



Public consultation on the draft Regulatory Technical Standards for Taxonomy-related sustainability disclosures. International Bulletin of June 2021.

On 2 February 2021, the European Supervisory Authorities (ESAs) published a final report containing the draft regulatory technical standards (RTS) in accordance with the provisions of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (Disclosure Regulation). These *disclosure RTS* develop, among others, the content and presentation of the pre-contractual, periodic and website information that must be provided for financial products that promote environmental or social characteristics, or a combination of those (Article 8 products) and for financial products that have sustainable investment as their objective (Article 9 products).

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation) introduced some amendments to the Disclosure Regulation, which led to new implementation mandates. In accordance with the provisions of the new sections added to Articles 8, 9 and 11 of the Disclosure Regulation, in March, the ESAs published a public consultation that includes proposals for the content and presentation of the pre-contractual and periodic information for Article 8 and Article 9 financial products whose portfolios include investments in economic activities that contribute to environmental objectives in accordance with the Disclosure Regulation. On 12 May, the consultation period for these *taxonomy RTS* was closed.

One of the points made in the document is given that the new information requirements complement the requirement of the *disclosure RTS*, the *taxonomy RTS* are proposed as an amendment to previous standards (which have not yet been adopted by the European Commission) with the aim that both texts will be integrated into a single delegated act implemented by the European Commission. This is to avoid the duplication of standards and minimise complexity by collecting all sustainability disclosure obligations of financial products in a sole legal text. The view on this approach is requested in the consultation.

The responses to the consultation are currently being analysed and the ESAs are expected to submit the final draft RTS to the European Commission in July.

Disclosure requirements introduced by the Taxonomy Regulation

Article 5 of the Taxonomy Regulation establishes that Article 9 products that, in accordance with Article 2.17 of the Disclosure Regulation, make sustainable investments in economic activities that contribute to environmental objectives, must include in their pre-contractual and periodic information: 1) information on the environmental objective(s) established in Article 9 of the Taxonomy Regulation to which the investment underlying the financial product contributes, and 2) a description of how and to what extent the investments underlying the financial product are in economic activities that qualify as environmentally sustainable in accordance with Article 3 of the same Regulation.

Article 6 of the Taxonomy Regulation establishes that the requirements of Article 5 apply *mutatis mutandis* to Article 8 products. The interpretation of this precept by the ESAs assumes that Article 8 products need only comply with the additional disclosure requirements of the Taxonomy Regulation when they contain

environmentally sustainable investments, and not for simply promoting environmental characteristics.

The proposal submitted to Public Consultation

1. Information on the objective(s) that the product contributes to

The Taxonomy Regulation requires these financial products to disclose the environmental objective(s) set out in Article 9 of the Taxonomy Regulation to which their underlying investments contribute. These are: a) climate change mitigation; b) climate change adaptation; c) the sustainable use and protection of water and marine resources; d) the transition to a circular economy; e) pollution prevention and control; and f) the protection and restoration of biodiversity and ecosystems.

Although the Taxonomy Regulation establishes that the obligations related to objectives a) and b) (climate change objectives) will apply from 1 January 2022, while the rest of the environmental objectives will apply from 1 January 2023, since the information requirements are the same regardless of the objective, the ESAs propose to send the European Commission a single text in which two different application dates are established in accordance with the provisions of the Taxonomy Regulation.

2. Description of how and to what extent investments are taxonomy-aligned

2.1 Description of the extent to which investments are aligned

To report on the extent to which product investments are made in economic activities that are considered environmentally sustainable in accordance with Article 3 of the Taxonomy Regulation, in other words, the extent to which they are taxonomy-aligned, the ESAs propose that the percentage of alignment be graphically presented. To calculate this percentage, a key performance indicator (KPI) should be used that measures the percentage of aligned investments as a proportion of the total investments made by the product.

The methodology proposed by the ESAs for calculating this KPI for financial products is largely based on the technical advice that the ESAs sent to the European Commission for the definition of KPIs for both non-financial undertakings (based on turnover, capital expenditure and operating expenditure) and financial undertakings (banks, asset managers, investment firms and insurance and reinsurance companies) that show the extent to which their activities are associated with aligned economic activities.

Several questions have been raised in the consultation regarding the calculation of this KPI for products. One question concerns the denominator, which should include all product investments, although for the calculation of the KPI for financial undertakings the EBA proposed the exclusion of exposures central governments from the denominator of the formula. The reason for this is that there are no established methodologies for assessing the proportion of taxonomy alignment of activities that are financed with sovereign bonds, so these investments cannot be included in the numerator of the formula. The approach proposed in the RTS for products coincides with that of ESMA and EIOPA, which consider that it is important for the calculation of the percentage of investments in aligned economic activities to be made in relation to total investments. On 7 May, the European Commission published its draft delegated acts for the definition of KPIs for financial and non-financial undertakings, in which it proposes to exclude exposures to central governments from the numerator and denominator for financial undertakings.

The numerator, whose components would be weighted by the market value of the investment in these assets, would be composed of:

- 1) green bonds issued under the future European Green Bond Standard, in their entirety;
- 2) debt instruments other than the above, where a proportion of the proceeds are required by their terms to

finance aligned economic activities, for the proportion of those proceeds;

3) real estate assets that meet the requirements to be considered aligned;

4) exposures in non-financial undertakings, whose value would be weighted by the percentage of turnover or, if relevant, of capital expenditure or operating expenditure that contribute to aligned activities. The ESAs propose that for all non-financial undertakings in which the product invests, only one of the three possible measures be chosen and that the product information should include a reasoned explanation of this choice and why the measure is appropriate for the investors in the product. The consultation asks for views on this proposal as well as the benefits and drawbacks of using operating expenditure as one of these measures.

5) Exposures to financial undertakings. In the same way as for non-financial undertakings, the value must be weighted by the KPI of these undertakings, which must be the same for all companies of the same type – such as credit institutions, insurance companies or asset managers –, although in this case, it is not required to explain the reasons for choosing the KPI in each case.

The methodology for calculating the KPIs of non-financial and financial undertakings is, as mentioned previously, included in the developments of Article 8 of the Taxonomy Regulation.

There are other questions that have arisen regarding the calculation of the KPIs for products and for some views are requested in the consultation:

a) In principle, investments in derivatives are excluded from the numerator, although views are sought in relation to the appropriateness of including contracts for differences.

b) To evaluate the alignment of investments of products in companies that are not subject to the obligation to disclose KPIs in accordance with Article 8 of the Taxonomy Regulation, the information that they publish must be prioritised, otherwise, information obtained privately either directly from companies or from third parties must be used. In any case, the methodology used to prepare the information must be equivalent to the methodology established in Article 8 of the Taxonomy Regulation. Pre-contractual and periodic information is requested to include details of how this information was obtained. This approach also differs from that adopted by the European Commission in the delegated acts relating to Article 8 of the Taxonomy Regulation, which would not initially include non-subject companies in the KPI calculation, although this is expected to be reviewed in 2025.

The ESAs will take into account the acts implemented by the European Commission in regard to company KPIs to decide whether or not to make any adjustments to the proposed methodology for product KPIs.

Lastly, it should be noted that the KPI for products should be broken down to identify the percentage of aligned investments related to enabling and transitional activities and in the periodic information, the KPI should also be broken down by sustainable objectives to which the investments contribute.

2.2 Description of how investments are aligned

The ESAs believe that in order to comply with this requirement it is sufficient to issue a statement declaring that these activities meet the four criteria set down in Article 3 of the Taxonomy Regulation: a) they contribute substantially to one or more of the environmental objectives established in Article 9; b) they do no significant harm to any of the environmental objectives established in Article 9; c) they are carried out in accordance with the minimum guarantees established in Article 18 of the Taxonomy Regulation, and d) they comply with the technical screening criteria established by the European Commission.

Likewise, if the statement has been verified by an auditor or reviewed by a third party, that auditor or third party must be identified. The consultation seeks views on this proposal and, in particular, on whether the

statements should be assessed by a third party.

One key aspect of this statement relates to the principle of “do no significant harm”. The ESAs consider that in the case of taxonomy-aligned investments, the statement of compliance with the principle of “do no significant harm”, together with the minimum guarantees in accordance with the aforementioned Article 3 of the Taxonomy Regulation, will be sufficient and no additional information will be required, in contrast to non-aligned sustainable investments where more detailed information must be provided, including information on the consideration of sustainability indicators in relation to adverse impacts included in Annex 1 of the *disclosure RTS*.

The ESAs also consider that while the Taxonomy Regulation does not contain any mandates regarding the website disclosures of financial products, the related content in the *disclosure RTS* should be modified to clarify that products with environmentally sustainable investments that are taxonomy-aligned will not have to include on their website extensive information on the principle of “do no significant harm” for these investments, as is requested for non-aligned investments.

3. *Non-aligned investments*

The ESAs propose that for products with environmentally sustainable investments it should be indicated whether these investments are taxonomy-aligned, and where they are not, the reasons should be clearly explained. Although the objective is to know whether or not products that make sustainable investments with environmental objectives use the taxonomy to select these environmentally sustainable investments, the proposal extends the requirement to sustainable investments with social objectives that may also include these products. Therefore, the consultation asks whether respondents would agree with this proposal.

4. *New standard models*

The ESAs have changed the standard templates for pre-contractual and periodic information included in the disclosure RTS to add a new section in which all the information related to sustainable investments would be included, both investments with environmental objectives (where the taxonomy-related amendments are made) and social objectives (where the main amendment would be the explanation referred to above). Separate templates are therefore proposed, one for Article 8 products, that would include the products referred to in Article 6, and one for Article 9 products, that would include those of Article 5.

Useful links:

[Public consultation on the draft Regulatory Technical Standards for Taxonomy-related sustainability disclosures](#)

[Regulation \(EU\) 2020/852 of the European Parliament and of the Council, of 18 June 2020, on the establishment of a framework to facilitate sustainable investment](#)

[Final Report on draft Regulatory Technical Standards with regard to Regulation \(EU\) 2019/2088 on sustainability-related disclosures in the financial services sector](#)

[ESA Supervisory Statement of 25 February 2021](#)

[Regulation \(EU\) 2019/2088 of the European Parliament and of the Council, of 27 November 2019, on sustainability-related disclosures in the financial services sector](#)

Technical advice from [ESMA](#), [EBA](#) and [EIOPA](#) to the European Commission on Article 8 of the Taxonomy Regulation

