

# Clarifications on the ESAs' draft RTS under SFDR

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## Introduction

1. Following the numerous requests for clarifications received from stakeholders and national competent authorities relating to the practical implications and given the significant breadth and technical complexity of these rules, this statement by the ESAs intends to provide clarification on the ESAs' draft RTS issued under [Regulation \(EU\) 2019/2088](#) on sustainability-related disclosures in the financial services sector ("SFDR"). The clarifications concern the draft RTS (included in a [final report](#)) with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a(3), Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of SFDR from 4 February 2021 and the draft RTS (included in a [final report](#)) with regard to the content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of SFDR.
2. Please note that the European Commission has adopted a delegated regulation (C(2022)1931)<sup>1</sup> containing the provisions from both of those draft RTS. This paper does not refer to the text by the European Commission. In the absence of the delegated regulation, the ESAs published a supervisory statement in February 2021 in order to mitigate the risk of divergent application and updated it in March 2022.<sup>2</sup>
3. In order to provide financial market participants and financial advisers with sufficient time to gather the information necessary and adjust their practices to apply the specific requirements of the forthcoming delegated regulation, including the product-specific disclosures stemming from Regulation (EU) 2020/852 (the Taxonomy Regulation, "TR"), the Commission announced in a letter<sup>3</sup> on 25 November 2021 that the application date of these rules would be delayed to 1 January 2023.
4. With this statement the ESAs provide clarification on key areas of the final reports, including principal adverse impact (PAI) disclosures, financial product disclosure and "do not significantly harm" (DNSH) disclosures.

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<sup>1</sup> [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/sustainability-related-disclosure-financial-services-sector\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/sustainability-related-disclosure-financial-services-sector_en)

<sup>2</sup> <https://www.esma.europa.eu/press-news/esma-news/esas-issue-updated-supervisory-statement-application-sustainable-finance>

<sup>3</sup> Letter Ares(2021)7263490

[https://www.esma.europa.eu/sites/default/files/library/com\\_letter\\_to\\_ep\\_and\\_council\\_sfdr\\_rts-j.berrigan.pdf](https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts-j.berrigan.pdf)

## Clarifications on the disclosures covered by Articles 2a(3), 4(6)-(7), 8(3)-(4), 9(5)-(6), 10(2)-(3) and Article 11(4)-(5) SFDR

Clarifications related to disclosure of principal adverse impact (PAI) of investment decisions on sustainability factors

Uses of “sustainability indicators”

5. The reference to sustainability indicators in the disclosures for financial products is to be understood with reference to the “sustainability indicators used to measure the environmental or social characteristics or the overall sustainable impact of the financial product” in Articles 10(1)(b), 11(1)(a) and 11(1)(b) SFDR. Therefore, the ESAs consider that the “sustainability indicators” and the indicators for principal adverse impact referred to in Article 4 SFDR, and Chapter II and Annex I of the draft RTS in the ESAs’ final reports refer to different disclosures under the SFDR.
6. However, it is possible to use the indicators for principal adverse impact to measure the environmental or social characteristics or the overall sustainable impact of the financial product, e.g. by showing improvements of the investments against those indicators over time.
7. For the sake of clarity, the ESAs consider the following table with regards to three possible uses of the adverse impact indicators at financial product level:

	<b>Use of the PAI indicators</b>	<b>Related main disclosure sections</b>
a)	<p><b>Disclosure of DNSH for sustainable investments under Article 2(17) SFDR:</b> the use of PAI indicators is mandatory to demonstrate that an investment qualifies as a sustainable investment. The PAI indicators to be used are the ones in Table 1 of Annex 1 and any relevant indicators in Tables 2 and 3 of Annex I</p> <p>The ESAs consider that using PAI indicators to fulfil the DNSH of SFDR does not require any PAI consideration at entity level pursuant to Article 4(1)(a), 4(3) or 4(4) SFDR.</p>	<p><b>Annex II/IV:</b> “how do/did the sustainable investments that the financial product partially intends to make/made, not cause significant harm to any environmental or social sustainable investment objective?”</p> <p><b>Annex III/V:</b> “how do/did sustainable investments not cause significant harm to any environmental or social sustainable investment objective?”</p>
b)	<p><b>Disclosure of PAI consideration under Article 7 SFDR:</b> the disclosure of PAI consideration at product level is set out in Article 7 SFDR and is not further</p>	<p><b>Annex II and III:</b> “does this financial product consider PAI on sustainability factors?”</p> <p><b>Annex IV and V:</b> “how did the financial product consider PAI on sustainability factors?”</p>

	<p>specified except for fields in the templates to provide the information required by that Article.</p>	
<p>c)</p>	<p><b>Measurement of the attainment of environmental or social characteristics and the sustainability-related impact (Articles 10(1)(b), 11(1)(a) and 11(1)(b) SFDR):</b> sustainability indicators used to measure the attainment of the environmental or social characteristics (for Article 8 SFDR financial products) or sustainable investment objective (e.g. the impact of the financial product for Article 9 SFDR products) may include PAI indicators. There is no direct link between sustainability indicators and PAI indicators.</p> <p>The ESAs clarify that the use of PAI indicators as sustainability indicators to measure the attainment of environmental or social characteristics or impact of the sustainable investments does not require any prior PAI consideration at entity level pursuant to Article 4 SFDR or PAI consideration at product level pursuant to Article 7 SFDR.</p>	<p><b>Annex II:</b> “what sustainability indicators are used to measure the attainment of each of the environmental or social characteristics promoted by this financial product?” // “What are (...) and how does the sustainable investment contribute to such objectives?”</p> <p><b>Annex III:</b> “what sustainability indicators are used to measure the attainment of each of the sustainable investment objective of this financial product?”</p> <p><b>Annex IV:</b> “How did sustainability indicators perform?” // “What were (...) and how did the sustainable investment contribute to such objectives?”</p> <p><b>Annex V:</b> “How did sustainability indicators perform?”</p>

## PAI calculation methodology

8. The ESAs understood that several financial market participants have questions about the calculation rules in the context of periodic disclosures of financial products, in particular the value of holdings to be referred to. In that respect, while a calculation methodology for the disclosure of principal adverse impact of investment decisions on sustainability factors is set out in Chapter II of the RTS empowered by Article 4(6)-(7) SFDR, the periodic disclosures for financial products are governed by the sectoral legislation set out in Article 11(2) SFDR. The ESAs consider that such periodic disclosures comply with the rules set out in the sectoral legislation referred to in Article 11(2) SFDR.
9. With regard to the calculation of indicators on GHG emissions, it is worth noting that in some cases an investee company’s emissions may change throughout a reference period and the size of the investment in that company may evolve too. For instance, the CO<sub>2</sub>e emissions for Company A could be 5000 tonnes and a financial market participant could hold 10% of the company the first 6 months of the reference period for reporting and 0% the remaining 6 months of the period.

10. In such a case, the ESAs note that for the purposes of the disclosures of principal adverse impacts of investment decisions on sustainability factors, the assessment of the impact should be based on, at least, the average of four calculations made on 31 March, 30 June, 30 September, and 31 December of a calendar year reference period (year N)<sup>4</sup>.

Reference date of the calculation	Annual CO2e emissions of Company A	% holding
31 March N	5000	10
30 June N		10
30 September N		0
31 December N		0

11. Therefore, in the example referred to in paragraph 9:

- a) a financial market participant reports in year N<sup>+1</sup> on the reference period N;
- b) annual company A's emissions for year N are 5000 Tco2e and there is no further information regarding its distribution throughout the year. Therefore, it will be assumed they are distributed equally over the 12 months;
- c) the 5000 tonnes of GHG emissions of Company A should be weighted by 10% in the first two calculations (31 March and 30 June) towards the overall GHG emissions of the financial market participant under the relevant indicators in the disclosures
- d) these emissions should not count towards the overall GHG emissions in the last two calculations in the calendar year (30 September and 31 December);
- e) so the contribution of the emissions of Company A to the financial market participant's GHG emissions indicators during the reference period would be 250 tonnes:

$$\frac{0,1 * 5000 + 0,1 * 5000 + 0 + 0}{4} = 250tCO2e^5$$

#### Look-through approach and investment instrument scope for PAI disclosures

12. With regard to the calculations to be made as part of the reporting on principal adverse impacts of investment decisions required by Article 4(1)-(5) SFDR, the ESAs consider that all

<sup>4</sup> The reference to the quarterly assessments in Article 6(3) is a minimum – more frequent assessments are allowed.

<sup>5</sup> 5000 tCO2e are assumed to have been emitted between 1 April of Year N-1 and 31 March of Year N, and 5000 tCO2e are assumed to have been emitted between 1 July of Year N-1 and 30 June of Year N.

investments, both direct and indirect (which includes investments in e.g. funds and funds of funds), should be included in these calculations. This covers investments in assets such as equity and corporate bonds, sovereign debts, private equity, supranational entities, infrastructure, and real estate.

13. Direct investments in “investee companies” are those securities issued by the investee company, e.g. listed and non-listed equities, corporate bonds, mortgage debt, covered (mortgage) bonds, private debt, asset backed securities. In terms of indirect investments in investee companies this encompasses investment in funds such as UCITS or AIFs where applicable, funds of funds or derivatives.
14. Where the investee company is a holding company, collective investment undertaking or special purpose vehicle, information about the adverse impacts of the investment decisions of those companies could look through to the individual underlying investments of those companies and consider the total adverse impacts arising from them. Where such information is not available, in order to be able to fulfil the disclosure requirement for those investments, the RTS provided that the section should also contain details of the best efforts used to obtain the information either directly from investee companies, or by carrying out additional research, cooperating with third party data providers or external experts or making reasonable assumptions”.
15. In the case of investment decisions where an investment exclusively finances a project or type of project, such as an investment in a green bond, social bond or project bond, the assessment of the adverse impacts of the investment decisions could be limited to the adverse impacts of the project or type of project funded by the instrument.

#### Disclosures for direct and indirect investments in pre-contractual and periodic disclosures

16. Where a financial product promotes environmental or social characteristics or commits to a sustainable investment objective, the relevant pre-contractual and periodic disclosures should be provided for that financial product. The pre-contractual and periodic disclosures could outline what share of the investments of the financial product is held directly and what share is held indirectly.
17. The proportion of the investments used to attain the environmental and social characteristics promoted by the financial product (in the case of a financial product which promotes environmental or social characteristics) or the proportion of the investments used to attain the sustainable investment objective (in the case of a financial product with a sustainable investment objective) should be disclosed in addition to what the purpose of the remaining proportion of investments is.
18. For the sake of clarity, with regard to this remaining proportion of investments of the financial product, which are investments that do not qualify as sustainable or as contributing to the environmental or social characteristics promoted by the financial product, environmental or social safeguards could be considered. Such safeguards should be described so that end

investors receive accurate information on the entirety of the investments made by the financial product.

19. For the avoidance of doubt, as stated by the European Commission in its SFDR Q&A from July 2021<sup>6</sup>, financial products that have sustainable investment as an objective should only make sustainable investments. However, disclosures are still required on the amount and purpose of any remaining assets to demonstrate how those do not prevent the financial product from attaining its sustainable investment objective.

Further guidance on the adverse impact indicators in Tables 1-3 of Annex I

20. To clarify indicator 6 in Table 1 of Annex I (Energy consumption intensity per high impact climate sector), the ESAs consider that the calculation is restricted to the energy consumption of the entities for their high impact climate sectors only, not the general entity-level energy consumption intensity of that company.
21. Furthermore, the ESAs are of the view that indicator 8 in Table 1 of Annex I (emissions to water) should be expressed as a weighted average (which is defined in the Annex) of the priority substances referred to in the definition of “emissions to water” in Annex I.
22. Where the principal adverse impact indicators (such as indicators 12 (gender pay gap) and 13 (board gender diversity) in Table 1 of Annex I) require “average” or “average ratio”, the ESAs consider that the “average” impacts from indicators 12 and 13 in Table 1 of Annex I are intended to be expressed weighted by the individual size of each investment.
23. With regards to the required metrics for the identification of inefficient real estate assets in indicator 18 of Table 1 of Annex I, the ESAs consider that the formula and criteria for calculation of exposures to ‘energy inefficient real estate assets’ required by this indicator is provided in Annex I. The reason for the choice of the nearly zero-energy building (NZEB), primary energy demand (PED) and energy performance certificate (EPC) metrics in the formula for inefficient real estate assets is to ensure consistency with technical screening criteria established under the TR.
24. The ESAs consider that the “average” amount under indicator 6 part 1 of Table 2 of Annex I (water usage and recycling) should be considered as weighted average amount of water consumed by the investee companies (in cubic meters) per million EUR of revenue of investee companies.
25. Regarding the GHG emissions of real estate in indicator 18 of Table 2 of Annex I, the ESAs consider that the disclosure of the adverse impact for GHG emissions generated by real estate assets should reflect the share of ownership of the assets by the financial market participant, as detailed in the GHG emissions calculation formula in Annex I.
26. In relation to multi-asset investments in real estate and investee companies, specifically for

<sup>6</sup> [sfdr\\_ec\\_qa\\_1313978.pdf \(europa.eu\)](https://www.europa.eu/sfdr-ec-qa-1313978.pdf)



the respective GHG emissions of real estate and investee companies, the ESAs consider that principal adverse impacts should be disclosed by type of exposure aggregated at the entity level. In other words, if the financial market participant makes investments through a multi-asset product in real estate, the impacts of that real estate exposure should be added to the relevant indicators for real estate in the template provided in Table 1 of Annex I. Exposures to investee companies should be added in Table 1 of Annex I to the relevant indicators. The disclosure is not an aggregation of the entire adverse impact of the entity, but the aggregation of the impacts caused by exposures to different types of asset classes in the relevant indicators in Table 1 of Annex I. The ESAs are of the view that for the purpose of the calculation of indicator 17 of Table 1 of Annex I, the financial market participant should only include in the denominator all its investment in real estate assets.

27. The ESAs are also providing more guidance on some specific terms used. Specifically, indicator 14 in Table 3 of Annex I concerns the identification of severe human rights issues cases and incidents. Indicator 14 is intended to capture exposure to investee companies connected to cases and incidents related to severe human rights issues. Those could be considered against rights, freedoms and principles set out in the [Charter of Fundamental Rights of the European Union](#) and the [European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols](#).
28. With regards to the quantitative social and employee indicators in Table 3 (indicators 3, 7 and 14) and whether they should be provided in absolute or relative numbers, the ESAs consider that the metrics for indicators 3, 7 and 14 in Table 3 of Annex I indicate that the value of the impact should be expressed as a weighted average. Furthermore, unlike the metrics for indicators 8 and 9 in Table 1 and indicators 1-3 and 13 in Table 2, these metrics in Table 3 do not include the requirement to express the result “per million EUR invested”. This means that the ESAs consider that the value of the impact should be expressed in absolute numbers instead of as a relative expression.
29. The ESAs are of the view that NACE codes are sufficient to identify some investments for some indicators, such as indicator 9 in Table 2 of Annex I concerning pesticides. The RTS refer to Division 20.2 of Annex I to Regulation (EC) No 1893/2006 with regard to NACE codes, as indicated in the third column of Table 2. Furthermore, indicator 8 in Table 1 on emissions to water is supported by a clear definition of the relevant substances.
30. With regards to non-cooperative tax jurisdictions referred to in indicator 22 in Table 3 of Annex I, the ESAs are of the view that, as indicated in the metric, reference to non-cooperative tax jurisdictions should be understood to refer to the EU list of non-cooperative jurisdictions maintained and updated by the EU Council, available at <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/#>.

## Guidance related to pre-contractual financial product disclosures

31. Further to the final report published on 22 October 2021, the ESAs would like to provide

guidance on how products which invest in a mixture of environmental and social objectives that vary over time could address the requirements to calculate the minimum proportion of taxonomy-aligned investments. The ESAs clarify that this commitment should be made in the pre-contractual disclosures. Where changes to the financial product require an update of that commitment, it is considered appropriate to consult the relevant sectoral legislation referred to in Article 6(3) SFDR to determine when and how the pre-contractual disclosure should be amended during the life of the financial product.

32. Furthermore, the ESAs would like to point out that where the disclosure of the Taxonomy-alignment of the financial product is calculated for the non-financial investee undertakings using capital expenditure or operating expenditure instead of turnover, that should be justified in the pre-contractual disclosure including how it is appropriate for the financial product. Where changes to the financial product require an update of the information provided in the pre-contractual disclosures, relevant sectoral legislation referred to in Article 6(3) SFDR can be consulted to determine when and how the pre-contractual disclosure should be amended during the life of the financial product.
33. It is appropriate to pay particular attention to the change in the strategy of the product, by justifying the need to adapt its Taxonomy-alignment KPI to increase the transparency towards investors. With regard to the latter, in addition to the amendment to the pre-contractual information of the product, historical comparisons in the periodic reports could be accompanied by a statement that the Taxonomy-alignment KPI in the pre-contractual disclosure has been changed. This statement could also detail the reasons explaining such change.

### Guidance related to periodic financial product disclosures

34. The ESAs clarify that disclosure of the top holdings of the product in the periodic disclosures for financial products should be understood to require the identification of the country in which the investment is made or the investee company is headquartered or where a financial product is domiciled. Therefore, if a top 15 holding is an investment vehicle, the country identification should be the country of domicile of the investment vehicle. The disclosure of the country domicile is not intended to be done on a look-through approach to the underlying investee companies of such an investment vehicle.
35. Furthermore, the timing of the application of the delegated act (1 January 2023)<sup>7</sup>, raises questions about any impact on the periodic financial product disclosure timelines. As stated in the ESAs' supervisory statement<sup>8</sup>, periodic reports referred to in Article 11(2) of the SFDR must comply with the requirements laid down in that Article from 1 January 2022. This means that in 2022 periodic reports should be drawn up according to the sectoral legislation listed under Article 11(2) in compliance with the SFDR, irrespective of reference periods. As the delegated act is expected to apply from 1 January 2023, the additional detailed rules should be contained

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<sup>7</sup> Letter Ares(2021)7263490

[https://www.esma.europa.eu/sites/default/files/library/com\\_letter\\_to\\_ep\\_and\\_council\\_sfdr\\_rts-j.berrigan.pdf](https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts-j.berrigan.pdf)

<sup>8</sup> <https://www.esma.europa.eu/press-news/esma-news/esas-issue-updated-supervisory-statement-application-sustainable-finance>



in periodic reports from that date.

36. In addition, for insurance financial products, the periodic disclosures under SFDR supplement other obligations under Article 185 of Directive 2009/138/EC. The timing of the annual disclosures is not defined under the Directive. It may have been defined at national level, as the detailed rules for implementing Article 185 of Directive 2009/138/EC have been laid down at Member State level, in accordance with paragraph 8 of that article.

### Guidance related to taxonomy-related financial product disclosures

37. The ESAs' final report from 22 October 2021 can give rise to questions about the requirements to disclose the "minimum proportion" of taxonomy-aligned investments in the pre-contractual financial product disclosures. The ESAs consider that the commitments on the "minimum proportion" of Taxonomy-aligned investments are intended to be binding commitments to ensure transparency to end investors on the taxonomy ambitions of the financial product. In that respect, as for any other binding commitment included in the pre-contractual information, penalties for failing to respect such commitments are set out in the sectoral legislation referred to in Article 6(3) SFDR.
38. Furthermore, there has been lack of clarity about how environmentally sustainable economic activities related to climate change adaptation can be counted. The pre-contractual disclosure of the Taxonomy-alignment of a financial product in the ESAs' draft RTS is designed to favour the measurement of the non-financial investee undertakings Taxonomy-contribution by turnover. However, where a more representative calculation of the taxonomy-alignment is given by using capital expenditure or operating expenditure, those could be used instead in the pre-contractual disclosure and that use should be justified. In periodic disclosures, all three measurements should be disclosed.
39. For the avoidance of doubt, only economic activities compliant with Article 3 TR can count towards the representation of taxonomy-aligned activities funded by the financial product.
40. In periodic reports, the ESAs clarify that the taxonomy-alignment of the aggregated investments should be represented in the form of a bar chart, and be expressed by turnover, capital expenditure and operating expenditure. Furthermore, the disclosures require a breakdown of the proportion of each of the environmental objectives set out in Article 9 TR to which the sustainable investments contributed. Consequently, the ESAs consider that financial products should be able to demonstrate the contribution of its investments to both climate change mitigation and adaptation in its periodic reports and to the other four environmental objectives in Article 9 TR once they are applicable.
41. The ESAs consider that the calculation of the Taxonomy-alignment of a financial product investing in another financial product (including funds of funds) should be based on the market value of the proportion of Taxonomy-aligned investments of the latter.
42. As a practical illustration, in case financial product A invests in financial product B:

- Where financial product B reports its taxonomy-alignment under Article 5 or 6 TR, then financial product A should use financial product B's KPI in order to calculate its own Taxonomy-alignment KPI<sup>9</sup>; or
- Where financial product B does not report any taxonomy-alignment under Article 5 or 6 TR, then financial product A may apply a look-through approach and base its calculation on the taxonomy-aligned activities of financial product B's underlying investments.

## Guidance related to “do not significantly harm” (DNSH) disclosures

43. The ESAs have noted the significant attention paid to the DNSH disclosure requirements proposed in the RTS, specifically regarding the difference between the PAI consideration and the DNSH disclosures, which both require the use of the same adverse impact indicators in Annex I. Stakeholders have also wondered how to determine DNSH by using the indicators.
44. The ESAs' draft RTS set out disclosures for financial products' sustainable investments' (as referred to in Article 2(17) SFDR) DNSH requirements for pre-contractual disclosures, for website disclosures and for periodic disclosures. The disclosures require an explanation of how the sustainable investment does not significantly harm any sustainable investment objective with reference to “how the indicators for adverse impacts in Table 1 of Annex I, and any relevant indicators in Tables 2 and 3 of Annex I, are taken into account”.
45. This should not be mistaken with the disclosures required by Article 4 and 7 SFDR which contain references to how the financial market participant or financial product considers the principal adverse impacts of its investments. For disclosures under Article 4 SFDR, that consideration is done by the publication of a statement on the principal adverse impacts of investment decisions on sustainability factors with reference to the indicators in Annex I.
46. For the financial product's DNSH disclosures, the ESAs' did not set out any additional criteria for the taking into account of the adverse impact indicators in Annex I. Based on the definition of sustainable investment, the ESAs consider that financial market participants can determine whether the indicators have been respected for the purpose of disclosing that the investment has not significantly harmed any environmental or social objective. One factor worth considering when making that determination is to compare, where feasible, the impacts with similar metrics in the Climate Delegated Act<sup>10</sup> and the Complementary Climate Delegated Act<sup>11</sup>.
47. For the avoidance of doubt, there is no direct link between the two types of disclosures, which apply independently. A financial product making sustainable investments must make DNSH disclosures, whereas the PAI disclosures at financial product level referred to in Article 7 SFDR apply separately under that Article.

<sup>9</sup> Based on the actual reported proportion of investments in environmentally sustainable economic activities from periodic disclosures, bearing in mind that the pre-contractual commitment can be based on different KPI (e.g. turnover and capital expenditure).

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R2139>

<sup>11</sup> [https://ec.europa.eu/info/publications/220202-sustainable-finance-taxonomy-complementary-climate-delegated-act\\_en](https://ec.europa.eu/info/publications/220202-sustainable-finance-taxonomy-complementary-climate-delegated-act_en)

48. The ESAs acknowledge that their final reports did not specify exactly how the PAI indicators should be used for the purpose of the DNSH disclosures for sustainable investments in the RTS or the financial product disclosures. However, best practice could be to disclose DNSH for sustainable investment by extracting the indicators from Table 1 of Annex I, and any additional relevant indicators from Table 2 and 3 of Annex I, and show the impact of the sustainable investments against those indicators, proving through appropriate values (e.g. where feasible in compliance with the Climate Delegated Act<sup>12</sup> and the Complementary Climate Delegated Act<sup>13</sup>) that the sustainable investments do not significantly harm any environmental or social objectives.
49. Furthermore, the ESAs see merit in clarifying how the DNSH disclosure of the SFDR interacts with the DNSH requirements of the TR. The DNSH principle under TR is not applied in the same way as it is under Article 2(17) SFDR. When assessing whether an economic activity qualifies as environmentally sustainable, the TR sets out detailed DNSH activity level criteria under Article 17 TR and in technical screening criteria in relevant Delegated Acts. In contrast, the SFDR sets out this principle for the purpose of assessing at the level of the investment which may qualify as sustainable. In that respect, it means that to qualify as a sustainable investment in the meaning of SFDR, an investment in a taxonomy-aligned economic activity must also respect the 'do not significantly harm' principle as set out in Article 2(17) SFDR. While Article 2(17) SFDR itself does not provide under Level 1 specific criteria that need to be assessed, the empowerment to the ESAs in Article 2a SFDR, and the SFDR draft RTS contained a requirement to demonstrate DNSH by reference to the indicators for principle adverse impact in Annex I.
50. The RTS included an additional requirement to the DNSH provisions. In addition to disclosing how the financial market participant has taken into account the indicators for adverse impact in Annex I, the DNSH reporting should also show whether the investments are aligned with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights. The objective of this provision is to bring the DNSH disclosures under SFDR in line with the minimum safeguards in Article 18 TR.

### Guidance related to disclosures for financial products with investment options

51. The ESAs would like to provide clarification on the Final Reports' disclosures for products with investment options. For multi-option products and other financial products with underlying investment options, pre-contractual and periodic disclosure requirements provide clear instructions to disclose at the financial product level a list of the investment options that qualify as a financial product referred to in Article 8(1) or 9(1), (2) and (3) of SFDR, or that have sustainable investment as their objective and are not a financial product referred to in Article

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R2139>

<sup>13</sup> [https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2022-631\\_en.pdf](https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2022-631_en.pdf)

## 2(12) SFDR.

52. The ESAs clarify that website disclosures for multi-option financial products referred to in Article 8(1) or 9(1), (2) and (3) SFDR should include disclosure of the following items:
- a list of the investment options that qualify as a financial product referred to in Article 8(1) or 9(1), (2) and (3) SFDR; and
  - a summary for each underlying investment option that qualifies as a financial product referred to in Article 8(1) or 9(1), (2) and (3) SFDR, or that have a sustainable investment as its objective and are not a financial product referred to in Article 2(12) SFDR.
53. Remaining disclosure requirements should be disclosed at the underlying investment option level.
54. The ESAs consider that within the financial product, the sustainability-related information to be provided in the annexes should be included for each investment option that is offered by the financial market participant or another financial market participant as a financial product that has a sustainable investment as its objective or that promotes environmental or social characteristics.
55. The ESAs further clarify that the financial market participant should group the information related to underlying investment options from letter (a) to (l) so that an investor can easily find and read the disclosures related to a specific underlying investment option of the financial product.