Position Paper

Response to the ESAs joint consultation concerning environmental, social and governance (ESG) disclosures

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Summary

With more than €10tn of assets under management, the insurance industry is the largest institutional investor in Europe. As a result of their business model, insurers invest their assets with a long-term perspective and already consider sustainability as a key factor in their investment decisions.

Insurance Europe supports the efforts of the European co-legislators towards financing a more sustainable economy and welcomes the recent regulation on disclosures relating to sustainable investments and sustainability risks. The European insurance sector is in favour of increased transparency in sustainable investments and sustainability risks, provided that disclosures are balanced and help consumers make informed financial decisions aligned with their objectives.

In this context, the draft regulatory technical standards (RTS) are a step in the right direction. However, some changes are needed to make the disclosure regime implementable in practice and reflective of market reality. It is key that the proposed disclosures in the RTS are feasible with respect to financial market participants' activities, and towards sustainability itself, and that they are based on observable and verifiable facts.

With respect to entity- level disclosures, the industry has the following remarks:

- **Clarity of definitions**: The European Supervisory Authorities (ESAs) should elaborate on the concept of adverse impact before proposing mandatory indicators. The proposed approach focuses on the actions of underlying investee companies rather than the actions of the financial market participants. To ensure a technically feasible approach, the ESAs should test proposed requirements on existing financial portfolios and products before finalising the RTS.
- **Materiality**: As not all investments are relevant with regard to adverse impacts, principal adverse impact (PAI) disclosures should better consider materiality based on the severity and likelihood of the impacts, which is strongly dependent on entity-specific portfolios. The assumption that the proposed 32 mandatory indicators always lead to PAI is unjustified and represents a substantial burden, without justified benefits for information users.

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- **Scope**: In view of the broad diversification and wide range of asset classes within an insurer's portfolio, it is necessary to clarify which asset classes should be considered to identify and report on the PAI and how.
- **Information and data**:
  - All disclosures should be technically feasible and adequately consider existing issues with environmental, social and governance (ESG) data quality and availability. To avoid that market participants are pressured to disclose information and indicators that are not sufficiently reliable, reasonable efforts should be sufficient.
  - ESAs should apply a phased-in approach until the necessary ESG data is made available at the level of investee companies (as part of their Non-Financial Reporting Directive (NFRD) reporting obligations) in a comparable, reliable and public format, possibly via a centralised EU data register.
  - Proposed indicators should not necessarily be quantitative and data-intensive but could also be qualitative.
- **Proportionality**: The development of the RTS must consider the different size, nature and scale of insurers' activities. Requirements should also differentiate between financial market participants and financial advisers. Administrative burden for financial players and disadvantages to investors must be fully assessed to ensure requirements are proportional and feasible.
- **Overload and comprehensibility of information**: Disclosures are beneficial for users of information provided they do not result in information overload and are comprehensible. The RTS heavily rely on the end investors' capacity to process the information. Users of information already face a large number of disclosures, not only related to investments. Therefore, disclosures should remain balanced and need-based.
- **Timing**: The ESAs should assess and report to the co-legislators on the implementation challenges and related timing implications in their proposal. This is key because the Regulation is very likely to become applicable before the related, final Level 2 measures are even adopted and because of the current lack of ESG data. For this reason, the insurance industry highlights the need for the ESAs to apply a phased-in approach with the objective to allow financial market participants to implement comparable and meaningful disclosures. This would recognise that during a period of time companies will need to be allowed to comply on a "reasonable effort principle" and apply a proportionate approach based on materiality.

With respect to product-level disclosures, the industry has the following remarks:

- **Mandatory templates**: There is a risk that the RTS become too prescriptive and result in overly complex consumer information. The use of mandatory pre-contractual and periodic templates in particular should be avoided to allow for a degree of flexibility in implementation at national level and across various product types. The RTS should focus only on what information needs to be disclosed rather than being too prescriptive on the form of these disclosures in order to avoid a repeat of the problems we are seeing now with the packaged retail investment and insurance products (PRIIPs) Regulation.
- **Definition of sustainability-related products**: The distinction between "sustainable investment products" and "products that promote environmental or social characteristics" needs to be clarified. More guidance in the RTS is needed to determine when a product will qualify for either product category and to facilitate compliance by insurers. In the absence of a clear distinction, it is difficult to assess which information is necessary to distinguish the features of the two categories.
- **Multi-option products (MOPs)**: The insurance industry has some concerns regarding the lack of clarity of the application of these rules to MOPs. It should be clarified that, where a MOP qualifies under Article 8 or 9 of the Regulation, Articles 14-21 and 23-31 of the RTS do not apply, and MOPs manufacturers would only need to comply with Article 22 and 32 of the RTS. It would also be helpful for the RTS to explicitly state that this means no information on the product wrapper would need to be disclosed.

More broadly, it is essential to ensure that there is consistency across related policy developments including the EU taxonomy, the NFRD review, and amendments to the Solvency II and Insurance Distribution Directive (IDD) delegated acts with respect to sustainability preferences.

Detailed comments

***Question 1:** Do you agree with the **approach proposed in Chapter II and Annex I** – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an "opt- in" regime for disclosure?*

European insurers welcome the EC's aim of making the economy more sustainable and acknowledge that the financial industry has an important role to play in this. It should be noted that this process needs to be coherent with ongoing policy developments on sustainable finance - in particular concerning the revision of the NFRD and the establishment of a taxonomy for sustainable activities - and current and mid-term market reality.

The lack of ESG data availability also cannot be ignored. In this respect, the approach taken in the draft RTS and in the proposed level of standardisation is premature and requires a detail of disclosures that is not consistent with current working methods or available market information (see response to question 3). In addition, looking at the timelines of the entity-level disclosures, it risks putting an extreme pressure on financial market participants, without delivering sufficient benefits for users of this information.

While the insurance sector is ready to contribute to the transition to a more sustainable economy and is fully aware of the role of disclosures, it encourages the ESAs to adopt a more realistic approach: at least until related legislation has been finalised (ie taxonomy, non-financial reporting) and is implemented by investee companies. The sector invites the ESAs to better account for the following implementation challenges:

- **Clarity of definitions**: <u>the ESAs should elaborate on the concept of adverse impact indicators before proposing mandatory indicators.</u> Transparency of adverse sustainability impacts (ASIs) at entity level is a relatively new concept, which requires a common understanding of ASIs if financial market participants are expected to identify and report on them. The proposed approach seems to focus on the actions of underlying investee companies rather than the actions of the investor. In this respect, exclusions are promoted in comparison with stewardship and engagement actions which can drive the transition to a sustainable economy (eg the carbon emissions of a company will be the same regardless of whether an investor buys or sells its shares in that company: rather, it is the investor's engagement with the company to reduce them that is key). Adverse impact indicators based on this approach may result in a misleading negative snapshot of the investments, ignoring far more important trajectories and transition plans. For instance, some firms may be prioritising transition and impact investing in high emitting companies and using stewardship to encourage them to set meaningful and measurable pathways to net zero. Despite this being one of the most impactful approaches for a financial market participant, the RTS act as a disincentive here. In addition, more guidance on the meaning of adverse impact will help insurers to better comply with proposed requirements: eg for tracking the effectiveness of their actions in terms of adverse impacts.
- **Materiality**: <u>proposed PAI disclosures should better take into account materiality based on the severity and likelihood of the impacts.</u> The draft RTS link the concept of ASIs to a risk dimension (eg see problem definition of the consultation paper). However, the draft RTS appear to prioritise standardisation over a risk-based approach. As noted in recital 5, an assessment of the principal adverse impacts should take into account the likelihood and the severity of a risk materialising, which is strongly dependent on entity-specific portfolios. Specifically, the materiality of ASIs differs widely across industries and assets. In addition, financial market players are better placed to assess what impacts are principal. This is why the approach proposed for the indication of principal adverse impact indicators as per article 6(d) appears to be more appropriate: it requires a materiality assessment and a risk-based prioritisation based on severity and frequency of occurrences in the portfolio of a given entity, without ignoring portfolio-specific characteristics, geographies, etc.
- **Information and data**: <u>all indicators should be technically feasible and adequately consider existing issues with ESG data quality and availability</u>. At present, such ESG-related data, and even less so for adverse impacts, is not readily available or sufficiently reliable at the level of investee companies to be disclosed with the level of precision proposed in the draft RTS, especially on a fund by fund basis due to poor global corporate disclosure. Information received by investee companies is often of poor quality,

while that provided by ESG data providers is often inconsistent. This issue is exacerbated by the global nature of investment portfolios and by a reliance on asset managers. Therefore, while guidance on the presentation of existing adverse sustainability impacts is appreciated, the industry notes that:

- Proposed indicators should not be mandatory at this stage unless reliable standardised ESG data that is necessary to produce indicators is available and published in accordance with the forthcoming revised NFRD.
- Additionally, whilst the NFRD plays an important role in delivering ESG information required by insurers to assess their investments in corporates, there is also a need for EU governments to disclose reliable standardised ESG information that is necessary to enable insurers to produce indicators and to assess their holdings of bonds issued by regional or national governments.
- Such ESG data must be available in a standardised format and electronically in a way that facilitates access and minimises the cost for the investors and other users of the information. In this respect, the industry invites the ESAs to avoid the proposed level of granularity of the PAI indicators and to apply a phased-in approach where the necessary ESG data is made available at the level of investee companies (ie as part of their NFRD reporting obligations) in a comparable, reliable and public format, possibly via in a centralised EU data register. To ensure a technically feasible approach, the insurance sector encourages the ESAs to test proposed requirements on a number of existing financial portfolios and products before finalizing its proposal.

- **Scope:**
  - In view of the very broad diversification and wide range of asset classes within an insurer's security assets, it is necessary to clarify which asset classes should be taken into account to identify and report on the PAI. On one hand, indicators in Annex 1 appear to focus on equity and corporate bonds, while it seems not to address ASIs for other asset classes such as real estate or sovereign bonds. On the other hand, recital 3 also notes that "*an investment in an investee company or an entity includes direct holdings of capital instruments issued by those entities and any other exposure to those entities through derivatives or otherwise*"). Finally, it needs to be explained how derivatives should be taken into account.
  - The RTS should make clear that, while an insurer should report the PAI for all its investments, information related to unit linked accounts should be provided by the investment manager. Therefore, when the investment company is not the insurer, the insurer should obtain the necessary information from the investment company. The insurer should only need to assess and directly report PAI for investments where the investment choice is under the discretion of the insurer. Where the insurer is required to disclose information from indirect investments where the investment company is not the insurer, then timing issues needs to be considered to allow insurers to receive the necessary PAI information from the investment firm with a reasonable time frame for aggregation and disclosure.
  - While standardisation is relevant to the presentation and harmonisation of indicators, the scope of PAI should be consistent with the availability of ESG data to comply with proposed disclosures. Therefore, it is essential, in order to achieve the goals of the regulation, that the requirements of the RTS are linked with the scope and information requirements under the forthcoming revised NFRD, which is currently considered by policymakers as the main tool for ESG disclosures by investee companies. Such consistency will ensure financial market participants have all the data they need to comply efficiently and consistently with the Regulation, as it will ensure a unified approach to assessing sustainability and PAI/ do not substantially harm (DNSH) factors.
  - The insurance sector invites the ESAs to take into account in the proposed RTS the fact that the availability of ESG data for investee companies outside the EU will not be improved by the NFRD nor the taxonomy regulation, which do not apply to companies based in eg America or Asia. Given the global nature of the investment universe of European insurers, the proposed RTS should allow financial market participants not to disclose PAI for investments outside the EU when ESG data is not available.
- **Consistency of legislation**:
  - Proposed legislation should be coherent and consistent with related policy developments, while avoiding contradictions and allowing proposed disclosures to remain sufficiently stable over time. In this respect, the link between the Taxonomy Regulation and the RTS on the Disclosure Regulation

should be better clarified. In practice, the proposed disclosure regime should better consider upcoming work under the taxonomy framework, ie the RTS regarding the DNSH principle. In the approach proposed in the RTS, it appears that any investment will lead to PAI, while in the taxonomy the DNSH appears to define limits for the negative effects of economic activities on sustainability factors. As the DNSH and the PAI pursue the same regulatory objectives, ie they are intended to avoid "significant adverse effects" on the environmental objectives of the taxonomy and on sustainable investments of the SFRD, then they should be largely consistent and, where relevant, use the same approaches for determining their criteria and indicators. For example, if the taxonomy bases the DNSH for mitigation on greenhouse gas emissions, then the PAI should prefer greenhouse gas emissions to alternative measures of PAI related to mitigation. This would avoid confusion for all information users/providers and it would be more consistent from a data perspective, without the risk of a two-tier approach developing. Similarly, data needed for the requested indicators should also be compatible with the Benchmark Regulation. Finally, the link with the Shareholder Rights Directive should also be considered.

  - Equally important, also required PAI indicators and ESG data under the reviewed NFRD should be consistent. For example, the principle of dual materiality, which applies under NFRD, and the concept of a set of mandatory PAI indicators should not contradict each other. In addition, whereas the ESAs acknowledge that there is a lack of ESG data, the mere indication that the data situation will improve does not solve the problem for financial market participants, which are supposed to collect these data as early as 30 June 2021 (see also timing point).

- **Timing**: The Regulation will apply from 10 March 2021. However, the Regulation is very likely to become applicable before the related, final Level 2 measures are even adopted, thus creating significant compliance challenges and liability risks for market players, as well as confusion for investors. Additionally, there are challenges relating to the chain of data that needs to be collated and distributed to professional investors. Moreover, the timing of the application of the RTS should consider that the ongoing NFRD review has the objective to better standardize non-financial information. The insurance industry is concerned about the risk to start reporting on a first list of indicators that will change in the coming years, while the EFRAG will propose new standardised non-financial indicators. The industry suggests that the ESAs consider potential implementation challenges and related implications in their proposal (eg the timeline by considering a transition phase for firms collating the required information on a reasonable effort basis).
- **Benefit for consumers and other users of non-financial information**: Financial illiteracy, complexity and information overload are three well-known obstacles for good consumer disclosure. It is key that the ESAs take due account about the needs and limitations of consumers and other users of non-financial information, including their expectation to access information via digital channels and related implementation by financial market participants. This should consider the balance between the technicality of disclosures and their usefulness.

Given the above-mentioned challenges, the industry suggests that at this stage indicators in Table 1 are used as guidance and remain subject to an "opt- in" regime, accounting for materiality considerations (see question 3). The industry would also appreciate it if financial market participants are able to limit disclosures to the share of their portfolio for which information is available and relevant.

***Question 2**: Does the approach laid out in Chapter II and Annex I, take sufficiently into account **the size, nature, and scale of financial market participants activities and the type of products** they make available?*

The European insurance industry believes that the development of the RTS does not sufficiently consider insurers' different size, nature and scale of activities, nor does it take into account the type of products they make available or the required proportionality approach prescribed in Level 1.

In particular, care must be taken so that the draft RTS do not go beyond the objective of the Regulation, which is to establish rules for the disclosure of information regarding financial market participants' and financial advisers' approaches to the integration of sustainability risks and consideration of adverse sustainability impacts. The Regulation does not prescribe what these approaches should be. Therefore, it is important that the draft RTS does not introduce such requirements through the back door.

Specifically, the industry notes that:

- The ESAs should consider the possibility of differentiating between financial market participants to ensure that requirements are **proportional and feasible**. The burden of implementing and continuously complying with the SFDR is particularly large for smaller financial market participants. The Regulation should fully assess and take into account the administrative burden for financial players and disadvantages to investors. A balanced setup should be found where on the one hand the public is adequately informed and on the other hand smaller market participants are not put in a cost/effort disadvantage in comparison with larger participants. For example, some players may be requested to issue periodic reports only in case of material changes or with a different frequency, based on the risk profile.
- Insurers should have sufficient **flexibility in implementing and dealing with the proposed requirements** in line with the specific risk profile of their activities and portfolios, including investment allocations and geographies. A certain degree of discretion at the level of financial market participants can result in more practical and cost-effective disclosures, without reducing the information value for consumers.
- Proposed disclosures should remain sufficiently stable over time and consider upcoming work under the taxonomy framework, ie **the empowerment under Article 8 of the taxonomy regulation**, and ongoing developments, ie **the review of the NFRD.** This will avoid that market participants have to change their disclosures twice within a relatively short time and will facilitate implementation.
- For financial advisers, the proposed RTS should **not just duplicate the requirements asked from the financial market players** (articles 3, 4, 5, 6 of the SFDR). A large part of insurance distributors are SMEs or individuals, notably in certain markets. Certain companies may not have a website to publish the information needed and the RTS should not impose such requirement.
- Regarding the scope, the insurance sector appreciates that the **RTS will apply to financial advisers only when providing advice to customers**, as per article 2(11) of the SFDR.
- The provisions in the RTS go beyond the scope of the regulation and may **discourage financial advisers from taking into account adverse impacts on sustainability factors**. On one hand, article 4 (5) a) of the SFDR provides that financial advisers shall publish and maintain on their websites information as to whether, taking due account of their size, the nature and scale of their activities and the types of financial products they advise on, they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors. On the other hand, in pursuance of this article, article 12 of the RTS asks financial advisers to publish a detailed statement specifying: how the information published by financial market participants in accordance with this Regulation is used; whether the financial adviser ranks and selects financial products based on the principal adverse impacts referred to in Table 1 of Annex I and, if so, a description of the ranking and selection methodology used; and any criteria or thresholds used to select financial products and advise on them based on those impacts.

Question 3: *If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure* ***sufficiently comparable disclosure against key indicators****?*

The European insurance industry invites the ESAs to consider the following:

- **The adverse impacts indicators as defined in Table 1 should remain voluntary for a transitional period**, until non-financial reporting standards are sufficiently defined (in view of the review of the NFRD) to allow financial market participants to have access to ESG data necessary for compliance with the RTS in a comparable, reliable and public format, possibly via a centralised EU data register.

- **PAI disclosures should primarily be based on materiality considerations.** Indicators that are truly principal based on a materiality assessment, which takes into account the specificities of particular investments, run by the financial market participant should be disclosed.
- **Not all investments are likely to be relevant with regard to adverse impacts.** Therefore, the PAI disclosures should focus on the most material holdings.

These approaches will help achieve standardisation and facilitate implementation given the other challenges mentioned before (please see Insurance Europe proposed approach below). They will also help information users with different levels of financial and sustainability literacy to identify the most important impacts.

European insurers note that the ESAs proposals require sustainability data for each actual and potential investment for investors to identify PAIs and comply with the RTS of the SFDR. However, there is a current lack of data and, where it is available, it is not consistent or in a format easy to access and use.

For financial market participants to disclose detailed PAI indicators, ESG data necessary for compliance with the SFDR should be publicly available by investee companies that are required to report under the renewed NFRD. This would be a proportional and efficient solution to achieve efficient and comparable disclosures. The purchase of ESG data from rating agencies and active data collection by financial market participants are inefficient given the nature of financial market participant investments and do not address the issue of availability and comparability of ESG data. In addition, it is key that proposed disclosures do not become a de facto requirement forcing market participants to rely on third party providers of ESG data and research to obtain necessary ESG data.

Required information should be available in a standardised and electronic format supplied by the investee companies to a central, publicly accessible, free of charge EU data register. This would minimise the cost for investors and other information users, but also to eliminate the multitude of different requests of information for preparers of non-financial information. In this respect, the industry notes that the need for standardisation and for broad coverage of ESG information is leading to strong market concentration of ESG research providers and agencies, which are developing into oligopolistic structures. If an oligopolistic market structure and related pricing power were to be maintained, related costs could harm the attractiveness of sustainable products for product manufacturers and even for customers, eg in terms of higher product fees. The existence of publicly available information – especially under a centralised database - can drastically lower the cost of ESG data collection, especially for small-sized companies. The insurance sector encourages the ESAs to liaise with the European Commission, which has already outlined a proposal for such an ESG data register in its consultation paper on the renewed sustainable finance strategy.

Finally, the industry appreciates that the ESAs recognise in Article 7(2) that there are instances when information cannot be obtained from investee companies, but it points out that the lack of data may limit the ability of insurers to make as much progress as they would like on the identification of PAI and it represents a real challenge for compliance with the new regulatory requirements. Therefore, the industry encourages the ESAs to apply the industry proposal for a **phased-in approach with the objective to allow financial market participants to implement comparable and meaningful disclosures**.

European insurers proposed alternative approach

The proposed approach would have two main phases:

- **Phase 1: from March 2021 and until non-financial standards are sufficiently defined and implemented by investee companies (ie one year after the implementation of the standardised reporting by companies).** This phase would allow for sufficient time to put in place a revised NFRD addressing the need for standardised ESG data and a related data register. This phase would require the greatest effort to set up the disclosures, eg in terms of processes and systems, and as such, it should not be over-ambitious in terms of the indicators to be reported, especially in consideration of the lack of an ESG data register and of adequate legislation on third party ESG data providers and agencies. During this period:

- The reporting approach in Chapter II and Annex I would work as guidance and best practices for financial market participants.
- Financial participants would still need to disclose PAI that are truly principal on a "reasonable effort principle". The use of quantitative indicators would not be the focus at this stage and disclosures based on qualitative indicators would be sufficient. The PAI would still be disclosed based on the following key areas: carbon footprint (scope 1 and 2), human rights (reporting on controversies on social or employee impacts) and exposure to controversial weapon. Moreover, any identified controversy on an ESG topic should also be systematically communicated in the description of principal adverse impacts.
- Even if quantitative ESG data might not be fully available in this transitional period, financial market participants would have to account and report for PAI based on a "reasonable effort principle", instead of a "best effort principle". As acknowledged by the ESAs, there are instances when meaningful ESG information cannot be obtained from investee companies. This avoids a tick the bock exercise and allows financial market participants not to be pressured to disclose information by making "reasonable assumptions", as this kind of information may be of limited benefit to customers and could even be misleading.
- During this phase, PAI disclosures should be driven by materiality considerations on a portfolio basis. Given the novelty of capturing PAI, taking into account PAI based on materiality considerations, such as the investment volumes in investee companies within a portfolio, would allow financial market participants to focus on most relevant PAI for its specific portfolio, without the risk of negatively affecting the incentive for diversification within a portfolio. Financial market participants would need to be transparent about the approach chosen and disclose it in their website.
- In addition, financial market participants would need to provide a description of policies to assess PAI, including a description of the actions to address principal adverse sustainability impacts, engagement policies and adherence to international standards. The other indicators (especially greenhouse gas (GHG) emissions indicators on scope 3) would remain voluntary during this phase.
- Consistency of legislation, clarity on scope and on definitions as indicated in response to question1 would still be needed to reach consistent disclosures.

- **Phase 2: one year after the implementation of the new reporting standards under the NFRD by investee companies.** For a successful implementation of this phase, it is key that EU policymakers take action to improve investment information from investee companies. Beyond information already disclosed in the first phase, during this phase:
  - A selection of indicators should always be disclosed on a mandatory basis, whatever the results of the materiality assessment run by the financial market participant (on the condition these indicators have been standardised under the revision of the NFRD).
  - During this phase, reporting will develop starting with a reasonable number of key mandatory indicators (see below). As reporting develops and best practice evolves, more mandatory indicators may be added.
  - The key **mandatory** indicators proposed are the following:
    - *Greenhouse gas emissions*
      - *1. Carbon emissions (broken down by scope 1, 2 and 3, and in total).*
      - *At the choice of the investor: 2. Carbon footprint (scope 1, 2 and 3) OR 3. Weighted average carbon intensity (scope 1, 2 and 3).*
      - *4. Coal exposure (with details needed on how to measure this exposure)*

        Scope 3 indicators should be introduced last as they are most difficult to measure reliably.
    - *Energy performance*
      - *5. Total energy consumption from non-renewable sources and share of non-renewable energy.*
    - *Biodiversity*
      - *A biodiversity indicator based on the standardisation of non-financial indicators under NFRD. The sector recommends waiting for this standardisation to find a suitable indicator for investors as indicators 9, 10, 11 are not the most appropriate at portfolio level.*

- *Social and employee matters*
  - *17. Implementation of fundamental International Labour Organization (ILO) Convention (standardisation under NFRD should also clearly define how to assess this indicator at company level. "Due diligences policies on issues addressed by the fundamental ILO convention", as currently stated in the draft RTS, is not enough clear on what should be disclosed by the investee company or assessed by the financial market participant).*
- *Anti corruption and anti bribery*
  - *30. Anti-corruption and anti-bribery policies.*
  - *32. Number of convictions for violation of anti-corruption and anti-bribery laws.*
- *Human rights*
  - *Share of investments at risks on human rights (based on the materiality analysis of the financial market participant taking into account sectoral exposure and measures implemented by investee companies). This would substitute indicators 23 to 27, which are too detailed to be reported at portfolio level and are more relevant at company level. Standardisation on human rights could also help to precise the most relevant indicator on human rights.*
  - *28. Number and nature of identified cases of severe human rights issues.*
  - *29. Exposure to controversial weapons (land mines and cluster bombs).*

- Other indicators should remain **voluntary**, but they should be disclosed when the financial market participant identifies them as being PAI based on its materiality assessment. These are:
  - *Energy performance*
    - *6. Breakdown of energy consumption by type of non-renewable sources of energy.*
    - *7. Energy consumption intensity.*
    - *8. Energy consumption intensity per sector.*
  - *Water*
    - *14. Untreated discharged waste water.*
  - *Waste*
    - *15. Hazardous waste ratio.*
    - *16. Non-recycled waste ratio.*
  - *Anti corruption and anti bribery*
    - *31. Cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery.*
  - *Social and employee matters*
    - *18. Gender pay gap.*
    - *19. CEO pay ratio.*
    - *20. Board Gender diversity.*
    - *21. Whistle-blower protection.*
    - *22. Investment in investee companies without workplace accident prevention policies.*
- Finally, the sector notes that the following indicators are useful to assess the PAI at the investee company level but not at investor portfolio level. These indicators help the investor assess the risk but are not necessarily ASIs:
  - *12. Water emissions (the concept of "water emissions" itself is not clear).*
  - *13. Exposure to areas of high-water stress.*

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

- **Summary:** The summary section required under Article 5(1)(d) is a duplication of the more detailed information already required to be disclosed and in its current form provides no added value. A single disclosure standard should be created that contains only the information that is truly necessary. This should not preclude additional information from being provided on an optional basis.
- **Description of principal adverse sustainability impacts:**
  - Financial market participants should be able to identify the most relevant indicators based on materiality assessment and a risk-based prioritisation. The identified areas of adverse impacts are

not principal for all financial market participants under the meaning of PAI outlined in the SFDR. While the industry supports transparent disclosures and understands the need to assess investment portfolio against EC objectives of mitigation and adaptation, it does not consider that all 32 mandatory indicators are necessarily principal, according to a robust risk-based approach. The need for standardisation should not lead to an excessively burdensome approach for market participants, without having counterbalancing benefits for information users.
  - It is not sufficiently clear what some indicators are trying to capture. Some indicators may not be informative or even relevant to report at portfolio level (aggregate data), but will only reflect the size and/or composition of the investment portfolio (see answer to question 5). In some cases, the very name of some indicators is biased towards value judgement and not grounded on a commonly accepted understanding of sustainability, especially for some social indicators. For this reason, such detail indicator dashboard risks being misleading for information users and prone to window dressing.
- **Description of policies to identify and prioritise principal adverse sustainability impacts:** The industry considers the information in Article 7(1) as appropriate for publication in the website and appreciate the fact that Article 7(2) accounts for instances when information might not be obtained from investee companies. To avoid that market participants are pressured to disclose information and indicators that are not sufficiently reliable, the industry suggests adopting "**reasonable efforts**" as a wording for Article 7.
- **Description of actions to address principal adverse sustainability impacts:**
  - The industry encourages the ESAs to maintain the wording of the Regulation. Therefore, the industry proposes that the following wording is added in Article 8: "*The section referred to in point* (d) of Article 4(2) shall contain the following information, where relevant:".
  - The industry is also concerned that the level of detail required on tracking the effectiveness of actions taken to reduced adverse impacts is excessive and prone to window-dressing. The effectiveness of some actions may be difficult to measure and can also be highly subjective. Therefore, disclosures should be limited to robust evidence and concrete actions. It also needs to be kept in mind that impact may not be easy to measure at an aggregate level and that it should rather be considered by individual investee companies.
- **Engagement policies:** The industry considers the information in Article 9 as appropriate for publication on the website and appreciates the coherence with existing legislation in this respect.
- **References to international standards:** The industry agrees with Article 10 on the disclosure of responsible business conduct codes and internationally recognised standards for due diligence and reporting. However, it notes that forward-looking climate scenarios are currently under development and not always robust enough for website publication. The inclusion of forward-looking climate scenarios and indicators may significantly vary based on the choice of assumptions, portfolio coverage, methodologies (sectorial analysis based on 2°C scenario alignment, temperature of the portfolio, climate value-at-risk). There may also be legal risks for financial market participants to make such disclosures. For these reasons, it is key that the wording "where relevant" is maintained.
- **Comprehensibility of the information:** With regard to customers and other users of information, sustainability-related information should be tailored to a level that they can understand and process. In view of the large amount of information that a customer has to process for a financial product, such a level of sustainability indicators is not conducive to comprehensibility.

***Question 5**: **Do you agree with the indicators**? Would you recommend any other indicators? Do you see merit in including **forward-looking indicators** such as emission reduction pathways, or scope 4 emissions (saving other companies´ GHG emissions)?*

While the sector agrees on the importance of transparency, the concept of adverse impact is risk-based and does not correspond to a sustainability assessment. The Regulation and ongoing policy developments do not appear to imply such characterisation and they distinguish adverse impacts, sustainability risks and the degree of sustainability assessment.

The industry notes that:

- Certain key areas of adverse impacts, notwithstanding their importance, should not be necessarily classified as "principal" without prior assessment (see also response to question 1 on materiality and question 3). Pending a clarification of the meaning of adverse impacts in different areas, it is not completely clear under which assumptions some of the proposed indicators capture *adverse* impacts.
- The industry recommends that the ESAs elaborate on the concept of adverse impact and limit proposed public disclosures to observable and verifiable facts. Therefore, emission reduction pathways, or scope 3 and 4 emissions should be carefully assessed. Accordingly, the name of indicators should not risk being biased or leading to value judgments: in the absence of a full-spectrum ESG taxonomy, the name of the indicators should not qualify their outcomes, eg excessive CEO pay, insufficient whistle-blower protection, etc.
- Proposed indicators should not necessarily be quantitative and data-intensive but could also be qualitative, with due consideration of the need to establish observable and verifiable data. As the ESAs recognise, data issues can be particularly problematic. Therefore, an assessment at the level of the various investment instruments would also be necessary to verify their feasibility. Producing and disclosing proposed indicators is challenging without non-financial reporting standards in place to allow financial market participants to fulfil their disclosure obligations and to better assess the risks linked to sustainability-related factors.
- Some indicators are not informative or even relevant to report at an aggregate level, but will only reflect the size and/or composition of the investment portfolio, without consideration of the engagement actions of the investor. For example, while "total carbon emissions" or "number/rate of accidents, injuries, fatalities, frequency" may be informative at the level of the investee company, at the level of the investment portfolio it will – all other things being equal – mainly reflect the size of the investment portfolio (ie assets under management).
- Likewise, a mandatory catalogue of indicators cuts off the discretion on the part of the financial market participant. As a result, the collection (for certain industries) of irrelevant indicators not only leads to unnecessary efforts, the data obtained also has a limited or even misleading informative value. For example, not all investee companies have the need to have eg biodiversity and ecosystem preservation practices or a deforestation policy in place, because it is irrelevant for their business activities; another example is the indicator for scope 3 emissions, which are largely based on estimates. At an aggregate level it will be impossible to differentiate between these companies and those that are to be considered as "non-sustainable".
- The draft RTS should also provide minimum guidance on how government bonds, local government bonds, supranational entities or any other asset that is not issued by a company should be treated. For this, public entities should also provide the necessary ESG data to a centralised EU data register.
- The disclosure requirements must take into account the needs and benefits of the users of non-financial information. Too complex indicators, such as emission reduction pathways or scope 4 emissions, are under increased risk of being misunderstood and should be carefully assessed so that their disclosure does not represent a tick-the-box-exercise. Reducing the number of mandatory indicators is especially important to reduce information overload in terms of sustainability-related information.
- Finally, to avoid information which lacks accuracy and objectivity to the detriment of information users, forward-looking indicators such as emission reduction pathways, or scope 4 emissions should remain on an optional basis, and should be further investigated in the context of the NFRD review.

Please consider also responses to questions 1 and 4.

Question 6: *In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a* ***relative measure of carbon emissions relative to the EU 2030 climate and energy framework target*** *and b) a* ***relative measure of carbon emissions relative to the prevailing carbon price****?*

As noted above, producing and disclosing proposed indicators is challenging without non-financial reporting standards in place. The industry believes that this should be further investigated in the context of the NFRD review, the empowerments under Articles 8 and 25 of the taxonomy Regulation.

Question 7*: The ESAs saw merit in requiring* ***measurement*** *of both (1) the* ***share of the investments*** *in companies without a particular issue required by the indicator and (2) the* ***share of all companies*** *in the investments without that issue. Do you have any feedback on this proposal?*

Most of the suggested indicators have to be reported on (1) the share of the investments and (2) the share of all companies in the investments. The industry notes that the second category is not meaningful and increases the information, already complex and numerous, provided to customers. Therefore, the industry suggests that reporting each indicator only based on the first category (based on the value of the investments and not on the number of companies). While it may make sense to measure the share of investments in companies without a particular issue, the industry insists that the proposed indicators should be used as guidance and remain subject to an opt-in regime.

Furthermore, when calculating the share of investments, it must be clear what this indicator is aiming at measuring. Insurers usually have a very diversified investment portfolio including all sorts of assets (government bonds, unlisted equity, bonds, loans, infrastructure, etc). This makes the calculations less straightforward compared to an equity portfolio of listed companies (see response to question 1).

Having said that, non-financial reporting standards are key to be able to precisely measure such share of investments, especially considering the different types of investment instruments used in financial markets. European insurers believe that a finalised taxonomy and available ESG data at the level of investee companies would be necessary for a consistent and robust assessment.

Question 8*: Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture* ***activities by investee companies to reduce GHG emissions****? If yes, how would such advanced metrics capture adverse impacts?*

European insurers believe that a finalised taxonomy and available ESG data at the level of investee companies would be necessary for a consistent and robust assessment of activities by investee companies to reduce GHG emissions. Regulatory requirements related to such classification should therefore remain voluntary until all aspects of the taxonomy are sufficiently developed, especially those related on enabling and transitional activities. This will ensure that financial market participants deliver a realistic picture and avoid penalising unfairly some economic activities.

Question 9*: Do you agree with the goal of trying to deliver* ***indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters*** *at the same time as the environmental indicators?*

The European insurance industry agrees with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters ("social considerations"). The sector looks at sustainability in a holistic sense, considering all ESG factors contributing to sustainable investments, in recognition of the implicit connection of these components. Also in this case, the industry notes that there are challenges for investors in gaining access to reliable information sources (for example, a company will tend not to report on human rights violations in the case of breaches).

At the same time, the industry acknowledges the urgency to take action on the E aspect and the current EU policies focus on this aspect. For this reason, the industry suggests that the adverse impacts for social considerations (with the exception of those suggested in question 3 on human rights and exposure to controversial weapons) as defined in Table 1 remain voluntary:

- For a transitional period, eg until necessary data is available under the non-financial reporting standards.
- Until the assessment of social objectives is evaluated under Article 26 of the taxonomy regulation and minimum safeguards are developed as per Article 18 of the taxonomy Regulation.

This will ensure consistency with EU legislation.

In addition, the industry recommends consideration of indicators that are truly principal, based on a materiality assessment run by the financial market participant. The industry encourages the ESAs to evaluate and prioritise the qualitative aspects of those indicators.

Question 10*: Do you agree with the proposal that financial market participants should provide* ***a historical comparison of principal adverse impact disclosures up to ten years****? If not, what timespan would you suggest?*

The industry considers that a period of up to ten years is too long for a historical comparison. A considerably shorter period would be better suited for data stability and it would be less burdensome for financial market participants. The insurance industry recommends that the duration of the historical comparison considers a **five-year horizon**. This will help comparison in terms of data stability. In addition, this will make the requirement less burdensome in terms of records of information, without affecting the quality of information provided to information users.

Moreover, the five-year period should be introduced gradually, so that in the first year (2021) only one year of data is required, the second year only two years of data is required, and so on. In addition, given the evolution of methodologies, indicators, and potentially changing choices in opt-in indicators, there should be an exemption for the five-year period of historical comparison when methodologies to obtain the indicators has changed and data is not comparable anymore (eg change of data providers).

Question 11: *Are there any ways to discourage potential "****window dressing****" techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the* ***methodology and timing of reporting across the reference period****, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?*

The principal adverse impact reporting must reflect the approach of the financial market participant, otherwise it will be prone to window dressing and end up being a tick-the-box exercise. Furthermore, the selection of indicators risks encourages window dressing if they are not based on observable and verifiable facts. This is why it is crucial that a common understanding of adverse impact is reached and that proposed indicators are consistent with ongoing policy work on the EU taxonomy and with disclosed data in non-financial reporting. The evaluation of actions taken to reduced adverse impacts is also to a great extent subjective.

The industry does not believe that more granular requirements and harmonisation of methodologies will be a suitable solution to these issues. While guidance on disclosures is useful, financial market players should retain sufficient flexibility in the implementation of the Regulation and be able to adopt the methodologies most suited to their specificities and risk profiles.

As noted above, non-financial reporting standards will be key for reliable disclosures. At the same time, they will help the fight against greenwashing and window dressing. In order to ensure feasibility and consistency of the requirements, the ESAs should collaborate with the Commission to ensure the above-mentioned issues are addressed within the review of the NFRD. As already noted in question 3, it is essential to ensure that the data needed for the indicators is disclosed in a standardised and ready-to-use format by the investee companies that fall under the NFRD. Data concerning the indicators should be reported under a revised NFRD in the same way as it will be requested in the RTS. Additionally, consistency and assurance measures will have to be considered at a later stage to avoid greenwashing.

Regarding the **timing of reporting**, harmonisation of the reporting date of asset holdings would be welcome (eg 31 of December). However, for consistency with the date of companies' financial reporting, the dates of the composition of investments need to consider staggered implementation / disclosure periods for investors compared to investee companies. Depending on when investee companies report the required data on indicators in a given year, necessary data from investee companies could only be taken into account by an investor with a lagging time period ranging of up to one year. Timing of reporting should also be carefully considered for investments which are not directly managed by the insurers, for which ESG data is not directly available. In addition, it is key to note that there should be a separation of financial reporting requirements and ESG reporting to avoid operational overload and allow flexibility in terms of internal processes and reporting timetables. More frequent reporting from financial market participants should be optional.

In the public hearing of the ESAs on 2 July, ESMA set out the view of the ESAs that reporting would be required not only for the investments at a given reporting date (eg 31 of December), but also for investments that were held at a certain point in time or period during the whole reference period. While the industry understands the ESAs are concerned with the risk of window-dressing, there are not sufficient benefits to justify the excessive burden for financial market participants to report at this level of granularity.

The insurance industry stresses that, **for PAI consideration, it is crucial to focus on those assets that are held at a specific date, ie at the end of the year, rather than during the whole reference period**. In this respect, the industry notes that:

- Reporting on all assets that were held, even if they were held for a short period of time within one reference year and also when those are no longer held at the end of the reference period, is not technically feasible and realistic in terms of required resources from financial market participants.
- Insurers must act in the best interests of their customers, in line with the prudent person principle (PPP) in article 132 of the Solvency II regulation, and providing for a liquidity, duration and asset-liability management appropriate to their liabilities as part of their risk management. In addition, the draft delegated acts on the integration of sustainability risks in Solvency II explicitly oblige insurers to take into account sustainability risks within the PPP and their risk management, and also to consider the long-term impact of their investment decisions on sustainability factors (stewardship approach). All these regulatory requirements already prohibit insurers from engaging in window-dressing. The PAI assessment of the investments during the whole reference period is well proxied by the assessment at the end of the reference period. First of all, as liability-driven long-term investors, insurers are obliged to provide for a strategic asset allocation and have no incentive to alter their portfolios before the end of the reference period to communicate lower PAI. Second, for liquidity management, insurers generally do not hold cash, but (short-term) bonds: taking all these investments (eg held for liquidity reasons) into account with a view to consider PAI would be an impractical academic exercise, which would not be meaningful, nor serve consumer benefits.

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

This level of prescriptiveness is unprecedented and inappropriate for interim and periodic reports.

The SFDR requires that disclosures of information for insurance products are done according to Article 185(2) of the Solvency II Directive and Article 29(1) of IDD. These disclosures allow for a degree of flexibility and are mostly detailed at national level. Therefore, the industry notes that inflexible requirements under the SFDR are not compatible with the general rules of the IDD or Solvency II and should not be introduced through these RTS. The same applies to pension products, the information requirements for which are stipulated predominantly by national legislation. The following would, for example, be more appropriate for customer disclosures:

- National disclosure format resulting from Solvency II and the minimum harmonisation approach taken in IDD.
- Link in the PRIIPs KID "Other information" section to the available information – note that the KID "What is the product?" section already provides for the possibility to indicate whether a product has sustainability objectives.

Accordingly, **no new specific pre-contractual information template should be introduced, unless its use is optional**. The SFDR objectives are fully achieved by the provisions of the RTS with regard to content, order and titles of the information. This leads to better understanding for the customers without overloading them with information. Further standardisation by way of specific templates is not required and would have to be compatible to the vast variety of different products encompassed by the SFDR and different national practices. Avoiding the use of new specific pre-contractual information templates would also help insurance companies, especially small and medium entities, as well as insurance distributors to mitigate the compliance effort to produce, deliver and explain to customers new templates. Consequently, both insurance companies and distributors would be facilitated in the offering of products in the scope.

Should the ESAs pursue the introduction of templates, the insurance industry would urge the ESAs not to provide mandatory prescriptive templates. While the need for a minimum level of standardisation is clear, the optional use of templates (provided all the required information is clearly provided) should be considered, as this is more coherent with the minimum harmonisation principle of IDD. This leads to a better understanding for customers without overloading them with information.

The industry does not believe it will be possible to create a single template that is appropriate for use in consumer facing documents such as the PEPP KID, but also appropriate for use alongside a market-focused prospectus. The insurance industry notes, and is sympathetic to, the concerns raised by the ESAs on page 9-10 of the consultation paper regarding the different nature of the various pre-existing documents where the SFDR disclosures will need to be incorporated. It appreciates that the Level 1 requirements present a significant challenge for the ESAs, but it believes this needs to be solved through maximum flexibility for companies rather than prescriptive standards.

Finally, the time pressure the ESAs are under to finalise the RTS is well understood, however, the industry regrets that draft templates were not provided for comments as part of this consultation. If mandatory templates are to be produced at a later date, there will need to be **a second consultation so that stakeholders can provide feedback on the usefulness and feasibility of these templates**.

In addition, we encourage the ESAs to perform consumer tests in order to collect insights about the needs of consumers, including the testing of any disclosure material and format in digital and smart phone format according to the needs of consumers. **Financial illiteracy, complexity and information overload are three well-known obstacles for good consumer disclosure.** Consequently, it is very important that the ESAs take due account about the needs and limitations of consumers. The insurance sector therefore encourages the ESAs to carry out consumer tests to collect insights about the needs of consumers before finalizing its proposal.

The timeline stipulated on level 1 is already extremely ambitious. It does not seem possible for mandatory templates to be developed, consulted and finalized while still leaving an adequate implementation period for market participants. The ESAs should clarify their intentions as soon as possible in order to allow market participants to proceed with the implementation of the rules instead of waiting for further requirements.

For periodic reporting to customers, the insurance sector asks the ESAs to allow flexibility in terms of delivery to customers: each financial market participant should be free to deliver this periodic reporting to its customers in the way that is most suited (by mail, e-mail, website or any other electronic means).

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

As stated above, **mandatory templates should not be introduced for SFDR disclosures. In case optional templates are developed, they should include the minimum data fields to be included, the order in which information should appear, and potentially key definition**. This would ensure a degree of comparability between products while respecting the minimum harmonisation principle of the IDD and respecting national specificities in IDD implementation.

It is also crucial that any templates provided are digital friendly and do not follow the restrictive approach used in PRIIPs. A degree of flexibility allows financial market participants to tailor disclosed information to the type of product offered. This would allow manufacturers to provide appropriate information to customers and adapt information to be suited to the full range of products in scope. In this respect, the use of references and links to pre-existing and available information, if already reported elsewhere, is welcome and should be encouraged.

Regarding the **specific elements** that are proposed in Article 14 (similar for Article 15), the insurance sector believes that:

- There is no need to have two separate sections for (a) "a description of the environmental or social characteristics promoted by the financial product" and (c) "investment strategy", since the investment strategy by necessity will reflect the environmental and social characteristics that the financial product aims to promote. It is two sides of the same coin. In addition, we find the detailed specification of point (a) in Articles 15 and 24 (narrative and graphical representation) confusing.
- Point (b) "No sustainable investment objective" goes beyond the requirements of level 1, since level 1 only requires financial market participants to disclose information about how the environmental and social characteristics are met (also applies to Article 34(3), 36 (b) and 38). This narrative for Article 8(1) and 8(2) products could be misleading for the final customer, especially as from 2023 with the company's disclosure on every product; by reporting just the negative sentence "This product does not have..." we believe that customers may understand as "This product is not sustainable". It may be sufficient to add a simple sentence before, such as "This product is considered as sustainable by the company, but the product does not have sustainable investment among its objectives ".
- Point (e) "Use of derivates" should not be at odds with Solvency II. Please refer to response to question 26.

For periodic reporting to customers, the insurance sector asks the ESAs to allow flexibility in terms of delivery to customers: each financial market participant should be free to deliver this periodic reporting to its customers in the way that is most suited (by mail, e-mail, website or any other electronic means).

Question 14: *If you do not agree with harmonised reporting templates for financial products, please suggest what* ***other approach*** *you would propose that would ensure comparability between products.*

Rather than producing templates, **the RTS should specify only what information needs to be disclosed without specifying the format of these disclosures**. The provisions of the RTS on the order and the titles of the information ensure its recognisability across sectors. Optional guidance on best practices for making these disclosures within the various existing disclosure regimes could then be provided to assist companies in making these disclosures in the most effective way, while still allowing the format to be adapted to reflect the specific nature of the product and any applicable national rules.

Question 15: *Do you agree with the* ***balance of information between pre-contractual and website information requirements****? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?*

The sector appreciates the effort to keep the pre-contractual information as short and concise as possible against the background of the level 1 text. The provision of too much information makes it less likely that the customer will take note of the information at all. This holds true for information provided on a durable medium, as well as on websites. Excessively detailed information requirements should therefore be avoided.

The ESA may wish to consider consumer testing the information in order to ensure that the level of detail is not counterproductive. Please note that the purchaser of a life insurance product already receives a multitude of documents based on information requirements in other legislation. Therefore, while excessively detailed information should generally be avoided, the pre-contractual information is particularly vulnerable to information overload.

This said, **complex information is generally more accessible on a website**, where technical features (such as layers and menus) make it easier to navigate. In order to avoid duplication of information, a single disclosure requirement should be created where possible, containing only the information that is absolutely necessary. The insurance sector questions the need for the provision of any further information to be mandatory and welcomes the possibility for market participants to provide supplementary information on an optional basis, where relevant. This includes the requirement to prepare a summary of the disclosures provided by Article 10 SFDR.

The requirement to use the language of the home Member State of the financial market participant and a 'language customary in the sphere of international finance' should be replaced. In addition to being unclear it is also at odds with existing EU legislation and national rules requiring customer information to be provided in the language in which the product is marketed (see eg Article 185 (6) Solvency II, Article 23 (1) (c) IDD). Existing rules on the language in which product information is provided should be relied upon instead.

Should the ESAs wish to provide for an optional summary, the limitation to two sides of A4 when printed should be reviewed. This provision is unnecessarily restrictive and not digital friendly. In other areas of precontractual information legislators are looking to move away from paper-based requirements to allow for truly digital distribution. Requirements relating to paper-based measures should be removed as they are not 'future-proof' and will not allow for the layering of information or the incorporation of information by reference.

In order to reduce the administrative burden with regard to products which incorporate external funds (unit-linked products), European insurers would appreciate a clarification that information requirements on the website can be complied with by providing a link to the relevant information on the website of the fund provider.

***Question 16**: Do you think the **differences between Article 8 and Article 9 products** are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.*

The distinction between "sustainable investment products" and "products that promote environmental or social characteristics" is not clear. More guidance in Level 2 is needed to determine when a product will qualify for either product category and to facilitate compliance from insurers. Unless more guidance is given, national supervisors might end up having substantially different interpretations.

The industry notes that, a product should be considered to be in scope of Article 8 or Article 9 of the Regulation only where the product manufacturer markets and promotes the whole product as a sustainable product, in line with the Level 1 requirements. It is key that when the financial market participant follows a general sustainability strategy for its investments (eg exclusions, engagement), its products do not automatically qualify as an Article 8 or Article 9 product.

This difference is key because current regulatory requirements (eg the SFDR and the draft delegated acts on the integration of sustainability risks in Solvency II) already require insurers to consider sustainability risks and the long-term impact on sustainability factors. The obligation to take into account sustainability risks and factors (explicit in the amendments of Solvency II of the PPP) should not imply that all their products qualify as products promoting sustainability characteristics under Article 8 of the SFDR. This differentiation is fundamental because insurers follow sustainability strategies as a means to deal with sustainability risks, not only to have an effect on sustainability factors. For example, an exclusion policy on solid fossil fuels can be an example of a risk mitigating technique against the risk of stranded assets or transition risks from regulatory changes, etc. When such a strategy is performed at entity level, the specific product does not promote sustainability in itself, therefore the product should not be deemed as a sustainability-related product (under Article 8 or 9 product) unless it the product is marketed as sustainable.

In the absence of a clear definition, it is also difficult to assess which information is necessary to capture and distinguish the features of the two categories. While the industry understands that the RTS are subject to the definition of sustainable investments provided in Article 2(17) of the Regulation, a better qualification is needed for products that promote environmental or social characteristics. The confusion is exacerbated by a number of requirements, eg Article 15(2) on the sustainable investments with environmental or social objectives (this also makes it difficult to present the narrative and graphical representations requested in Articles 15.1 (b) and 15.2), or Article 18 on sustainability indicators used to measure the attainment of the environmental or social characteristics. This is also the case with regard to Article 16 (2) which transfers a part of the information requirements from Article 9 to Article 8 products. Additionally, it is unclear where the demarcation lies between article 8 and 9 investment products, or whether a product can apply to both.

Currently the only detailed guidance provided to financial market participants is the taxonomy regulation. Unfortunately, the ESAs conclude that the SFDR does not feature a link of environmentally sustainable investments to the taxonomy regulation (page 8 of the consultation paper) but give no further guidance on how to differentiate between these two categories.

The warning message required by Article 16 (1) and Article 34 (3) is, in our view, misleading and should be removed. It is highly unlikely that the average investor will know the legal meaning of "sustainable investment" as defined by Article 2 (17) SFDR. Neither will they be aware of the exact differentiation between Article 8 and 9 SFDR, which is, so far, unclear even to most experts. As a result, the investor may understand the warning as contradictory to the environmental or social characteristics promoted by the product. There is also no need for the warning. The investor receives accurate information on the precise sustainability related characteristics of the product in accordance with the provisions of the RTS.

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

The RTS are not sufficiently clear with respect to the graphical representation and to the narrative (also see answer to Q13 and Q18). The insurance sector does not understand the rationale for the requirement to distinguish between direct and indirect holdings, and wonders what the added value would be for customers.

Indirect investment may be in the form of investment funds, where the insurer does not own the underlying assets, but rather is a unit holder in the fund of collective investment. Indirect investments may also be in the form of derivatives. Bearing in mind the broad spectrum of derivatives, it is difficult to give a comprehensible graphical and narrative description of investment proportions including indirect investments. At least further guidance would be needed on how indirect investments should be considered.

The industry also questions what the sectorial criteria would be to classify investments in companies involved in different sectors (see also response to question 18). Additionally, it is not clear how instruments, such as government bonds should be classified.

***Question 18**: The draft RTS require in Article 15(2) that for Article 8 products **graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product**. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?*

The requirement in the graphical representation to differentiate between sustainable investments and investments contributing to the attainment of the characteristics of the product is confusing and it implies that a product under Article 8 could still have environmental or social objectives.

In addition, the industry observes that the same graphical representation for very different types of products will end up misleading end-investors, as it does not consider the constraints and the allocation of different products types. Experience shows that graphic representations are particularly vulnerable to be misinterpreted by consumers as they imply a level of comparability which they often cannot provide. There is also a tendency for consumers to overlook footnotes which explain the limited informative value of the presentation. In particular cases, graphic representations may be helpful in understanding the relevant data. Whether or not this is the case should, however, be decided by the provider of the product based on the characteristics of the particular product in question. The allocation of different types of products in different financial instruments risks misleading customers, potentially to the detriment of other relevant information to make an investment decision (eg a product investing a lot of the funds in government bonds would tend to look less "sustainable" since government bonds presumable would be classified as "remainder").

Furthermore, the presentation of the same information in a graphical way, and as a narrative, leads to duplications which should be avoided in the interest of the investor.

Should the ESAs pursue the requirement of a graphical representation, the insurance industry would urge the ESAs to perform a test run of the requirement on a range of actual products in order to fully assess the challenges that this requirement is associated with.

Finally, we appreciate that this graphical representation is not required for MOPs at wrapper level. According to article 22 and 32, there is a derogation for financial products with underlying investment options, so that article 15 and 24 do not apply to MOPs. Indeed, it is not feasible for the graphic to capture the nature of the overall product where a retail investor can choose between a large number of underlying funds, and a graphic representation at the level of each underlying fund is more workable.

_Question 19__: Do you agree with always disclosing exposure to_ **_solid fossil-fuel sectors_**_? Are there other sectors that should be captured in such a way, such as_ **_nuclear energy_**_?_

The industry suggests that sectorial disclosures are developed in line with the taxonomy regulation and based on the classification at activity level as provided by investee companies.

As power generation activities that use solid fossil fuels are clearly excluded from sustainable activities as classified in the taxonomy regulation (article 19–3 "The technical screening criteria referred to in paragraph 1 shall ensure that power generation activities that use solid fossil fuels do not qualify as environmentally sustainable economic activities"), the RTS should follow the same approach of the taxonomy regulation, ie start by reporting on solid fossil-fuel exposures as they are those most harming to climate change mitigation. Further sectorial exposures could be proposed at a later stage, in line with the definitions and the development of the taxonomy.

If sectorial disclosures are required, it will be necessary to give more precise information on how to define such investments and what companies should take into account (eg X% of revenues stemming from the production, processing, distribution, storage or combustion of fossil fuels? Threshold on turnover or energy mix? All companies/entities involved in production/consumption of fossil fuels? How to assess corporate investment in a large diversified company involved in coal or for a government bond?).

Guidance on more detailed disclosures should be investigated at a later stage, in the context of the empowerment under Article 25 of the taxonomy regulation.

_Question 20__: Do the product disclosure rules take sufficient account of the differences between products, such as_ **_multi-option products or portfolio management products_**_?_

The insurance industry has some concerns regarding the lack of clarity of the application of these rules to MOPs. It should be clarified that where a MOP qualifies under Article 8 or 9 of the Regulation, Articles 14-21 and 23-31 of the RTS do not apply, and MOPs manufacturers would only need to comply with Article 22 and 32 of the RTS. It would also be helpful for the RTS to explicitly state that this means no information on the product wrapper would need to be disclosed.

The industry understands that a MOP qualifies under Article 8 of the Regulation where one or more of the underlying investment options promote environmental or social characteristics or have sustainable objectives. As such, the industry appreciates that only those sustainability-related options have to comply with Article 22 of the RTS. As regards the requirement under Article 22(b), it is important to clarify that merely a reference to the information provided by the underlying investment options is sufficient (and not the information itself). Given the large number of options available for some products this is the only feasible way of providing the information.

The acknowledgement in Recital 36 that overall disclosures for MOPs will be lengthy is appreciated. However, there is no specific obligation under Article 29(1) IDD to give preference to certain underlying options when selling a multi-option product. It appears that this is a general reference to the requirement to provide 'appropriate information' rather than implying a specific regulatory requirement for MOPs.

Questions remain, however, with regard to unit-linked insurance products, so called hybrids, where part of the investment is allocated to a fund chosen by the policyholder and another part to the insurer's collective pool in order to ensure a guaranteed maturity value. The same applies to unit-linked products where the investment in the funds chosen by the policyholder is limited to a part of the product's lifespan (typically the savings phase where the capital is transferred to the collective pool for the payment of annuities during the retirement of the policyholder). It is very important that insurers are able to rely on Article 22, Article 32 and Article 52 of the

RTS also with regard to the fund component of these products in order to avoid the burden of having to develop and maintain sustainability information for all conceivable combinations of funds and collective pool.

In our view there are two possibilities to provide legal certainty with regard to these products:

- Clarification could be included (eg in Recital 34) that the collective pool constitutes an investment option in accordance with Articles 22, 32 and 52.
- Alternatively, a further point (c) could be added to Articles 22, 32 and 52 specifying that if the investment options cover only part of the total investment in the product or part of the product's lifespan, adequate information on the remaining part should be provided. This information might include:
  - A short, narrative description as to which extent or in which phase the investment will not be allocated in the funds chosen by the policyholder; and
  - Where applicable, the information required by Article 8, Article 9 or Article 11 of the Regulation with regard to the remainder of the investment (collective pool).

In addition, the RTS should provide the necessary clarity on closed business: ie for products that are no longer available to purchase but are managed for the benefit of existing policy holders. For these products, the ESAs should clarify that no product level disclosures would apply, including in cases where a customer switches underlying funds. In addition, for closed-book entities it should be clarified that website reporting is not required by the product manufacturer.

Question 21: *While Article 8 SFDR suggests investee companies should have "**good governance practices**", Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including "sound management structures, employee relations, remuneration of staff and tax compliance". Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?*

The insurance industry does not believe that it is appropriate for the specific details included in Article 2(17) to be applied to Article 8 products through the RTS. Good governance practices are analysed in various ways by financial market participants in a manner that is appropriate to the varying nature of investee companies.

The list in Article 2(17) SFDR is not exhaustive and that the list forms only part of the broader definition of a 'sustainable investment'. Applying only part of this definition to Article 8 products is potentially confusing.

Question 22*: What are your views on the preliminary proposals on "**do not significantly harm**" principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?*

On one hand, the DNSH principle of the taxonomy appears to be a narrow concept related specifically to thresholds on the sustainability assessment of economic activities, while on the other hand, the adverse impact appears to be a risk-based concept related to how investment affect sustainability factors.

Despite this, we share the view of the ESAs that there is a strong link between the two concepts and see value in a degree of alignment that recognises how these two concepts will exist in parallel. Nevertheless, the industry believes that the current drafting should clarify these concepts and provide guidance on the difference between principal adverse impact and the concept of DNSH where alignment is not possible.

Furthermore, European insurers believe that the proposals on DNSH principle with regard to Article 8 products (Articles 16(2), 34(3), 36 (b) and 38 of the draft RTS) are unhelpful. Introducing such requirements for Article 8 products only exacerbates the confusion about the distinction between Article 8 and Article 9 products and risks overloading consumers with unnecessary information.

Finally, the sector agrees with the wording in Recital 33: *"financial market participants should be transparent with regard to the criteria used, including any potential thresholds set, in order to assess that the investments qualifying as sustainable do not significantly harm environmental nor social objectives."* The European insurance industry believes information on management of controversies could also help to explain how the sustainable investment does not significantly harm the sustainable investment objectives.

***Question 23**: Do you see merit in the ESAs defining widely used **ESG investment strategies** (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?*

The industry does not believe that there would be added value in defining such strategies further, as they can already be defined in pre-contractual information under investment strategies, where additional information can be referenced.

In addition, there are challenges in the overall risk management of adverse impact assessments, for instance there is limited room for insurers' discretion and the approach can create an obligation to take adverse impact in all investment strategies, possibly creating conflict between the insurer's regulator obligations and their fiduciary duties to act in the best interests of their clients.

***Question 24**: Do you agree with the approach on the disclosure of financial products' **top investments** in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?*

The insurance sector notes that this information is available if the delay of publication is aligned with annual reporting of funds, and that this information should often be provided by the investment firms. While the industry supports transparency, it notes that the chosen approach cannot be excessively burdensome, and it needs to balance adequate value for customers and burden for financial market participants. Article 46 suggests that disclosures would apply to the top 25 investments, however we would suggest that the top 10 would be more appropriate and helpful. The ESAs should also elaborate how to disclose information about sector and location with respect to financial instruments such as equity, bonds, covered bonds, derivatives, etc.

***Question 25:** For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.*

a) An indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy – in the draft RTS below it is in the pre-contractual disclosure Articles17(b) and 26(b);

b) A short description of the policy to assess good governance practices of the investee companies – in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);

c) A description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product – in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and

d) A reference to whether data sources are external or internal and in what proportions – not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.

All four elements (a-d) listed in this question should indeed be provided to consumers, and in fact are already included in various existing mandatory disclosures. Insurers provide details of their approach to sustainability in their sustainability policy, while the impact on their investment strategy would be detailed in their investment policy. For insurers in particular, the new requirements in the draft Delegated Acts under Solvency II require this information to be available to investors. Likewise, separate risk policies are engagement policies are already produced.

Rather than requiring this information to be provided via a sperate 'short description' of the existing policies or requiring the policies to be reproduced for the purposes of the Regulation, links in the website disclosures should be sufficient. The policies are already readable and are intended to be used by investors and so we see no need for them to be shortened or summarised under this Regulation.

It should be borne in mind that there are insurance undertakings holding several hundred thousand investments. Necessary information should – where this is possible with regard to the provisions on level 1 – be provided on the website. Complex information is usually more easily accessible for the user if provided on a website than if it is part of an extensive patchwork of different product information provided on paper or on another durable medium.

Question 26*: Is it better to include a* ***separate section on information on how the use of derivatives*** *meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to* ***integrate this section with the graphical and narrative explanation*** *of the investment proportions under Article 15(2) and 24(2)?*

The insurance industry does not see the added value on a separate section on derivatives. Regarding the numerous information to disclose, a focus on derivatives is not necessary and seems excessive and complex for end-investors. The use of derivatives should be covered in the financial market participant's investment and risk policy instead.

The industry also highlights that a separate section would be superfluous as, with regard to the insurance sector, the usage of derivatives is already covered under the PPP (article 132 (4) of the Solvency II Directive dictates that the use of derivative instruments shall be possible only insofar as they contribute to a reduction of risks or facilitate efficient portfolio management).

Should the ESAs have to choose an approach, then it would be better to disclose their usage within the narrative explanation under article 15(2) and 24(2). In light of the above observations, the industry suggests deleting the wording on derivatives in articles 19 and 28, and proposes the following wording (under article 15(2) under point b, (iv) and article 24(2) under point b, (iv)) to explain how derivatives should be taken into account: "***(iv) the use of derivatives***".

Should the ESAs require a deeper level of disclosure than what is already disclosed in the financial market participant's investment and risk policy, then **clear guidance is required for harmonisation and for preventing window-dressing**. It needs to be explained when and how a derivative - which is already a risk management tool under Solvency II and can be used also to deal with sustainability-related risks – qualifies to:

- Meet environmental or social characteristics promoted by the financial product, or
- Account for PAIs of the financial product.

For example, when and how should interest rate swaps be treated? Equally important, should derivatives be accounted for in the graphical section, then it should also be specified how this should be done.

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

The implementation costs of such a sophisticated disclosure system are much higher than estimated in the preliminary impact assessment for the following reasons:

- References to potential implementation costs date from 2018 and therefore could not take into account the requirements of this draft RTS and the numerous indicators. This holds true for market participants, financial advisers and insurance distributors.
- The impact assessments produced by the ESAs do not give due consideration to the range of different financial market participants and financial advisers to which these requirements will apply. For example, the cost benefit analysis envisages small IT costs for making changes to facilitate website disclosures. For small insurers and intermediaries this will not be the case.
- The industry also notes that many of the costs related to compliance with the SFDR are fixed and unrelated to the size of the financial market participant or adviser. This necessarily means the relative compliance cost for smaller intermediaries will be higher.

The sector also notes that the risk of overload of precontractual information should be better assessed. The ESG information provided under the SFDR requirements and these RTS comes on top of a significant amount of pre-existing precontractual information. The level of disclosures should be tested on retail investors to assess whether such detailed information is really required and assists in making informed decisions in relation to financial products promoting, environmental and social characteristics and products with a sustainable investment objective.

Moreover, the industry would like to point to the timeline stipulated on level 1 which is already extremely ambitious. It does not seem possible for detailed disclosures and mandatory templates to be developed, consulted and finalized while still leaving an adequate implementation period for the market participants.

Finally, the insurance industry points out that there might be conflicting results from taxonomy screening and PAI analysis. The following example illustrates this issue by showing how a sustainable investment according to the taxonomy screening criteria and the result of the principal adverse impact analysis of the same investment can lead to contradictions.

> *An aluminium producer uses an efficient process to produce aluminium with relatively low CO2 emissions. This economic activity can be classified as "green" according to the taxonomy criteria (Article 5 of the taxonomy regulation). At the same time, these CO2 emissions are nevertheless included in the calculation of the PAI for the greenhouse gas emissions indicator. This means that, although this investment is classified as "green" for the taxonomy, the CO2 emissions of this activity (via aggregation at the company level) have a negative impact on the PAI relative to other investments in companies whose CO2 emissions are lower or not significant.*
>
> *This shows that the technology-neutral approach of the taxonomy is not reflected in the PAI concept, potentially leading to wrong incentives or window dressing. For example, in order to reduce the indicator of greenhouse gas emissions in the PAI concept and present their entire portfolio more favourably, investors may be inclined to reduce their investments in CO2-intensive industries or to increase their investments in companies from sectors with lower CO2 emissions. While reducing investments in CO2-intensive industries has environmental advantages, this approach would be detrimental both in terms of investment activity for the economy as a whole, in terms of diversification of the portfolios of insurers or other financial market participants, and even in terms of financial stability by inflating demand for some types of investments or by affecting the funding cost for some sectors.*

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