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Questions and answers (Q&A) on the SFDR Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288)

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Acronyms and definitions used

AIFs	Alternative investment funds
AIFMs	Alternative investment fund managers
CapEx	Capital expenditure
Clarifications document	Clarifications on the ESAs' draft RTS under SFDR (JC 2022 23)
CSRD	Corporate Sustainability Reporting Directive
Delegated Regulation	Commission Delegated Regulation (EU) 2022/1288
EFRAG	European Financial Reporting Advisory Group
ESAs	European Supervisory Authorities
ESRS	European Sustainability Reporting Standards
FMP	Financial market participant
GHG	Greenhouse gases
IORPs	Institutions for Occupational Retirement Provision
KPI	Key performance indicator
MOP	Multi-option Product
NCA	National Competent Authority
OECD	Organisation for Economic Co-operation and Development
OpEx	Operating expenditure
PAI	Principal adverse impacts
PEPPs	Pan-European personal pension products
PRIIPs	Packaged retail investment and insurance-based products
SFDR	Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088)
TR	Taxonomy Regulation (Regulation (EU) 2020/852)
UCITS	Undertakings for Collective Investment in Transferable Securities

I. Current value of all investments in PAI and Taxonomy-aligned disclosures

1. What does "current value" mean?

The basis used to calculate the "current value of all investments" in the PAI indicators applicable to investments in investee companies should be consistent with the definition of the "investee company's enterprise value" as defined in point (4) of Annex I of the Delegated Regulation, whereby 'enterprise value' means the sum, at fiscal year-end, of the market capitalisation of ordinary shares, the market capitalisation of preferred shares, and the book value of total debt and non-controlling interests, without the deduction of cash or cash equivalents.

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2. How should "all investments" be understood? Gross asset value including cash, other assets, other liabilities? Or only actual investments, e.g., only private equity / private debt assets?

"All investments" as a concept is used in both the PAI disclosures in Annex I of the Delegated Regulation and in the calculation of Taxonomy-alignment referred to in Article 17 of the Delegated Regulation.

PAI calculations

For the purpose of calculating the PAI indicators in Annex I, especially the indicators for the carbon footprint (indicator 2 table 1), the GHG intensity of investee companies (indicator 3 table 1) and the GHG intensity of sovereigns (indicator 15 table 1), "all investments" should be understood to mean both direct and indirect investments funding investee companies or sovereigns through funds, funds of funds, bonds, equity instruments, derivative instruments, loans, deposits and cash or any other securities or financial contracts.

Additional considerations for certain types of financial market participants' PAI calculations:

- Asset managers: For AIFM, managers of venture capital funds, managers of social entrepreneurship funds, management companies of UCITS, "all investments" should be considered the same as that Section 1.2 of Annex III of Regulation (EU) 2021/2178, i.e. all Assets under Management resulting from both collective and individual portfolio management activities;
- Insurers: "All investments" should include the following aggregates from the prudential balance sheet as defined in the Commission implementing regulation 2015/2452: holdings in related undertakings, equities, bonds, collective investment undertakings, derivatives, deposits other than cash equivalents, other investments, assets held for index-linked and unit-linked contracts, loans and mortgages and deposits to cedants and cash and equivalents;

- IORPs: For IORPs all investment should include the following lines from the balance sheet (PF.02.01.24) as laid down in the decision from the Board of Supervisors of EIOPA on EIOPA's regular information requests towards NCAs regarding provision of occupational pensions information (EIOPA-BoS/20-362): property, equities, bonds, investment funds/ shares, derivatives, other investments, loans and mortgage, cash and cash equivalents; and
- Banks or investment firms providing portfolio management or investment advice services: "All Investments" should include all the securities and financial contracts (which should be considered to include cash and cash equivalents) held by credit institutions and investment firms as part of the mandates given by their clients as referred to in article 4 (1) point 8 of Directive 2014/65/EU.

Taxonomy-alignment calculation

In order to disclose "investments of the financial product in environmentally sustainable economic activities", Article 17(1) of the Delegated Regulation sets out a closed list of investments that are "investments of the financial product in environmentally sustainable economic activities". Article 17 does not set any limitation to the definition of "all investments of the financial products" in the denominator which therefore includes all types of securities or financial contracts. Finally, Article 17 of the Delegated Regulation explicitly highlights that the investments in the numerator and denominator should be valued at market value.

This is not the same as the "net asset value" of a financial product. While the net asset value would be netted by the financial product's liabilities, the market value of all investment is the sum of all assets held by the financial product. Using the net asset value would lead to a higher share of Taxonomy-aligned investments than using the sum of all investments and could theoretically even lead to a share higher than 100% if all assets are Taxonomy-aligned and the liabilities would be deducted in the denominator.

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3. Do the ESAs have a view on how to incorporate short positions within the PAI indicators – should they be excluded, by being deducted from the PAI indicator calculations where the shorts relate to a brown asset, or should they be added for each of the PAI indicators?

The rules do not specify separately any particular instruction for the disclosure of short positions with regard to the principal adverse impact disclosures in Annex I of the Delegated Regulation. The ESAs are of the view that publishing short positions separately from the main calculation would not help the comprehensibility of the PAI disclosures. The calculations for short positions should apply the methodology used to calculate net short positions laid down in Article 3(4) and (5) of Regulation (EU) No 236/2012 of the European Parliament and of the Council. The principal adverse impacts of long and short positions should also be netted accordingly at the level of the individual counterpart (investee undertaking, sovereign, supranational, real estate asset), but without going below zero.

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II. PAI disclosures

1. **Should financial market participants disclose what share of PAI impacts have been estimated and what have been calculated on the basis of reported information?**

   For the sake of clarity and to enable investors to assess the robustness of the indicators disclosed in the PAI disclosure, it would be a good practice, but not obligatory, for financial market participants to include, where relevant as part of the disclosures required by Article 7(1)(e) of the Delegated Regulation and for each PAI considered by the financial market participant:
   - The proportion of investments for which the financial market participant has relied on data obtained directly from investee companies, in order to calculate the corresponding indicator; and
   - The proportion of investments for which the financial market participant has relied on data obtained by carrying out additional research, cooperating with third party data providers or external experts or making reasonable assumptions, in order to calculate the corresponding indicator.

   These proportions could be expressed as a percentage of the current value of the investments included in the calculation of the indicator.

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2. **In Table 1, indicator 16 (*Investee countries subject to social violations*), industry requests guidelines to ensure comparability, as there is a variety of approaches to this and lack of underlying data.**

   The Annex to the recently published proposal for a Directive on corporate sustainability due diligence COM(2022) 71 provides helpful examples of typical social violations that investee countries may be in violation of.

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3. **In Table 3, indicator 7.2 (*Number of incidents of discrimination leading to sanctions*), how should incidents that lead to sanctions be measured? Industry would welcome guidelines on this, such as whether fines or penalties are included in the definition of sanctions.**

   Until the application of the CSRD and the adoption of the ESRS by the European Commission, financial market participants may consider the definitions set out in the draft prototypes issued by EFRAG and especially the definition of a discrimination incident in Appendix A and DR S1-18 of ESRS S1 ‘Own workforce – Equal opportunities”.

   Disclosure requirement S1-18 of the Exposure Draft ESRS S1 “Own workforce – Equal Opportunities” requires the undertaking to disclose *the total number of incidents of*

discrimination, including harassment, reported in the reporting period; and *the number of incidents of discrimination leading to* ***financial sanctions***.

About incidents, Appendix A notes that: “an ‘incident’ refers to a legal action or complaint registered with the undertaking or competent authorities through a formal process, or an instance of non-compliance identified by the undertaking through established procedures. Established procedures to identify instances of non-compliance can include management system audits, formal monitoring programs, or grievance mechanisms.”

As a consequence, when disclosing indicator 7.2 of Table 3 about the number of incidents of discrimination leading to sanctions, financial market participants should consider financial sanctions such as administrative monetary penalties (or fines) as “incidents leading to sanctions". For sake of clarity, like all other PAI indicators of Annex I, indicator 7 of Table 3 of Annex I includes only the sanctions applied against entities causing the impacts, not the potential sanctions applied against the financial market participant itself, since the PAI disclosures focus exclusively on the adverse impacts of the financial market participant’s investment decisions.

The reported information should be consistent with the public disclosures reported by investee companies in accordance with the Accounting Directive (2013/34/EU).

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4. **It is common that many IORP voluntarily implement the OECD guidelines and therefore do voluntarily consider adverse impacts. Are they required to use the mandatory indicators?**

Financial market participants, including IORPs, that choose to consider principal adverse impacts according to Article 4(1)(a) SFDR or fall within the limits prescribed in Article 4(3)-(4) SFDR (and specified by the Commission in the July 2021 Q&A) are required to disclose a statement on due diligence policies regarding the principal adverse impacts of investment decisions on sustainability factors, further specified in Chapter II and Annex I of the Delegated Regulation. Such financial market participants would be required to disclose the principal adverse impacts under the indicators provided in Table 1 of Annex I of the Delegated Regulation and at least one indicator from Table 2 and one indicator from Table 3, as prescribed in Article 6 of the Delegated Regulation. If a financial market participant, including IORPs, do not consider the adverse impacts of their investment decisions on sustainability factors under Article 4(1)(b) SFDR, they should from 1 January 2023 publish a statement according to Article 12 of the Delegated Regulation.

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5. **A financial market participant manages a fund disclosing according to Article 8 or 9 SFDR. It manages 30% of this fund and delegates the management of the remaining 70%. Should the reported product level PAI be a weighted average of the internally and**

externally managed portfolios? In the context of Article 4 SFDR disclosures, how should investments made by a delegate be treated?

At the level of the financial product, the ESAs expect disclosure on PAI to cover all investments of the product, irrespective of whether the investment management is delegated or not.

Considering the fact that delegation has no impact on the accountability of the delegator, it is expected from the delegating financial market participant to have the same level of information about the investments it made itself and the investments made by its delegate. In this regard, the ESAs expect all investments to be reported.

At the financial market participant level, for the purpose of including investments by such a fund in a financial market participant's PAI disclosure (under Article 4 SFDR), all investments should be included in the reporting disclosed by the delegator, with the impact in the various indicators in Table 1 of Annex I of the Delegated Regulation weighted according to the value of those investments.

For the purpose of calculating the "current value of all investments" for the Article 4 SFDR disclosures, referred to under points 1 to 4 in the formulas of Annex I of the Delegated Regulation, where part of the investments may be made by a delegate, the financial market participant must ensure that it has information from the delegate to be able to fulfil the PAI disclosure requirements under Article 4(1)(a), 4(3) and 4(4) SFDR, as specified in Chapter II and Annex I of the Delegated Regulation.

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6. **On 21 April 2021 the European Commission proposed legislation to extend the non-financial reporting to enhance sustainability reporting while ensuring consistency with SFDR and the Taxonomy Regulation (CSRD). Until that time financial institutions will be obliged to either estimate the value of PAI indicators under Annex I or ask the investee companies to provide data, on a quarterly basis. We may expect that once the extended reporting obligations are in place, there might be significant discrepancies between the numbers estimated by financial institutions and the numbers actually reported by investee companies under new regulations. Have you considered how to address this issue, how the financial institutions should adjust their reporting to new, actual data reported by investee companies? The new reporting will apply to annual statements and KPIs are to be calculated based on at least quarterly data – this constitutes additional risk of discrepancies between data provided by the financial institutions and by the investee companies.**

In addition to aiding any financial product level disclosures where sustainability indicators include information disclosed by investee companies under the CSRD, the reporting provided by the CSRD will be used by financial market participants to satisfy the principal adverse impact disclosures (PAI) under Article 4 SFDR, Chapter II and Annex I of the Delegated Regulation and Article 7 SFDR. The PAI disclosures under Chapter II of the Delegated Regulation are annual disclosures to be published on the financial market

participant's website. The annual disclosure should be based on the average of the attributed impacts of all the FMP's investments at the end of each quarter, as laid out in Article 6(3) of the Delegated Regulation.

Such annual disclosures should be based on the average of indicators observed on 31 March, 30 June, 30 September, and 31 December for any reference period. This disclosure should therefore consist in the average of four different data inputs. As set out in Recital 5 of the Delegated Regulation, four is the minimum but additional specific data points during the reference period could be considered. The intention behind the use of at least four data points is to capture the change in the financial market participant's investments across a given financial year, as some investments made by the financial market participant may not be held by the financial market participant from beginning to end of the period in consideration, and their relative weights may change across time.

In practice, where financial market participants are in the preparatory process of its disclosures under Article 4 SFDR, they should calculate all the impacts from the four data points at the same time. This calculation should be based on the latest available information on the impacts of the investee companies. Therefore, the provision of data by undertakings on a quarterly basis is not a pre-requisite to perform at least four quarterly calculations.

Where information about the impacts of the investee companies may not be publicly available, financial market participants should use best efforts to complete the values for each indicator. In that respect, financial market participants should obtain information either directly from investee companies, or carry out additional research, cooperate with third party data providers or external experts. Financial market participants may also make reasonable assumptions. Finally, financial market participants should disclose how these efforts were made according to Article 7(2) in the appropriate field in the template provided in Annex I of the Delegated Regulation.

For the avoidance of doubt, a theoretical example could be as follows. FMP A held investments in investee companies "B" and "C" during each quarter of the whole reference period 2025. In May of 2026, FMP A prepares its PAI disclosures according to Annex I of the Delegated Regulation to be published before 30 June 2026, so it finds out the latest available information on the principal adverse impacts of investee companies B and C that they have most recently reported on for fiscal year 2025. FMP A then looks back at its quarterly holdings of investee companies B and C for 2025 and calculates the impacts of investee companies B and C at the end of each quarter in 2025 for each indicator based on the latest available information in May 2026 about the investee companies' adverse impacts.

On the following page, the ESAs have provided a theoretical sample calculation to illustrate the example given above:

Example on how to calculate the value on an Indicator where an FMP has 2 Financial Products (FP) with 2 investments (Inv) each.

Indicator: Emissions to water (Annex I, Table 1, Indicator 8)
Metric: Tonnes of emissions to water generated by investee companies per million EUR invested, expressed as a weighted average

	$A=B^1+B^2+B^3+B^4$	B^1	B^2	B^3	B^4	C^1	C^2	C^3	C^4	D^1	D^2	D^3	D^4	$E^1=B^1/C^1$	$E^2=B^2/C^2$	$E^3=B^3/C^3$	$E^4=B^4/C^4$	$F^1=D^1*E^1$	$F^2=D^2*E^2$	$F^3=D^3*E^3$	$F^4=D^4*E^4$	$G=F^1+F^2+F^3+F^4$	I=G/4	J=I/A
Point in time (end of…)	**"Current value of all investments"** in EUR million	**Current value of investment** in EUR Million				**Enterprise value** in EUR Million				**Investee Indicator** Tonnes of emissions to water generated by investee company				**Weighted average** current value of investment out of enterprise value				**Indicator weighted** Indicator attribution per investment in Tonnes				**Indicator weighted aggregated** Indicator for all investments per quarter	**Indicator expressed as an annual weighted average**	**Indicator per million EUR invested expressed as a weighted average**
		FP 1		**FP 2**		**FP 1**		**FP 2**		**FP 1**		**FP 2**		**FP 1**		**FP 2**		**FP 1**		**FP 2**				
		Inv 1	**Inv 2**	**Inv 3**	**Inv 4**	**Inv 1**	**Inv 2**	**Inv 3**	**Inv 4**	**Inv 1**	**Inv 2**	**Inv 3**	**Inv 4**	**Inv 1**	**Inv 2**	**Inv 3**	**Inv 4**	**Inv 1**	**Inv 2**	**Inv 3**	**Inv 4**			
Q1	12	2	5	5	0	1,268	4,924	5,338	693	50	125	15	0	0.16%	0.10%	0.09%	0.00%	0.08	0.13	0.01	0.00	0.22	0.055	0.005
Q2	21	9	6	5	1	1,268	4,924	5,338	693	50	125	15	0	0.71%	0.12%	0.09%	0.14%	0.35	0.15	0.01	0.00	0.52	0.130	0.006
Q3	27	10	10	4	3	1,268	4,924	5,338	693	50	125	15	0	0.79%	0.20%	0.07%	0.43%	0.39	0.25	0.01	0.00	0.66	0.165	0.006
Q4	28	13	0	7	8	1,268	4,924	5,338	693	50	125	15	0	1.03%	0.00%	0.13%	1.15%	0.51	0.00	0.02	0.00	0.53	0.133	0.005
Total	88																						0.483	0.022

For this example, the following assumptions are made:

- Current Value of investment: The current value of the investment represents the valuation of the investments taking as reference the ones included in the calculation of the enterprise value for the same fiscal year. The change in the current value of investment represents a change in the number of investments (e.g. shares) held, not a change in the valuation of that investment (e.g. a share).
- Enterprise Value: The value is fixed at fiscal year-end, annually.
- Investee indicator: The latest available information has been used for each investment.

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7. **In the delegated regulation, the timing of the amount of the current investments in an investee company (holding date) and the enterprise value (company's fiscal year end) are not aligned. Given market movement between those dates, the calculation of the percentage owned will be inaccurate. Art 6 (3) states for the PAIs it is an average of the impacts on four dates, so this will lead to problems in some cases and will lead to over/under representation of the emissions of some investee companies.**

   The ESAs are aware that there is a potential misalignment between the timing of the (at least) quarterly calculations of the adverse impacts under Section II and Annex I of the Delegated Regulation.

   The quarterly impacts should be based on the current value of the investment derived from the valuation the individual investment (e.g. share) price valued at fiscal year-end multiplied by the quantity of investments (e.g. shares) held at the end of each quarter. In such manner the composition of the investments at the end of each quarter is taken into account, but the valuation reflects the fiscal-year end point in time.

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8. **In Annex I, Table 3, indicator 3 (*Number of workdays lost to injuries, accidents, fatalities or illness of investee companies expressed as a weighted average*) - may this be reported as absolute or relative numbers? Or does the Regulation dictate one or the other? The question is also applicable to Table 3, indicators 7 and 14.**

   The metrics for indicators 3, 7 and 14 of Table 3 indicate that the value of the impact should be expressed as a weighted average. Financial market participants should refer to the definition of "weighted average" in point 3 of Annex I of the Delegated Regulation.

   Furthermore, while the metrics for those indicators do not contain the words that the result should be expressed "per million EUR invested" (unlike indicators 8 and 9 in Table 1 and indicators 1, 2, 3 and 13 in Table 2), to achieve the relative responses desired by the ESAs, these metrics (indicators 3, 7 and 14) in Table 3 should also be expressed in relative terms, i.e. "per million EUR invested".

   The annual disclosure should be based on at least four quarterly calculations based on the investments of the financial market participant, as described in Article 6(3) of the Delegated Regulation. The quarterly impacts should be based on the latest available information from investee companies or other entities.

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9. **When looking to carbon footprint major indices under the SFDR, we noticed that Enterprise Value Including Cash (EVIC) is expected as the denominator. Typically, Enterprise Value's main components are debt and cash which are not used by financial undertakings (e.g. banks) in the same way they are for non-financial undertakings. Banks are normally evaluated from loans and deposits. We do not believe there is an alternative EV value for banks. Is the expectation for EVIC that the FMP self-derives**

"current market cap + book value of debt + minority interests" instead of EVIC for financial undertakings? Or that you exclude financial undertakings in the calculation altogether? It does seem that in the case of financial undertakings, using gross debt rather than net debt creates peculiar results.

The ESAs recognise that the Enterprise Value definition in point 4 of Annex I of the Delegated Regulation was not specifically designed for credit institutions, but that definition is still meaningful and should be used as it provides an appropriate allocation mechanism to allow calculations to be made. Financial market participants should not develop their own definitions for the terms used in that definition.

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10. **Calculation of Indicators 1 and 2 table 1 - Enterprise Value Question: For those indicators where Enterprise Value is used, how should we proceed if the Enterprise Value is negative?**

    The ESAs note that the widely used concept of "enterprise value", outside the specific reference in Annex I can result in negative enterprise values. In such cases the cash held by the enterprise exceeds all other factors in the equation. However, the ESAs have specified in point 4 of Annex I of the Delegated Regulation that for the purpose of the calculation of certain indicators, "enterprise value" should be used but the definition specifies that cash or cash equivalents should not be deducted from the sum. Therefore, enterprise value calculated according to the definition laid down in Annex I cannot be negative.

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11. **Should an FMP still disclose the indicators applicable to investments in "sovereigns and supranationals" and "real estate assets" if the FMP makes no investments in sovereigns, supranationals and real estate assets?**

    If a financial market participant makes no investment decisions resulting in investments in sovereigns or real estate, then the rows in the template in Table 1 of Annex I corresponding to indicators for sovereigns and real estate should be left empty or with zero values. All the other indicators and fields in the template in Table 1 of Annex 1 should be completed by such a financial market participant.

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12. **Annex I, Table I, indicator 13 (board gender diversity). Assume a company has 5 female board members and no male board members. The indicator is defined as follows: Average ratio of female to male board members in investee companies. The use of "ratio .. to" seems to suggest a simple ratio where 'number of male board members' would be in the denominator. In the example, the calculation would be 5/0, which is**

infinite. In other words, is the denominator the number of male board members (0 here) or the number of all board members (5 here)?

This was clarified by the European Commission when they adopted the Delegated Regulation, because indicator 13 in Table 1 of Annex I was changed to add "expressed as a percentage of all board members" at the end of the metric.

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13. **How do you calculate indicator 8 (Emissions to water) from Table 1 (and similar indicators) where the explicit formula is not provided?**

See paragraph 21 of the clarifications document and Question 6 above.

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14. **The question relates to the separation of asset class in Annex I, Table 1, indicator 4 (Exposure to companies active in the fossil fuel sector) and 17 (Exposure to fossil fuels through real estate assets), but also applicable to other indicators. In the case of a multi-asset portfolio or product, how should the share of investments in real estate (REA) involved in fossil fuels be calculated (considering all investments or only investments in Equities/REA)?**

See paragraph 26 of the clarifications document.

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15. **In Annex I, Table 2, indicator 18 (GHG emissions), do we take the % of ownership into account when calculating the total GHG emissions (i.e. should GHG emissions be calculated as sum of all GHG emissions, or should we also include % ownership to make it a weighted average)?**

Annex I, Table 2, indicator 6 (water usage and recycling). How should one calculate the PAI in table 2 for indicators 6.1 (Average amount of water consumed and reclaimed by the investee companies (in cubic meters) per million EUR of revenue of investee companies) and 6.2 (Weighted average percentage of water recycled and reused by investee companies) considering that the first refers to 'average' and the latter refers to 'weighted average'?

See paragraph 25 of the clarifications document.

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16. **Annex I, Table 2, indicator 6 (water usage and recycling). How should one calculate the PAI in table 2 for indicators 6.1 (Average amount of water consumed and reclaimed by the investee companies (in cubic meters) per million EUR of revenue of investee companies) and 6.2 (Weighted average percentage of water recycled and reused by investee companies) considering that the first refers to 'average' and the latter refers to 'weighted average'?**

    Answer: See paragraph 24 of the clarifications document.

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17. **CO2 emissions for Company A are 5000 tonnes. If a financial market participant holds 10% of the company the first 6 months of the reference period for reporting and 0% the remaining 6 months of the period, which formula should be used for the calculations, following the Article 6(3) RTS provision that calculations should be made through quarterly and end of year reporting?**

    See paragraphs 9-11 of the clarifications document.

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18. **Can the PAI indicators listed in the Annex 1, Table 1 Delegated Regulation be used as indicators to measure the attainment of environmental or social characteristics?**

    See paragraphs 5-7 of the clarifications document.

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19. **If a financial market participant with more than 500 employees does not market or make available any financial products as defined in Article 2(12) SFDR, does the financial market participant still have to comply with the requirement to publish a statement on consideration of principal adverse impacts under Article 4(1)(a) SFDR?**

    The scope of the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR is limited by the definitions of "financial market participant" in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account). Within this scope, financial market participants have to consider all investment decisions for the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR, irrespective of whether the financial market participant's investment decisions are made through financial products or in any other way.

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20. Should the "information about the policies on the integration of sustainability risks in the investment decision-making process" of the financial market participant be restricted to investments affected by other Articles of SFDR (such as Article 6 SFDR) or should this be understood in a wider sense covering all investment decisions?

The scope of the disclosures is limited by the definitions of "financial market participant" in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account). Within this scope, FMPs have to consider all investment decisions for the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR.

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21. When it comes to entity-level disclosures in Article 4 should those disclosures relate only to financial products in scope of SFDR, or should those disclosures also relate to other types of instruments invested in by the financial market participant (e.g. structured bonds)? Should those disclosures also deal with own investments made on financial market participant's own account?

The scope of the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR is limited by the definitions of "financial market participant" in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account). Within this scope, FMPs have to consider all investment decisions for the disclosures under Article 4(1)(a), 4(3) or 4(4) SFDR.

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III. Financial product disclosures

1. **Can FMPs remove sections in the precontractual and periodic disclosure templates provided in Annex II to Annex V of the Delegated Regulation that are not deemed relevant for their financial product?**

   FMPs can remove the sections that are deemed not relevant for their financial product in the disclosure templates only if those sections are accompanied by a red text instruction that explicitly limits the scope of application of the section.

   For illustration purposes, without being exhaustive, the following instructions as reproduced from Annex II of the Delegated Regulation, which show the limitation of the scope of application of the sections and hence would allow the removal of the section as deemed appropriate by the FMP for its financial product: "[include a description for the financial product that partially intends to make sustainable investments]", "[for financial products that use derivatives as defined in Article 2(1), point 29), of Regulation (EU) No 600/2014 to attain the environmental or social characteristics they promote, describe how the use of those derivatives meets those characteristics]", or "[include section only where the financial product includes sustainable investments with a social objective]."

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2. **For the purposes of completing its disclosures in the Delegated Regulation, is there a difference in how a financial product tracking a Climate Transition Benchmark (CTB) index according to the BMR should fill in the section regarding sustainable investment before and after 31 December 2022 (when the new requirements in Article 10(2) of Regulation (EU) 2020/1818 for CTBs apply)?**

   The financial product should bear in mind in filling out the section in the template on sustainable investment that the BMR requirements for CTBs before 31 December 2022 are not strict enough to satisfy the requirements for a sustainable investment according to Article 2(17) SFDR. The European Commission's response to Question 5 of the Union law interpretation questions sent by the ESAs on 9 September 2022 should provide guidance about whether designating Paris-aligned benchmarks (PABs) or CTBs as reference benchmarks after 31 December 2022 satisfy the requirements for sustainable investments pursuant to Article 2(17) SFDR.

   (Published 17 November 2022)

3. **How can a financial product disclosing under Article 8 SFDR assess that good governance is effectively considered? Is a reference to the UN Global compact sufficient or should there be an alignment with OECD or ILO principles?**

   SFDR is a disclosure regulation. The Delegated Regulation provides details for how financial market participants should disclose that a financial product falling under Article 8 SFDR invests in companies respect the requirement to follow good governance practices.

Articles 28(b) and 41(b) of the Delegated Regulation requires the website disclosure of "the description of the policy to assess good governance practices of the investee companies […], including with respect to sound management structures, employee relations, remuneration of staff and tax compliance". The use of reference metrics, such as UN Global Compact, OECD or ILO principles is not prescribed, but could form part of the "policy to assess" the management structures, employee relations, remuneration of staff and tax compliance.

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4. **Is it possible to comply with Article 6 SFDR by just saying that sustainability risks are not being integrated and not taken into account yet, or does Article 6 SFDR mean that sustainability risks should be integrated by financial market participants by 10 March 2021?**

Article 6(1) SFDR is clear enough on this point not to require any further interpretation or clarification: "Where financial market participants deem sustainability risks not to be relevant, the descriptions referred to in the first subparagraph shall include a clear and concise explanation of the reasons therefor". Even in the unlikely situation they do not consider it relevant, they have to explain the reasons for not considering these risks relevant.

(Published 17 November 2022)

5. **Would a discretionary mandate that invests according to Investment Guidelines stipulated by the client be regarded as a financial product falling under Article 8 or Article 9 SFDR?**

Whether a financial product is invested according to a discretionary mandate or client guidelines does not affect the potential application of Articles 8-11 SFDR to it.

(Published 17 November 2022)

6. **Are financial market participants allowed to define their own substantial contribution criteria for socially sustainable investments? Can a single financial market participant apply different interpretations of "sustainable investments" to different financial products that it offers?**

It is possible for financial market participants to create their own framework for their financial products as long as they adhere to the letter of Article 2(17) SFDR. Financial market participant should not, however, interpret Article 2(17) SFDR differently for different financial products that it makes available.

(Published 17 November 2022)

7. **Article 9(3) SFDR sets out disclosure requirements for "a financial product, [which] has a reduction of carbon emissions as its objective". Does this also apply if a financial product has "reduction of greenhouse gas (GHG) emissions" as its objective (as one of the seven greenhouse gases listed in Appendix A to the Kyoto Protocol is carbon dioxide (CO2))?**

   Article 9(3) SFDR applies when a financial product has a reduction of greenhouse gas (GHG) emissions as its objective as the SFDR intention is to cover all greenhouse gases and carbon emissions.

   (Published 17 November 2022)

8. **Can the objective-aligned index designated as a reference benchmark under Article 9(1) SFDR, i.e. the "designated index" referred to in 9(1)(a) or 9(1)(b), be a broad market index?**

   No, the requirement in Article 9(1)(b) SFDR to explain "how" the designated index differs from a broad market index suggests that the designated index cannot itself be a broad market index, notwithstanding the accompanying "why" question.

   (Published 17 November 2022)

9. **If a financial market participant has to report on the consideration of ESG factors due to legally required information duties, such as under Directive (EU) 2016/2341, does this already qualify as "promoting environmental or social characteristics" within the meaning of Article 8 SFDR?**

   Whether disclosures under other EU legislation triggers the disclosures of SFDR depends on those disclosures. If the disclosures of an ESG nature consist of "promotion" of environmental or social characteristics, within the meaning of the European Commission's SFDR Q&A from July 2021 (page 8), then such disclosures would trigger the Article 8 SFDR disclosures.

   (Published 17 November 2022)

IV. Multi-option products

1. **For their own products and - if offered - in case of MOPs, for products of other financial market participants, the application date of SFDR Delegated Regulation is 1 January 2023. How should a financial market participant offering a MOP collect the disclosure templates from other financial market participants before or just in time for 1 January 2023? Would it be possible to work with hyperlinks per default (e.g. as well in the periodic reporting)?**

   Hyperlinks are allowed only for pre-contractual disclosures under Article 20(5) and 21(5) of the Delegated Regulation. They are not allowed for periodic disclosures. For pre-contractual disclosures they are only allowed when the Multi-Option Product (MOP) has such a high quantity of underlying options that it would make the provision of the respective disclosures for each underlying investment option in a clear and concise manner difficult due to the number of documents required. Ahead of the 1 January 2023 application date, insurance undertakings providing MOPs should request the underlying option disclosures from the financial market participant providing them.

   (Published 17 November 2022)

2. **Hybrid products and Article 22 Delegated Regulation: Can EIOPA provide more clarity on the use of Article 22 of the Delegated Regulation? Can this article be used for the guaranteed part of a hybrid product, that cannot be subscribed to as a stand-alone product?**

   In a MOP, Article 22 Delegated Regulation can be used for a profit participation fund that is not a stand-alone product and has a sustainable investment objective, but cannot be used for a profit participation fund that promotes environmental or social characteristics.

   (Published 17 November 2022)

3. **According to Article 65.2 of the Delegated Regulation, financial market participants shall provide the template set out in Annex IV or V for each investment option invested in that qualifies as a financial product referred to in inter alia Article 8 and Article 9 SFDR. Where customers are allowed to buy and sell investment options continuously, meaning that the investment options invested in may change over time, does this requirement include only the investment options invested in at the point of reporting (i.e. 31 December) or does it include every investment option invested in during the whole reference period?**

   Periodic disclosures should be given with regard to any investment options invested in during the reference period, even if the investment options were not invested in during the whole reference period.

   (Published 17 November 2022)

4. **Do you consider the provisions regarding "underlying investment options" e.g., Article 21 Delegated Regulation to be relevant for portfolio management products?**

   The provisions regarding "underlying investment options" were drafted to only apply to Insurance-Based Investment Products that include underlying investment options, i.e. multi-option products according to the PRIIPs Regulation and to PEPPs that offer to the consumer a choice of different underlying options according to the PEPP Regulation.

   (Published 17 November 2022)

5. **Product disclosures as presented in art. 10 SFDR and art.31 to 57 Delegated Regulation: Can EIOPA provides more clarity on the fact, as it wasn't specified in the Delegated Regulation, that website disclosures for MOPs have to be done at the underlying option level, and not at product level?**

6. **Can EIOPA confirm how product information for MOPs should be disclosed? Per funds or do we have to aggregate all the funds information proposed in a product?**

   See paragraphs 51-55 of the clarifications document.

   (Published 17 November 2022)

7. **How is the envisaged product classification in case of a multi-option product (MOP) that comprises only one investment option that (partially) invests in line with the Taxonomy Regulation? Would the entire MOP classify as a financial product falling under Article 5-6 TR?**

   A MOP falls under Article 5 of the TR when all of the underlying options offered have sustainable investment as their objective and at least one investment option invests in an economic activity that contributes to an environmental objective within the meaning of Article 2 (17) SFDR. In that case, the product templates included in Annex III and V of the Delegated Regulation (EU) 2022/1288 need to be completed with the related Taxonomy disclosures only for those underlying options that make investments in environmentally sustainable economic activities. A MOP falls under Article 6 of the Taxonomy Regulation when at least one underlying option offered promotes environmental characteristics.

   (Published 17 November 2022)

V. Taxonomy-aligned investment disclosures

1. For the purpose of the Taxonomy-alignment disclosures, which metric should be used for financial undertakings, such as financial conglomerates, that have several activities (asset management, insurance, and banking activities)?

For the purpose of the disclosure of investments in environmentally sustainable economic activities under SFDR and the Delegated Regulation, where investee companies are financial conglomerates, the requirements for such individual entities to present KPIs pursuant to Article 8 TR and Commission Delegated Regulation (EU) 2021/2178 are linked to the requirements for these same entities to prepare a non-financial statement in accordance with Article 19a and 29a of Directive 2013/34/EU. For investments in financial conglomerates where a credit institution is the top parent, the scope should therefore take into account the prudential scope of consolidation. For investments in any other financial undertaking, the accounting scope of consolidation would normally apply.

Question 4 in the European Commission's 21 December 2021 FAQs on Article 8 TR disclosures provide some additional detail:

"In the case of credit institutions, the information should be disclosed in accordance with the requirements relating to prudential consolidation […].

Consolidated non-financial statement disclosures should be based on the same consolidation principles that apply to the group's financial reporting under the applicable accounting principles […]."

Where the investment focuses on a subsidiary of a group disclosing under Article 8 TR, whether financial or non-financial, financial market participants should ensure they use the KPIs providing the most relevant and representative view of their investee companies' activities. This may lead them to use KPIs specific to subsidiaries.

For investments in non-conglomerate financial undertakings, the allocation of those financial undertakings' contribution to taxonomy-aligned investments is set out in Article 17(4) of the Delegated Regulation, i.e. KPIs from Section 1.1 points (b) to (e) of Annex III to Delegated Regulation (EU) 2021/2178 should be used.

(Published 17 November 2022)

2. Can taxonomy-aligned activities or PAI impacts from green bonds (or other specific project financing instruments like social bonds) be calculated for the projects they finance rather than taxonomy-aligned activities of or impacts arising from the issuer as a whole?

Taxonomy-alignment

For the purpose of calculating the proportion of taxonomy-aligned assets contributing to taxonomy-aligned economic activities, only the projects financed by green bonds under the future EU Green Bond Standard and other green bonds (the proportion of their value that

corresponds to the share of the proceeds of those bonds used for environmentally sustainable economic activities) should be considered.

As stated in Article 17(1)(b) of the Delegated Regulation, for its taxonomy-alignment KPI, a financial market participant can count an investment in a green bond up to the level of taxonomy-aligned activities the use of proceeds goes towards. The financial market participant should not take into account the issuer of such instruments for the purpose of the taxonomy-alignment KPI of the financial product.

PAI disclosure

Furthermore, with regard to the disclosure of principal adverse impacts under Article 4 SFDR, Section II and Annex I of the Delegated Regulation (and where financial products use the indicators provided in Annex I for the purpose of their Article 7 SFDR disclosures) and to demonstrate that a project meets the DNSH condition of the definition of sustainable investment set out in Article 2(17) SFDR, financial market participants could adjust the metrics to reflect the fact that project financing bonds finance only specific activities and not the entire undertaking.

Some PAI indicators in Table 1 of Annex I of the Delegated Regulation could be applied at "project" level and not company level where the investment is in a security that finances a specific project rather than the issuer issuing the security, for instance GHG emissions (Table 1, Indicator 1), land artificialisation (Table 2, Indicator 18) or rate of accidents (Table 3, Indicator 2), while some other PAI indicators could still be applied at company level such as the unadjusted gender pay gap (table 1, indicator 12).

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3. For Art. 9 products that are partly taxonomy-aligned, should the disclosures refer to the technical screening criteria as indicators for the taxonomy-aligned part?

Please refer to the European Commission's Q&A pages 4-6 issued in July 2021 with regard to the interpretation for products falling under Article 9 SFDR. The technical screening criteria in Delegated Acts for the Taxonomy Regulation provide the conditions under which economic activities can be considered Taxonomy-aligned. The do not significantly harm (DNSH) related requirements referred to in Article 2(17) SFDR are to be applied to all sustainable investments including investments in taxonomy-aligned activities. Therefore, Article 9 SFDR financial products that are partly taxonomy-aligned should disclose how taxonomy-aligned investments do not significantly harm environmental or social objectives by taking into account the indicators on principal adverse impacts, in addition to complying with the technical screening criteria in the Delegated Acts for the Taxonomy Regulation.

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4. An Article 9 SFDR product with 100% non-Taxonomy compliant climate objectives, would still fill the Taxonomy sections with 0% and the social sustainable investment

section with 0%?

Please refer to pages 3-5 of the European Commission's Q&A issued in July 2021 with regard to the interpretation for financial products falling under Article 9 SFDR. With regard to the type of financial product falling under Article 9 SFDR that invested in economic activities contributing to environmental objectives complying with Article 2(17) SFDR but not the criteria listed in Article 3 TR, the disclosure in the templates provided in Annex III and V of the Delegated Regulation contains clear identification of the share of sustainable investments with an environmental objective in the section "What is the minimum share of sustainable investments with an environmental objective that are not aligned with the EU Taxonomy?". Such a financial product should indicate 0% in the graphical representation in the section "To what minimum extent are sustainable investments with an environmental objective aligned with the EU Taxonomy?". In addition, it should disclose a 100% share under the heading "What is the minimum share of sustainable investments with an environmental objective that are not aligned with the EU Taxonomy".

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5. **Lack of data is a major challenge for FMPs. Although this hurdle seems less pressing when it comes to investments in undertakings that fall under the scope of the future CSRD, how could FMPs overcome this lack of data?**

   The ESG information chain is developing and both financial market participants and regulators may have to rely on the available data during the period before the application of the CSRD.

   (Published 17 November 2022)

6. **What is to be reviewed by the third party? The internal process used to assess the Taxonomy-alignment or the data as such?**

   Article 15(1)(b) of the Delegated Regulation requires the inclusion of a description of the investments underlying the financial product that are in Taxonomy-aligned economic activities, including whether the compliance of those investments with the requirements laid down in Article 3 of TR will be subject to an assurance provided by one or more auditors or a review by one or more third parties, and if so the names of the auditor or third party.

   The review – which is an optional choice – does not necessarily have to include the internal process of the financial market participant as it should primarily address the investments made by the financial product in Taxonomy-aligned economic activities, specifically the compliance of those investments with the criteria for environmentally sustainable economic activities laid down in Article 3 TR.

   This review could focus on investments whose Taxonomy-alignment is not proven by disclosures made by undertakings under Article 8 TR. Where the Taxonomy-alignment of an investment is demonstrated by disclosures required by Article 8 TR, the review could choose

not to carry out further verification with regard to the compliance of this investment with the criteria laid down in Article 3 TR, however the review could check that the financial product adequately reflects the Taxonomy-alignment in accordance with Articles 3, 5 and 6 TR, consistently with Article 8 TR disclosures.

(Published 17 November 2022)

7. **Once you have reported on your Article 5-6 TR financial product, should your pre-contractual information still be a minimum ambition or the actual achieved level of taxonomy aligned investments?**

Subject to the sectoral rules governing pre-contractual disclosures in Article 6(3) SFDR and any relevant contractual commitments, the disclosure of the minimum extent of Taxonomy-alignment of investments of the financial product is a commitment which should be met at all times (this also applies to (1) the disclosure of the minimum proportion of the investments of the financial product used to meet the environmental or social characteristics or sustainable investment objective(s) of the financial product and (2) to sustainable investments). Therefore, the pre-contractual disclosure should not include "targets" for Taxonomy-alignment, nor the actual achieved level of Taxonomy-aligned investments, but only the minimum proportion which the financial product commits to meet. The periodic disclosures are intended to appropriately reflect the Taxonomy-aligned investments achieved by the product, including where the actual Taxonomy-alignment is higher than the minimum proportion.

Furthermore, for new financial products the reference in Article 17 of the Delegated Regulation of the calculation of the Taxonomy-alignment of the aggregated investments should be understood as "expected investments" in the context of the disclosure of the binding commitment to the investor about the financial product's Taxonomy-alignment of investments.

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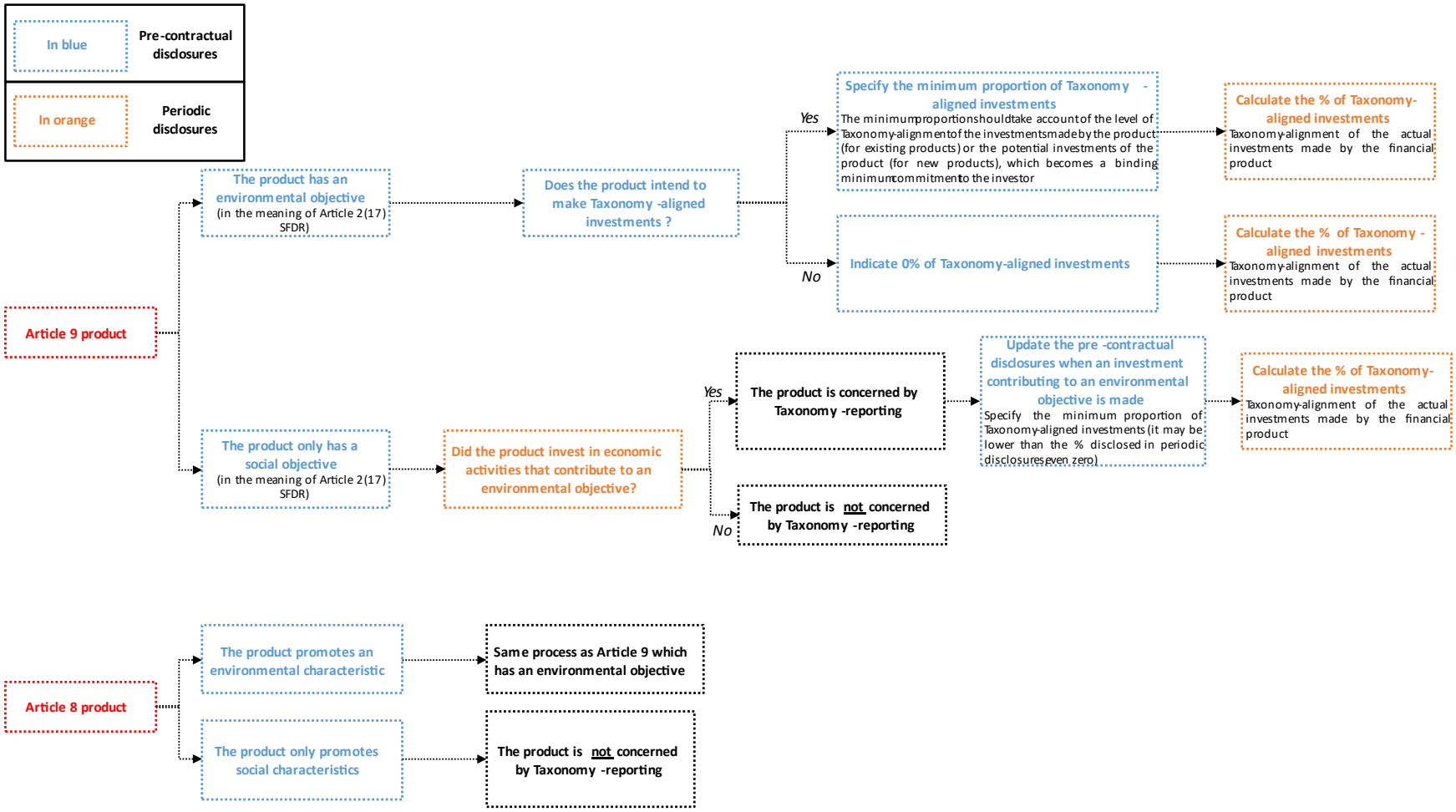
8. **Does the disclosure of the "minimum extent sustainable investments with an environmental objective aligned with the EU Taxonomy" have to be based on actual data or can it consist of a forecast calculation of the product's ambition for taxonomy alignment? How should a new financial product comply with the requirement to publish the minimum proportion of investments when it has not made any investments?**

Subject to sectoral rules governing pre-contractual disclosures in Article 6(3) SFDR and any relevant contractual commitments, the pre-contractual disclosure on the minimum share of sustainable investments, including the extent to which the investments are in environmentally sustainable economic activities, is a commitment that should be met at all times. The information about the degree to which investments are in environmentally sustainable environmental activities, as referred to in Article 15(1)(a) and 19(1)(a) of the Delegated Regulation, should be based on the actual investments the financial product makes in order to satisfy the requirement to disclose "how and to what extent" the investments are in

environmentally sustainable economic activities. For new financial products (or financial products that want to change their investment strategy) those references for the calculation of the Taxonomy-alignment of the aggregated investments should be understood as "expected investments". "Expected investments" can be considered the investable universe, which is analysed, and on the basis of this analysis, a decision about Taxonomy-alignment commitment is made.

Please note that while the European Commission's Q&A from May 2022 on pages 9-11 states that "periodic disclosures must include the information referred to in Article 6 TR if the investments made during the reference period were in economic activities that contribute to an environmental objective, irrespective of commitments made in the pre-contractual disclosure", this does not apply for Article 8 SFDR products' sustainable investments (that are not Taxonomy-aligned investments). Under Article 51(d) and the periodic disclosure templates in Annex IV of the Delegated Regulation, Article 8 SFDR financial products that do not commit to making sustainable investments can leave out disclosure of sustainable investments during the reference period.

The following decision tree is intended as guidance from the ESAs on the situations under which pre-contractual and periodic Taxonomy-alignment disclosures apply:



In order to assist preparers of financial product disclosures under Article 8 SFDR regarding the minimum extent to which sustainable investments with an environmental objective are aligned to the EU Taxonomy, the ESAs are also providing below a non-exhaustive table with additional guidance[1]:

Type of Article 8 SFDR product affected by Article 6 TR	Pre-contractual Taxonomy-alignment disclosure	Periodic Taxonomy-alignment disclosure
Product launched after 1 January 2023 promoting environmental characteristics but with no intention to make Taxonomy-aligned investments	The product should fill in the section "To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy" with zero disclosures (i.e. the pie chart shows zero Taxonomy-aligned investments).	The product should complete the section "To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy" based on the actual investments during the reference period.
Product launched after 1 January 2023 promoting environmental characteristics intending to make Taxonomy-aligned investments	The product should fill in the section "To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy" based on the expected investments of the product, which will become a binding commitment towards the investor.	The product should complete the section "To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy" based on the actual investments during the reference period.
Existing product[2] promoting environmental characteristics that is already making taxonomy-aligned investments	The product should fill in the section "To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy" based on the investments of the product which could, for example, be measured as an average over a period of time prior to when the disclosure is first made, which will become a binding minimum commitment	The product should complete the section "To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy" based on the actual investments during the reference period.

[1] Please note that this table is not a comprehensive guide to the full SFDR disclosures, only to one specific part of them: the disclosure of how and to what extent investments are Taxonomy-aligned. Other obligations in the Delegated Regulation or the Level 1 texts apply separately (such as the statement from Article 6 TR). Furthermore, the cases concern ambitions with regard to Taxonomy-aligned investments specifically.
[2] For the purposes of this table, "existing product" is intended to mean that the product was launched before 1 January 2023.

	towards the investor.	
Existing product promoting environmental characteristics that predicts it will change strategy to make taxonomy-aligned investments from 1 January 2023 onwards	The product should complete the pre-contractual disclosure on 1 January 2023 (or change it according to sectoral rules referred to in Article 6(3) SFDR, if it has previously completed the disclosure before it changed strategy) and complete the section "To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy" based on the expected future investments on 1 January 2023, which will become a binding minimum commitment towards the investor.	The product should complete the section "To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy" based on the actual investments during the reference period.
Existing product promoting environmental characteristics with no intention of making taxonomy-aligned investments	The product should complete the section on 1 January 2023 "To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy" based on existing investments, which may be zero (i.e. the pie chart shows zero Taxonomy-aligned investments).	The product should complete the section "To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy" based on the actual investments during the reference period.
Article 8 SFDR product not affected by Article 6 TR		
Existing product promoting exclusively social characteristics with no intention to change strategy	The product should not complete the section "To what minimum extent are sustainable investments with an environmental objective aligned to the EU Taxonomy" because the product is not an Article 6 TR product.	The product should not complete the section "To what extent were the sustainable investments with an environmental objective aligned with the EU Taxonomy" because the product is not an Article 6 TR product

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9. **As of 1 January 2022, financial market participants that make available certain Article 8/9 products shall include information about the proportion of Taxonomy-aligned investments as a percentage of all investments in the pre-contractual, website information and periodic reporting (Article 5 and 6 TR). At the same time, the full reporting requirement under CSRD will not be applicable for non-financial companies until 1 January 2023. This means that before 2023, there will be no reliable data or calculation model available. Moreover, initial evidence shows that estimated data from data suppliers on Taxonomy-alignment of investment portfolios differ greatly between different suppliers, making it inappropriate/dubious to present such data to consumers. How are FMP supposed to fulfil the Taxonomy-alignment reporting requirements under the SFDR and the Delegated Regulation, respectively, given the lack of data? From a consumer's perspective, the least misleading alternative would be to report 'data not available' coupled with a brief explanatory text.**

   Furthermore, in case a financial market participant makes available a product that is considered Article 8 SFDR and Article 6 TR, the disclosure about the percentage of Taxonomy-alignment needs to be made by end of year in the periodic information. How should this be possible if companies are only required to disclose their Taxonomy-aligned activities at a later stage?

   As stated in Article 17(2)(b) and Recital (35) of the Delegated Regulation, when Taxonomy-alignment of investments is not available from the public disclosures of investee companies, then the use of 'equivalent information' from investee companies or third-party providers is permitted. As clarified by the Commission in the answers provided in May 2022, Recital 21 to Regulation (EU) 2020/852 refers to exceptional cases where financial market participants cannot reasonably obtain the relevant information to reliably determine the alignment with the technical screening criteria established pursuant to that Regulation as far as economic activities carried out by undertakings that are not subject to that Regulation are concerned. In such exceptional cases and only for those economic activities for which complete, reliable and timely information could not be obtained, financial market participants are allowed to make complementary assessments and estimates on the basis of information from other sources. Assessments and estimates should only compensate for limited and specific parts of the desired data elements and produce a prudent outcome. Financial market participants should clearly explain the basis for their conclusions as well as the reasons for having to make such complementary assessments and estimates for the purposes of disclosure to end investors.

   Once the reporting prescribed by Regulation (EU) 2021/2178 on the Taxonomy-aligned activities of non-financial undertakings (from January 2023) and financial undertakings (from January 2024) starts, the disclosure of Taxonomy-aligned investments is expected to become more straightforward.

   (Published 17 November 2022)

10. **How is it possible to practically apply the requirement to use "equivalent information" as referred to in Article 17(2)(b)?**

    The starting point for the evaluation of equivalent information, as referred to in Article

17(2)(b) of the Delegated Regulation, should be considered information that provides the same content and level of granularity as that provided by the reporting of undertakings of their Taxonomy-aligned activities in Regulation (EU) 2021/2178. In this respect, equivalent information should meet these following basic principles:

- Equivalent information should only apply to economic activities listed in the Delegated Acts of Regulation (EC) 2020/852;
- The assessment of the substantial contribution of an economic activity should rely on actual information, subject to the limited circumstances described by the European Commission in its May 2022 Union Law interpretation Q&A on pages 10-11; and
- While it should be possible to use estimates to assess the DNSH based on equivalent information, controversy-based approaches should be discouraged and considered insufficient (as outlined in Q&A 32 below).

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11. Are environmental controversies a suitable proxy for "Do No Significant Harm" (DNSH) for the purpose of "equivalent information" referred to in Article 17(2)(b) of the Delegated Regulation?

Data sets referred to as media-based "environmental controversies" are typically entity-level assessments of a company to a common environmental baseline. Whilst a useful input for investors when engaging with companies to dealing with reputational risk management, they are not suitable as a proxy to activity-based DNSH. Important metric-based thresholds and process-based requirements within the Climate Delegated Act are not considered in environmental controversies. Similarly, using only compliance with local environmental laws would not equal DNSH compliance. If a company operates in a jurisdiction with lower environmental standards or no environmental laws, then the company should not automatically pass DNSH tests.

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12. Can the Taxonomy-alignment of assets owned by a fund, such as green bonds, be included in the calculation of the Taxonomy-alignment of the product where these assets are exchanged through derivatives, for instance by using total return swaps?'

The Delegated Regulation states that derivatives should not be included in the numerator to calculate the Taxonomy-alignment of a financial product (Recital 33).

In the case of total return swaps (TRS), it appears that:

- The actual performance of Taxonomy-aligned assets is swapped through the use of a derivative. Consequently, the investors of the product do not benefit from it. It is true for both financial and extra-financial performance.
- These assets are offset by the counterpart of the TRS (short position for hedging). In this regard, it is unclear whether there is an actual investment in these assets.

Therefore, in order to include investments (that are not derivatives) in the numerator of the Taxonomy-alignment of a product, the financial product should meet the two following conditions: (i) the financial product should own the investment, (ii) the financial product should not swap the performance of this investment.

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13. **Considering the provisions of the Delegated Regulation, a fund investing in real estate or infrastructure funds would be required to report on its Taxonomy-alignment in the same way than a non-financial undertaking, analysing the Taxonomy-alignment of its own economic activities. For instance, in the case of a real estate fund, it would report its own turnover, CapEx and Opex based on the criteria set out for activity 7.7 "Acquisition and ownership of buildings" set out in Delegated Regulation 2021/1239 supplementing TR.**

    Yet, funds are not non-financial undertakings. In that regard, would it be possible for financial products to base their Taxonomy-alignment reporting in its pre-contractual disclosures on the market value of these real assets, and report alongside the other KPIs in the periodic disclosures?

    Where a financial product reports on the Taxonomy-alignment of its investments in real estate or infrastructure assets, and not financial instruments, the financial product should be able to refer to the market value of these assets. All other rules to calculate the Taxonomy-alignment in Article 17 of the Delegated Regulation of an investment apply identically.

    Such reporting based on market values should only concern the real estate and infrastructure assets of the financial market participants, and not be extended to other kind of investments. It should be possible for a financial product to report on market values both in pre-contractual and periodic disclosures.

    For reasons of comparability, other KPIs, based on turnover, CapEx and OpEx should still be part of the periodic disclosures. So, despite the fact that the financial product investing in infrastructure / real assets may need a specific KPI, an investor should have the possibility to compare two financial products with each other.

    (Published 17 November 2022)

14. **Article 17 of the Delegated Regulation lays down the rules to compute the Taxonomy-alignment of a financial product. How should a financial product report on debt instruments which are not debt securities, such as the loans it originated, bearing in mind that:**
- **when it comes to investments in investee companies, the Delegated Regulation refers to "debt securities and equities" only; and**
- **when it comes to investments in real estate assets and infrastructures, the Delegated Regulation refers to "investments"?**

While the Delegated Regulation does not specify the potential contribution of loans and advances as defined in Annex II to the ECB BSI Regulation to the numerator of the calculation of the degree to which investments are in environmentally sustainable economic activities, investments in such instruments should be considered analogous to “debt securities”.

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15. How should activities be counted that qualify as Taxonomy-aligned while at the same time contribute to another environmental and/or social objective?

While an activity can contribute to several environmental and/or social objectives, double counting should be avoided for the sake of clarity. In this regard:

- when reporting on an activity aligned with the EU Taxonomy, financial market participants should only consider the objectives laid down in Article 9 TR. One activity can only contribute to one of these objectives. For the avoidance of doubt, if the activity contributes to more than one objective, the financial market participant should choose the objective to which the activity contributes most or that is better aligned with the environmental objective of the fund or investment; and
- when reporting on an activity non-aligned with the EU Taxonomy but that contributes to a sustainable investment in the meaning of Article 2(17) SFDR, FMPs should only consider one single environmental or social objective.

(Published 17 November 2022)

16. How should FMPs measure the positive contribution for sustainable investments and can they use the KPIs for taxonomy-alignment (Turnover, CapEx, OpEx)?

There are many ways to measure the sustainable investments of a portfolio. Neither SFDR nor the Delegated Regulation provide for a specific methodology. However, for Taxonomy-aligned investments the KPIs available to measure sustainable investments are turnover, CapEx and OpEx. While turnover gives a backward-looking view on the activities of a company that are already Taxonomy-aligned; CapEx provides a forward-looking view of companies’ plans to transform or expand their business activities and the efforts they are making to green their activities and/or assets. Furthermore, CapEx investments can include those that expand an already aligned activity or asset, or that render them Taxonomy-aligned. These metrics used for calculating the Taxonomy-aligned share of the portfolio could be equally applicable to measuring the proportion of sustainable investments.

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17. An economic activity qualifies as environmentally sustainable where it contributes substantially to one or more of the six environmental objectives listed under Article 9 TR. During the period 1 January 2022-31 December 2022 should the DNSH criteria be aligned to all six objectives or only to the first two (climate change mitigation and climate change adaptation)?

To be aligned to the EU Taxonomy, and therefore qualify as environmentally sustainable, an economic activity must meet all the criteria that have been defined for it and laid down in Annex I or Annex II of the Delegated Regulation 2021/2139, including all DNSH criteria. Furthermore, it must also fulfil the minimum safeguards set out in Article 18 of the Taxonomy Regulation.

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18. Would it be possible to have a financial product disclosing under Article 8 SFDR that makes sustainable investments with environmental objectives which are not (yet) taxonomy aligned?

A financial product falling under Article 8 SFDR is allowed to partly make and to disclose on sustainable investments with environmental and/or social objectives. In this respect, as long as the sustainable investment with environmental objectives complies with Article 2(17) SFDR, it does not have to be Taxonomy-aligned.

(Published 17 November 2022)

VI. Financial advisers and execution-only FMPs

19. Do the rules for financial advisers also apply to financial advisers carrying non-advised sales (execution only)?

For insurance advisers and intermediaries, it is clear from the definition of “financial adviser” in Article 2(11) SFDR that only intermediaries/advisers providing advice have to abide by the SFDR rules. For instance only insurance intermediaries that provides insurance advice with regard to IBIPs fall under the scope of the SFDR, not insurance intermediaries that sell IBIPs in a non-advised sale. The same applies for other advisers: the obligations are limited to the context of the provision of advice. Article 2(11) SFDR covers both tailored and non-tailored advice.

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20. Article 10 SFDR expressly mentions 'financial market participants' as the recipients of the obligations concerning the transparency of disclosures for financial products under Article 8 and 9 SFDR on the websites. Does this mean that execution-only investment firms will not be obliged to fulfil these obligations even when they are distributing the above-mentioned financial products?

The SFDR text states that execution only investment firms are not obliged to fulfil the obligations.

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