gender gap of 1%. And what about ratio related indicators? Is everything above 0% considered to be principal? Also not all indicators in this table will be relevant for all companies in the portfolio. As a result these companies might not have the policies in place to address topics that are not material for them. This can mean that a part of portfolio will have a positive value on these indicators, but no actual negative impact would take place as these indicators are not actually relevant. (E.g. companies in IT sector might not have a deforestation policy).

  Therefore, we propose either a smaller list of indicators, which list is commonly accepted in the market as being relevant and material and in addition financial market participant should be free to pick those remaining indicators outside the mandatory list indicators of Table 1, 2 and 3 which they deemed to be relevant and material.

Use of existing initiatives

- Thirdly, we see it as a missed opportunity that the draft RTS did not build upon or refer to two relevant existing initiatives: (1) The World Federation of Exchanges: ESG Guidance & Metrics, developed in 2015. Reference guide for stock exchanges in setting ESG reporting guidance for their listed companies. The initiative introduced 30 disclosures (equally divided along the environmental, social and governance pillar) and maps these to TCFD, SASB and GRI; and (2) The World Economic Forum's International Business Council (IBC) together with the Big Four accounting firms is proposing a set of common metrics and reporting disclosures around ESG factors. Their aim is to bring the most material non-financial aspects into mainstream financial reports on a consistent basis. Four pillars have been defined (governance, planet, people and prosperity) and 22 metrics, drawn from existing standards and disclosures. Aside from the 22 core metrics - the minimum requirement - there are 30 additional metrics. It is the expectation of the IBC that many companies will report against these metrics from their annual reports on 2020 onwards. we strongly recommend that the indicators should be derived from already existing global frameworks, such as the framework of the World Economic Forum.

- ***Number of indicators***
  Fourthly, having considered the indicators as proposed by the ESAs, we do not think that all 32 + 2 indicators as included in Annex I Table I are equally relevant, useful or material. **Therefore, Therefore, as mentioned before we propose a smaller list of indicators, which list are commonly accepted in the market as being relevant and material, and in addition financial market participant should be free to pick those remaining indicators outside the mandatory list indicators of Table 1, 2 and 3 which they deemed to be relevant. From that perspective, we opt for option 2.2 as described in the consultation paper (page 71), i.e. a mix of mandatory and opt-in indicators to assess adverse impacts. Our proposal is to start with 11 mandatory indicators. Possibly with a phase in model.**

<u>Availability of data of relevant indicators</u>

Not always is data available or when data is available they are not always available against reasonable costs. Some or most of the data is rather expensive to acquire, while they may not be or less relevant for assessing the sustainability of the portfolio. For the availability of data to indicators listed see our answer to question 5 of our response.

DUFAS stresses that the implementation of SFDR depends on the (i) availability, (ii) accessibility and (iii) comparability of *relevant* and *reliable* data. Therefore we do support initiatives aimed at increasing the accessibility of sustainability data by creating an free of charge open source ESG database or an ESG database which is accessible against reasonable costs. We therefore calling for the European Commission and the ESAs to establish a common open source ESG data register in the EU to enhance the availability of relevant and reliable ESG data which ultimately is crucial for financial market parties to comply with the obligations under the SFDR.

As to the accessibility of data of investee companies, art. 7(2) RTS SFDR seems to contain a mandatory sequence. According to the draft RTS financial market participants have to do their best efforts to obtain the information *directly* from investee companies. Only in the event information of any of the indicators used is not readily available, then the financial market participant may rely on third party providers. Needless to say is that it is the responsibility of financial market parties to obtain accurate and reliable information on investee companies. However, in terms of costs and by applying any sort of proportionality principle, market parties should also be entitled to rely on data obtained from third party providers directly and on the long run from an open source ESG data register as advocated by a number of market parties, such as EFAMA. **Hence, we do not support the principle that a financial market participant should always do their best efforts to obtain data from the investee companies directly, before relying on third parties**. From the perspective of the investee company, where the financial market participant has the obligation to obtain the data directly, this may also create the burden to investee companies to provide such information to each financial market participant individually. Furthermore, for listed investee companies, where they are providing information to an individual financial market participation directly, they should be careful not to disclose any information that may be considered to be price sensitive information within the meaning of the EU market abuse regulation.

Positive datapoints

Furthermore, the list of indicators as presented seems to be focused on 'negative' indicators. However some members feel that indicators may also be more formulated in a positive way, i.e. positive datapoints and indicators. This may include for example the percentage of the portfolio which is managed in a sustainable way, the percentage of the portfolio that is or will be invested in renewable energy or the percentage of the portfolio that actively contributes to the SDG's. Needless to say, such positive data points should be not positioned as principal adverse impact indicators. Therefore, adding positive datapoints should be well explained in order not to confuse potential investors and other stakeholders.

Annex I Table 2 and 3:

Furthermore, members of DUFAS have their doubts as to the added value of the indicators of Table 2 and Table 3. These may not be relevant for disclosing on an entity level at all. Financial market participants should be flexible in using some of these indicators where they find it relevant and appropriate.

Question 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?

No, DUFAS is of the opinion that the chosen approach does no always take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available. In that respect we refer to our previous comment on the accessibility of data of investee companies.

Not all financial market parties have the capacity and ability to perform a full due diligence on investee companies directly. Therefore they may have to rely on third party providers only. Needless to say is that it is the responsibility of financial market parties to obtain information on investee companies. However, in terms of costs and by applying any sort of proportionality principle, market parties should also be entitled to rely on data obtained from third party providers directly and on the long run from an open source ESG data register as advocated by a number of market parties, such as EFAMA.

Question 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?

We believe that some datapoints in Annex 1 are still open for interpretation. Different data providers will use slightly different definitions or that are open to interpretation. This might especially be true for a number of social indicators. It would be helpful to have transparency at the level of raw/ underlying data points that feed into a definition and end up as a metric rather than only the metric itself.

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

DUFAS is of the opinion that there are various means of setting up reporting templates. However, whatever the reporting template looks like it is more important that (i) there are no misconceptions how to read the template by financial market participants or other relevant stakeholders, and (ii) the template can be easily found on the website of the financial market participant or financial advisor. The feasibility, availability, content, comparability and the purpose (no greenwashing) is more of importance. As such, we question whether the proposed template meet said requirements, i.e. is the proposed template easy to interpret and to read for financial market participants or other relevant stakeholders, such as investors? Finally, whatever reporting template may be prescribed, there should be allowed enough space to explain the results and methodology as end-investors might misinterpret the data provided. Effectively, it should result in a mixture of quantitively and qualitatively disclosures as prescribed in SFDR level 1.

Question 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)?

Specific to indicators:

Greenhous gas emissions [1-4]

- Relevant indicators: DUFAS is of the opinion that all indicators set forth under greenhouse gas emissions are relevant and useful;

- Data availability/scope 3 emissions: The suggested formula on 'total carbon emissions' and 'carbon footprint' includes scope 3 emissions. Although, we do see merit in including scope 3 emissions, there is not much data, or reliable data, available on scope 3 emissions. We suggest that the formulas of the carbon emissions should use calculations or should be defined in accordance with current international calculation methods such as TCFD, PCAF which may be developed further from time to time. At the long run, scope 3 may be included into such formula, if and when more reliable data on scope 3 emissions becomes available. Parts of material scope 3 can be explored for specific sectors. Furthermore, scope 1 & 2 emissions are primarily available for listed equity. [2]

Energy performance [5-8]

- Relevant indicators: DUFAS found the indicators set forth under 5 (total energy consumption from non-renewable sources and share of non-renewable energy consumption) and 7 (Energy consumption intensity) relevant and useful, although the benefits of these indicators may be limited next to existing and future CO_2 disclosures;

[2] We anticipate that the pursuant to the Dutch climate agreement the measurement and disclosure of emissions will be expanded to other asset classes in the coming years.

- Data availability: However, most of the information under energy performance are already included into the greenhouse emissions indicators. As such, this type of information will not readily available on a separate basis; As to indicator 8 (Energy consumption intensity), we would like to point out that companies typically do not report energy consumption or any other environmental data per NACE sector. All other questions are also on a company level and not disaggregated. We therefore find it difficult to justify the benefit of the question compared to the additional data reporting requirements for companies as well as for investors;
- Some members suggest to exchange these indicators with an indicator referring to the percentage of the portfolio invested in renewable energy with a visible positive trend.

Biodiversity [9-11]

- Relevant indicators & data availability: DUFAS is of the opinion that indicator 9 (biodiversity and ecosystem preservation practices) and 10 (natural species and protected areas) are preserved for specialists only, and may not be relevant in all cases. Although, we do stress the importance of biodiversity. Furthermore, data on these indicators are not available. In general this applies to information on biodiversity in general. Indicator 11 (deforestation) may be relevant and useful for some investment funds. As to indicator 10 (natural species and protected areas). It would be useful to define whether the question is only on direct impact (part 2 clearly is) or should indirect impact also be considered. Especially, if indirect impact is included, the question should focus on whether and how risk of negative impact is assessed and managed.
- *High risk companies:* Some members find that what may be considered as additional indicators is the percentage high risk companies may have in terms of policy on e.g. soil degradation, deforestation, certified forest products, certified palm oil and/or possible non-organic pesticides.

Water [12-14]

- Relevant indicators: DUFAS is of the opinion that indicator 12 (water emissions) is certainly relevant. However, indicators 13 (exposure to areas of high water stress) and 14 (untreated discharged waste water) are hard to define. We therefore propose to delete these indicators. As to indicator 13 (exposure to areas of high water stress) it should focus more on the share of companies that do not track and map water usage at plant level taking into account local water stress.
- Data availability: as to data on indicator 12 (water emissions), these data are available reflected in consummation per m3.

Waste [15-16]

- Relevant indicators: A number of members find these indicators relevant. However some members argue that there should be a focus on landfill waste and possible exposure to materials on the UN POP list rather than hazardous waste ratio. Whilst other member found indicator 15 (hazardous waste ratio) a relevant and useful indicator.

Social and employee matters [17-22]

- Relevant indicators: Some members find the indicators set forth under 17 (implementation of fundamental ILO Conventions) and 20 (board gender diversity) relevant and useful;

- Some members argue that the indicators set forth under 17 (implementation of fundamental ILO Conventions), 21 (insufficient whistleblower protection) and 22 (investment in investee companies without workplace accident prevention policies) should only be relevant for high risk companies;
- Data availability: Indicator 18 (gender pay gap) may not be deemed to be a relevant indicator, and in addition, data on the gender pay gap is normally not available. In addition some members find that the inclusion of the living wage may be more relevant;
- Some member propose to link indicator 19 (excessive CEO pay ratio) and 20 (board gender diversity) to the exercise of voting rights. For indicator 19 this should include voting in relation to gender, board diversity and board independence.

Human rights [23- 29].

- Relevant indicators: DUFAS is of the opinion that the indicators 28 (number and nature of identified cases of severe human rights issues and incidents) and 29 (exposure to controversial weapons (land mines and cluster bombs)) are relevant and useful, although it has to be defined further what is considered to be 'controversial'. Indicators 23 (human rights policy), 24 (due diligence) and 25 (processes and measures for preventing trafficking in human beings) are considered to be relevant as well, but only in relation to certain high risk companies and sectors.
- Indicators 26 (operations and suppliers at significant risk of incidents of child labour) and 27 (operations and suppliers at significant risk of incidents of forced or compulsory labour) should be defined more accurately. For example, which operations and suppliers are in scope;
- In addition, some members propose to include an indicator on conflict materials, for example the percentage of high risk companies with a policy on conflict materials.
- Indicator 29 (Exposure to controversial weapons (land mines and cluster bombs)) is relevant, but for the Dutch market this is already (partially) excluded under mandatory Dutch laws.

Anti-corruption and anti-bribery [30-32].

- Relevant indicators: DUFAS is of the opinion that the indicator 30 (anti-corruption and anti-bribery policies) is relevant, particularly for high risk companies. Indicator 31 (cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery) may only be useful to apply in severe cases, and should be based on controversies and not necessarily 'insufficiencies'. As to indicator 32 (number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws), we suggest to delete this as an indicator.

Table 2:

Water, waste and material (5-10):

- As to indicator 5 (water usage) the difference between 'reclaimed' vs 'recycled'(see in connection with Table I) should be clarified. As to indicator 8 (Land degradation, desertification, soil sealing) we believe that this question does not make sense. Soil sealing is a much more limited challenge and very different in nature. Land/soil degradation and desertification are the bigger problems. For these, the majority of areas are in the supply chains of large companies and not owned by the companies themselves. Therefore the focus of the question should be on policies/measures of the companies to prevent soil degradation or desertification in their supply chains.

Given the above analysis, we propose the following Table with remaining indicators. All remaining indicators currently included in table 1 should be made optional and moved to tables 2 and 3 respectively.

		Adverse sustainability indicator	Availability of data
CLIMATE AND OTHER ENVIRONMENT-RELATED INDICATORS			
GHG emissions	1	carbon emissions - scope 1,2,3	Good, except for scope 3; mainly listed equity
	2	carbon footprint	Good, except for scope 3; mainly listed equity
	3	weighted average carbon intensity	Good, except for scope 3; mainly listed equity
	4	solid fossil fuel exposure	Good, except for scope 3; mainly listed equity
energy	5	total energy consumption from non-renewable sources in GWh	Medium
	6	energy consumption intensity (GWh per EURm revenue)	Medium
water	7	water emissions	Good
SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS			
Social and employee matters	8	implementation of fundamental ILO conventions	Good
	9	board gender diversity	Good
Human rights	10	number and nature of identified cases of severe human rights issues and incidents	Good
	11	exposure to controversial weapons	Already (partially) dealt with in Dutch regulation, i.e. prohibited

Question 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?

DUFAS has the following comment on the calculation of the carbon footprint as formulated in sub (g) Annex I template on principle adverse impact.

The formula includes scope 3 emissions. Unfortunately, there is not much data reported by companies on scope 3 emissions. Including scope 3 emission into the formula would result in flaws in the outcome. Rather than including a too restrictive formula, we strongly suggest to have a formula in place which refers to international market standards on the calculation of carbon footprint, such as TCFD, PCAF etc. At least at the start of the SFRD. Where markets develops, a more tight formula for calculating carbon footprint may evolve.

Question 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?

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 the party receiving this information and whether the difference in drivers of (1) and (2) is sufficiently understood.

Question 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?

As suggested in our response to question 1, the list of indicators as presented seems to be focused on 'negative' indicators. However some members feel that indicators may also be more formulated in a positive way, i.e. positive datapoints and indicators. This may include for example the percentage of the portfolio which is managed in a sustainable way, the percentage of the portfolio that is or will be invested in renewable energy or the percentage of the portfolio that actively contributes to the SDG's.

Furthermore, as long as these more advanced indicators are voluntary by nature we would see merit in including them. 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.

Question 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?

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.

Question 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?

Although DUFAS appreciates and understands the relevance of including a historical comparison of principal adverse impact disclosures up to ten years, we do foresee an issue on obtaining this data from the start or

SFDR. As mentioned, data will be crucial for being able to comply with the SFDR obligations from 2021 onwards. Backtracking these data ten years before 10 March 2021 or ten years prior to starting from the date on which a financial market participant first considered principal adverse impacts of its investment decisions on sustainability factors, would not be feasible to accomplish. It would rather make more sense to start backtracking from 10 March 2021 onwards or starting from the date on which a financial market participant first considered principal adverse impacts of its investment decisions on sustainability factors. In addition, ten years seems pretty rich. Proposing to build up a rolling history of up to five years would be our suggestion. Whilst at the same time, we also think that a one year comparison is quite short and may not reflect substantial changes in principal adverse impact indicators.

Question 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?

Yes, in terms of timing of the reporting, we suggest to set a fixed reporting date in the year.

Templates

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

Yes, we do see merit in having templates for pre-contractual information and periodic reporting as these contributes to comparability of financial products and financial market participants.

Question 13: If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?

Such templates should be easy to access, readable and comprehensible for investors.

Question 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.

No comments

Product disclosure at pre-contractual, website and periodic level

Question 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?

Financial market participants are both the providers and users of this information. We believe that there should be less pre-contractual information in client documentation in order to prevent information overload and to have more disclosures on the financial market participant website. Because parts of this information changes rapidly over time, this means that we may need to change the prospectus each and every time, this may be another reason why not to put too much disclosures in client documentation.

Question 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.

General observations
First of all, we believe that is positive that in the recitals of the draft RTS some more guidance is given on the product classification (18-22). Clarity on the scope of product with environmental and social characteristics (art 8) and products with an sustainable investment as objective (art 9) ultimately helps to increase comparability between sustainable funds and address 'greenwashing'. Whilst both templates of art. 8 and art. 9 are not made available yet for consultation, the difference may not be fully captured, although we acknowledge that the draft RTS SFDR does contain the disclosure requirements for both type of products. The differences therefore between article 8 and 9 could be more clearly explained, also to avoid different interpretations across Member States. Setting an uniform EU definition is of crucial importance here.

Secondly, we believe that the product classification under SFDR should not discourage managers of funds that are not specifically marketed as sustainable ('growth funds') to integrate a broad spectrum of ESG. These should not necessarily be limited to just some baseline environmental or social safeguards as recital 22 points out. Investment managers that currently apply a more sophisticated ESG approach across all their strategies, i.e. not only exclusions, but also ESG information integration in investment decisions, voting/engagement etc, should be allowed to continue to do so - including for their funds that do not fall under art 8 and art 9 categories. After all, the overall purpose of Sustainable Finance is to facilitate sustainable investing and not force market participants to reduce on sensible ESG practices for some products.

Therefore we propose to adjust recital 22 as follows: "(22) *As regards products ~~investments~~ that do not qualify as sustainable or as contributing to the environmental or social characteristics ~~promoted by the financial product~~ and are not marketed as such, financial market participants may decide to apply some ~~baseline~~ broad environmental and/or social overlays ~~safeguards~~. These may vary in terms of intensity, depending the market participant's overall approach towards ESG. Financial market participants should explain those overlays*."

Thirdly, given the clarification of the ESAs in the RTS SFRD, it seems that art. 9 products not only include sustainable investment products with a reference benchmark, but more market wide benchmarks.

Furthermore, art. 9 products do not seem to only relate to products with a passive investment strategy, but also with an active strategy with a market wide benchmark. Art 9 SFDR suggests that when an index has been designated as a reference benchmark for a fund, this index should differ from a broad market index. However, page 10 of the consultation paper seems to suggests that this only applies to passive funds and that active funds can still use a broad market index. In our understanding even when they make 'use' of a benchmark as defined in EU Benchmark Regulation (BMR). Recital 28 of the SFDR RTS uses the phrase: 'portfolios that match a sustainability-related index' when it comes to article 9. This makes the scope even more unclear since 'match' is an undefined term under BMR and the UCITS Directive. More clarity would be welcome on this point.

Fourthly, key element in order to qualify under art. 8 products is the *promotion* of financial products with ESG characteristics. Draft recital (21) SFDR RTS provides that "*Financial products with environmental or social characteristics should be considered to be promoting, among other characteristics, environmental or social characteristics, or a combination thereof, when information provided to clients, in marketing communications or in mandatory investor disclosures or as part of a process of automatic enrolment in an IORP, references sustainability factors that are taken in consideration when allocating the capital invested of the product*.'

DUFAS has the following comments in the way the ESAs provide some context around 'promotion'.

Discretion to financial market participant

We are of the opinion that **not each reference to *environmental or social characteristics* in a mandatory investor disclosure of a financial product should considered to be 'promotion' within the meaning of article 8 SFDR.** In that respect 'promotion' is defined in a too broad manner, as recital (21) draft RTS seems to capture any and all mandatory investor disclosure. **It is in that respect up to the financial market participant to expressly indicate whether or not they promote *environmental or social characteristics* of the product within the meaning of article 8 SFDR.** In which case, they should indicate this e.g. in the prospectus of the financial product or in the pré-contractual information of an individual managed portfolio.

ESG promotion in marketing communications

In addition, any marketing communication of a financial product where reference is made to *environmental or social characteristics, or a combination thereof* should always be considered to be 'promotion' within the context of article 8 SFDR. Promotion and marketing communications should then be interpreted and defined consistent with other existing EU financial legislation, such as e.g. MiFID. Although e.g. MiFID itself does not contain a definition, adherence should be sought in the way national legislators and national competent authorities have defined 'promotion' or marketing communications. For example, in the Netherlands, article 1:1 Act on the Financial Supervision Act ("Wft") defines a marketing communication as "*any form of information that serves to promote or have a promotional character with regard to a specific financial service or a specific financial product*". The key element of a marketing communication is whether the information invites of induces the reader to buy the financial product. A similar definition if also given by the FCA. We suggest to explicitly clarify in the draft RTS that **any marketing communication of a financial product where reference is made to *environmental or social characteristics, or a combination thereof* should always be considered to be 'promotion' within the context of article 8 SFDR**

Signatories to ESG covenants

It may also need to be clarified under the draft RTS SFDR whether or not promoting also includes the situation where financial market parties have signed various ESG covenants. **We would suggest to clarify that if a financial market participant refers in the information of a financial product to a signatory to a certain ESG covenant, either in mandatory investor disclosures or in marketing communications this will automatically deemed to be 'promotion' under article 8 SFDR.** However, where a financial market participant does not explicitly refer in the information of financial product to its signatory to various ESG covenants the situation may be different. Although the financial market participant has signed various ESG covenants, the financial product does not necessarily fall under article 8 solely based on the accession of the FMP to various ESG covenants, if the communication does not refer to that fact.

Fifthly, given the broad definition of 'promotion' we wonder which financial products do not fall under the SFDR scope or under art 6/art. 7, art. 8 or art. 9 as the case may be. We assume that this group will be relatively small, if existing at all.

Finally, we understand that art. 9 products are not the typically EU taxonomy aligned financial products only, as the definition of sustainable investments in art. 2(17) SFDR Regulation includes both environmental and social objectives. The taxonomy regulation is only limited to environmental objectives, with application of the DNSH criterium and minimum social safeguards. We suggest to clarify this in the draft RTS SFDR.

Question 17: Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?

Recommendations

We believe the difference between the two categories can be made clearer. The following adjustments will help in that respect.

- We suggest to remove the required illustration of proportion of sustainable investment for art 8 products (art 15 (2). Making sustainable investments, is not mandatory for art 8 products. The high level definition of sustainable investment, as set out in art 2(17) SFDR, is determined in the context of 'sustainable investment objectives' related to article 9 products rather than a means of classifying individual underlying investments of article 8 products.
- We furthermore suggest to remove the required explanations in the fund prospectus and annual report for art 8 products regarding do not significantly harm (art 16(2)(b) RTS, 38). In SFDR level 1 the concept of 'do not significantly harm' is only mentioned in the definition of 'sustainable investment', which definition is exclusively used for art. 9 products.

If these two simple adjustments are applied, the difference between art 8 and art. 9 will become easier.

Question 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?

No comments.

Question 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?

Some members disagree with the narrow interpretation of "fossil fuel" in the definition in article 1(1). In their view, "fossil fuel" for compliance with the SFDR must follow the definition by Eurostat: "*Fossil fuel is a generic term for non-renewable energy sources such as coal, coal products, natural gas, derived gas, crude oil, petroleum products and non-renewable wastes. These fuels originate from plants and animals that existed in the geological past (for example, millions of years ago). Fossil fuels can be also made by industrial processes from other fossil fuels*." Any deviation from commonly used definitions in the European Union would be highly confusing, for investors, for companies that would be required to report two different costly sets of information, and for monitoring the EU's environmental footprint in statistics.

Question 20: Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?

In general DUFAS believes that there is no reason why for an investment fund different sustainability disclosures should apply than for a discretionary portfolio mandate that follows a similar strategy. However, discretionary portfolio mandates are set up for an individual client and has been made custom made. Where this is not the case for an investment fund or other investment products defined in the SFDR. In that context we refer to the fact that portfolio management under MiFID is defined as an *investment service,* not as an *investment product*, such as an investment fund. The differences between an *investment service* and *investment product* should also be taken into account under the SFDR. Therefore, given the individuality of an customize individual discretionary portfolio mandate, contrary to other investment products, it cannot be expected that sustainable information of these portfolio is to be published on the Financial Market participants website. For discretionary portfolio management mandates, we recommend that all the necessary sustainability disclosures should be made in the MIFID II precontractual and periodic information only and not on a public website.

Question 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?

We do not think this is necessary. Requiring a short description of the policy that is used to assess good governance is enough (art 17(c) SFDR RTS). Most asset managers already have mature long term engagement (required by SRD II for equity investments) and stewardship policies that, among other things, capture assessment and promotion of good governance practices.

Question 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?

Requiring 'do not significantly harm' descriptions in the fund prospectus and annual report for art 8 products (art 16(2)(b) RTS, 38) does not fit with the level 1 approach in which 'do not significantly harm' is only relevant for art 9 products. In level 1 'Do not significantly harm' in the context of SFDR is only used in the definition of sustainable investment (art 2(17) SFDR, which definition is exclusively relevant for art 9 products. Hence, we propose to remove the proposed disclosures related to do not significantly harm for art 8 products.

Question 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?

Some members of DUFAS do not see merit in defining these strategies by ESAs. In the market it is already sufficiently clear what is covered by the strategies. The RTS proposals already include granular provisions for market participants to disclose what their ESG strategies entails, how these are applied and how the ESG performance is measures.

Other members of DUFAS believe that the ESG incorporation approach that is used on a product level is relevant. For example, the best in class fund will have less adverse impact in comparison to a fund without such approach. Furthermore, where the exclusion approach is used, companies with the most severe impact on sustainability factors could be excluded from investment universe. This is a relevant information. It would be helpful to have this included in terms of the transparency requirements to the client (pre-contractual information) and as part of the SFDR.

Question 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?

We believe this requirements is beyond the scope of SFDR. The focus of the RTS should be on fostering comparable disclosures of the sustainability aspects of investment strategies, rather than requiring general top investment lists.

Specific questions on pre-contractual disclosure items in light of differences between types of disclosure documents

Question 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.

a) 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);

b) 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);

c) 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*
>
> *d) 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.*

No comments.

> *Question 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)?*

No comments.

Preliminary impact assessment

> *Question 27: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?*

It is hard to assess what the costs of implementation will be at this stage. A substantial number of data is not available yet, therefore the costs are hard to estimate. However, we do believe overall that the costs may go beyond the costs estimates as indicated by the ESAs in their consultation paper amounting between EUR 80,000 and EUR 200,000. Costs may be considerable higher as a result of *inter alia* (i) the acquisition of external data from data vendors, (ii) additional internal research and engagement with companies, but also (iii) costs of implementation of SFDR, which includes all internal FTEs who are engaged and consulted (iv) at least annually maintaining obligations under the SFDR, such as periodic reporting, and last but not least (v) significant IT related costs related costs required to implement the required disclosures (Annex I table 1+ 2+3) on both entity and product level. However, needless to say the costs will also depend on final obligations under the SFDR RTS. For example, it will make a difference whether or not indicators will be removed from Annex I Table I as proposed, particularly in respect of indicators of which data is available, but only at a high expense.

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