

MEMO# 33535

May 13, 2021

ICI Global Submits a Response on the ESAS' Consultation about Taxonomy-Alignment Disclosure for Products

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TO: ESG Task Force

EU ESG Disclosure Regulation Working Group

ICI Global Regulated Funds Committee RE: ICI Global Submits a Response on the ESAS' Consultation about Taxonomy-Alignment Disclosure for Products

Yesterday, we submitted a response (attached) to a consultation by the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) on proposed regulatory technical standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR) for taxonomy-related disclosures for SFDR Article 8 and 9 products that contribute to environmental objectives.[\[1\]](#)

The ESAs proposed to amend the not-yet-final draft SFDR RTS and the corresponding pre-contractual and periodic disclosure templates by adding new taxonomy-related disclosures, which would include, among other new items:

- a graphical representation in the form of a pie chart of the taxonomy-alignment of investments of the financial product (calculated according to the RTS-prescribed methodology); and
- a statement that the activities funded by the product that qualify as environmentally sustainable are compliant with the detailed criteria of the Taxonomy Regulation (TR).

Highlights from our response

- **Single rulebook approach and the consolidated SFDR/TR templates.** We agree with the single rulebook approach for the SFDR and TR disclosures and the use of consolidated templates, where the taxonomy sections will be added only for products that are subject to the TR's requirements. Alternatively, the ESAs can consider the use of separate templates for SFDR-only products vs. SFDR products that plan to have taxonomy-aligned investments.
- **The Taxonomy Regulation's timing and sequencing provisions.** The TR is a cornerstone of the EU's sustainable finance agenda, and the disclosures should be

sequenced appropriately. For the financial product taxonomy-alignment reporting, the products will base their pre-contractual and periodic disclosures on the information from the investee companies (the methodology for investee companies' reporting is yet to be adopted by the European Commission). In this regard, on 7 May 2021, the European Commission published for consultation a delegated act that relates to the corporate issuer taxonomy-alignment disclosures (under Article 8 of the Taxonomy Regulation), in which it proposed a simplified corporate issuer reporting for 2022, with the full reporting beginning in 2023. The taxonomy-alignment disclosure rules for products should follow a similar approach.

- **Clearly communicating the limited scope of the Taxonomy Regulation.** It is essential for the TR's success and its long-term credibility with investors that the templates inform investors of the TR's current limited scope. Thus, the templates must include, at the outset, a clear explanation that the taxonomy alignment disclosure would cover only 2 out of TR's 6 environmental objectives in 2022 and only environmental objectives in 2023 and beyond. The templates must be clear that the TR does not include social objectives.
- **Clarifying the products to which taxonomy-alignment disclosure applies.** The ESAs should clarify that the RTS for the taxonomy-alignment disclosure will apply only to products that target or intend to invest in companies that are taxonomy-aligned, and that they will not apply to products that happen to have taxonomy-aligned investments in their portfolios.
- **Making the RTS disclosure consistent with the TR's mandate.** The TR requires products to disclose "proportions" of taxonomy-aligned investments and the information on the environmental objectives to which the products' underlying investments contribute. The draft RTS, however, would require products to show "the minimum" taxonomy-alignment and non-alignment and a "clear explanation of the reasons" for investing in "economic activities that are not environmentally sustainable economic activities." These requirements go well beyond the TR's mandate and should be deleted from the RTS and the corresponding templates. Introducing new concepts further complicates disclosures and introduces negative inferences that were not intended by the TR. For example, the question about "not investing in the environmental objectives" would force products investing in social objectives for which there currently is no taxonomy to rebut the negative impression about its investment objectives.
- **For the pre-contractual disclosures, the ESAs should clarify the nature of the graphical illustration of the "taxonomy alignment."** For example, it appears that the representation can be a "snapshot" of the product's holdings at the time of the pre-contractual document's preparation. For some products (e.g., new products or products that newly intend to have taxonomy-aligned investments), it may be an anticipated taxonomy alignment. For both cases, the RTS should make it clear that the actual alignment may vary from the prospectus disclosure throughout the life of the product, and investors will be able to see the products' actual taxonomy alignment percentages in the periodic statements for the relevant reporting period.
- **Choice of a single KPI (turnover, capital expenditure, or operating expenditure).** We agree that the same KPI should be used for all investments by a given product, but the ESAs should confirm that asset managers will have the discretion to select the KPI for each product, based on their needs for the products.
- **Third party assurance statement.** We strongly disagree with the proposed requirement for pre-contractual documents that a TR-compliant narrative must be accompanied by a statement "whether the statement has been subject to an assurance provided by an auditor or a review by a third party." With respect to UCITS,

the pre-contractual disclosure (prospectus) is subject to extensive legal requirements, including a stringent regulatory pre-approval process by national competent authorities (NCAs). There is no reason for the statement of taxonomy compliance to be the only item that states whether it was confirmed by a third party. The ESAs should avoid creating the appearance that this piece of information is more valuable than other information in the Sustainable Finance Disclosure Regulation (SFDR)/TR templates and other information in the prospectus.

With any questions, please contact me at adriggs@ici.org.

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endnotes

[1] See Memorandum to ESG Task Force, EU ESG Disclosure Regulation Working Group, and ICI Global Regulated Funds Committee [33373], dated 24 March 2021, *available at* <https://www.ici.org/memo33373>. A summary of the consultation is attached, and the consultation is available here: <https://www.eba.europa.eu/esas-consult-taxonomy%E2%80%93related-product-disclosures>.

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