



**PensionsEurope input to ESA's Joint Consultation
Paper concerning Taxonomy-related
sustainability disclosures/RTS.**

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General remarks

PensionsEurope welcomes the opportunity to comment on these draft measures. We also applaud the effort of the ESAs to clarify the Level 1 provisions of both the SFDR and the Taxonomy Regulation through the letter of 7 January to the European Commission and the webinar of 29 April.

PensionsEurope reiterates the concern that disclosure towards members/beneficiaries of IORP's (and, more broadly, towards any consumer purchasing a financial product) should be simple and focused on the main features of the product (included ESG factors). Nevertheless, the templates provided to the EU Commission by EIOPA, EBA and ESMA on 4th February 2021 are complex and too long. They are not easy to understand by members and in the end, there is the risk that those to whom such information is directed will not be interested in reading.

The SFDR does not take into account to a large degree a proportionality principle for different financial entities, which instead would be very useful for IORP's. Based on that, changes to the RTS following this consultation phase should be as limited as possible and should not further increase their complexity.

PensionsEurope members are expressing also concerns related to the timetable of the RTS and to the availability of the data to complete the RTS. While the approach followed by EIOPA, EBA and ESMA to amend the soon to be finalised RTS, to minimize duplication and complexity is positive, it will cause a big pressure on IORP's to comply from the 1st January 2022. If a postponement of the entry into force and application of the RTS is not possible, PensionsEurope advocates that a flexible and more principle-based approach on a best-effort basis in the early stage should be adopted. This should be done also by taking into account the fact that the taxonomy regulation is still a work in progress and the collection of data would not be an easy task, at least in the first phase of the application of the RTS.

Moreover, we feel that the combined information requirements of the SFDR and TR will lead to an overflow of information for pension funds participants and retail clients. Therefore, we recommend a balanced approach to information requirements to find a compromise between the information needs of different users.

As such we recommend:

- Removing Article 16a (1) a (ii) from Commission Delegated Regulation (EU) 2021: we would caution against these 'negative' explanations because they require an understanding of the difference between 'promotion' and 'sustainable investments'.
- Removing or reducing (or putting at the bottom) of the entire sector the following elements: the classification of the financial product as being Article 8/9 SFDR, making sustainable investments according to Art. 2(17) SFDR, and doing the same in environmental objectives that may or may not fall within the Taxonomy. This type of information is meaningless for pension fund participants, or retail clients more generally.

In our answers below, we have particularly answered on the specific questions of the consultation

Answers to specific questions

Question1: *Do you have any views regarding the ESAs' proposed approach to amend the existing SFDR RTS instead of drafting a new set of draft RTS?*

PensionsEurope agrees on the proposed approach to amend the soon to be finalized RTS to minimize duplication and complexity. We also support the aim to define a single rulebook on sustainability disclosure instead of having different delegated acts. However, the choice of the ESAs has an impact on the overall timetable expected for the finalization of the delegated acts envisaged by Regulation (EU) 2019/2088.

As the ESAs' themselves recognize, they were not able to start the work on the amendments to the RTS until the beginning of 2021 and the delay will impact the release of the RTS. Financial entities would not have sufficient time to comply with the new requirements, given that the ESAs' expect to issue a final report with the amended RTS at the latest by early July 2021. The revised RTS will then be subjected to the scrutiny of the EU institutions and the delegated regulation is planned to apply from 1 January 2022.

The concerns created by the compressed timetable match with those triggered by the lack of information to fulfil the disclosures given that the work on Taxonomy is still underway and, when finalized, it will take some time for companies to comply with.

Moreover, PensionsEurope believes that more clarity is required on the terminology of 'sustainable investments'. Recital 19 of the Taxonomy Regulation suggests that sustainable investments include taxonomy-aligned investments. However, the difference between 'sustainable investments' and 'investments with other E/S characteristics' as in the templates is not clear.

Compressed timetable and lack of reliable information, at least in the first stage, are alarming for all financial entities, especially for IORPs. Occupational pension schemes are usually small entities that rely on a very restricted staff and small budgets, therefore the compliance to the RTS in a squeezed time would be too burdensome. If a postponement of the entry into force and application of the RTS is not plausible/possible, at least a flexible and more principle-based approach on a best-effort basis should be adopted in the early stage.

Question 2: *I Do you have any views on the KPI for the disclosure of the extent to which investments are aligned with the taxonomy, which is based on the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies? Do you agree with that the same approach should apply to all investments made by a given financial product?*

PensionsEurope sees revenue and capital expenditures (CAPEX) alignment as the most important metrics. It could be envisaged that CAPEX plays a bigger role in the early stages of the Taxonomy, as companies make investments towards Paris-alignment, while later on revenue becomes more relevant when companies' products and services comply with the screening criteria. Some MS Pension funds currently map their investments against the SDGs and use the revenue to do so.

According to some PensionsEurope members, the formula for the computation of the KPI and the underlying assumptions do not seem very straightforward. The computation of the KPI implies a complex procedure and it is based on information not easily accessible. While the same approach for the computation of the KPI would help overtime to create comparisons, it risks not considering the differences in data availability and economic activities. As a result, at least in the first stage of application, financial market participants should be free to consider the most suitable KPI for each activity/investment in a non-financial undertaking investee company.

For the IORP's investing in mutual funds, following a proportionality approach, some minimum thresholds, under which this kind of investments should not be considered in the computation of the KPI, should be fixed. In any case, it should be up to the fund manager to provide the IORPs with the KPI of the fund in which IORPs would invest.

EBA has suggested that banks publish their green asset ratio (GAR) as the main taxonomy KPI. However, including GAR into the KPI calculation of an investment fund is questionable as this would create a mixture of revenue-aligned figures for non-financials and asset-aligned figures for financials.

Question 3: *Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?*

PensionsEurope sees limited value in operational expenses (OPEX) alignment disclosures and regards revenue and CAPEX disclosures as sufficient (we assume that in this consultation 'operational expenditures refer to 'operating expenses as described in the Technical Report of the Technical Expert Group from March 2020).

A drawback of OPEX is that there is no definition of OPEX in IFRS or US GAAP. This means that there may be differences between investee companies concerning the cost categories that are included in their reported OPEX figure. In addition, different depreciation and amortization policies between investee companies could make OPEX figures less comparable.

An advantage of reporting OPEX would be that investors get a clearer picture of the future taxonomy alignment of a company as it may be incurring costs that do not yet show up in revenue figures. However, we believe that CAPEX sufficiently reflects the plans of companies in this respect.

Question 4: *The proposed KPI includes equity and debt instruments issued by financial and non-financial undertakings and real estate assets, do you agree that this could also be extended to derivatives such as contracts for differences?*

PensionsEurope disagrees on the inclusion of derivatives for the computation of the KPI. The formula is already complex, and it is not appropriate to increase the level of complexity. Moreover, for IORP's the use of derivatives is limited. Based on IORP directive article 19 c, investment in derivative instruments shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management. Therefore, derivatives are mainly used for hedging purposes and not to get returns. Financial market participants (FMPs) could be offered the option to provide comments on the use of derivatives in the template. For example, FMPs could explain how the use of derivatives could alter the Taxonomy alignment of the product if the impact of derivatives were taken into account in the KPI calculation. For these reasons, the KPI should only be limited to equity and debt instruments, with which IORP's take a direct exposure on the financial and non-financial undertakings.

Question 5: *Is the use of "equities" and "debt instruments" sufficiently clear to capture relevant instruments issued by investee companies? If not, how could that be clarified? Are any specific valuation criteria necessary to ensure that the disclosures are comparable?*

No. We suggest using the ESMA terminology in its Article 8 Taxonomy Regulation draft advice for equity investments (ESMA30-379-325). ESMA uses the term 'public and private equity, which is a clearer term than 'equities' as the latter may suggest that only listed equities are in the scope of the KPI calculation, which is not the case. In our view, the terminology 'debt instruments' is sufficiently clear

Question 6: *Do you have any views about including all investments, including sovereign bonds and other assets that cannot be assessed for taxonomy-alignment, of the financial product in the denominator for the KPI?*

Government bonds and other assets that cannot be assessed for taxonomy alignment should not be included in the denominator of the KPI. From a logical perspective, the ratio should be computed only between fully comparable sets of data, to have a clear measure of the share of taxonomy-aligned investments held by the financial product. Total investments including those which are not eligible under the taxonomy (including sovereign bonds and other investment that cannot be assessed for taxonomy-alignment) could still be reported and explained separately to provide a more transparent picture of the product.

Additionally, for financial products largely invested in sovereign bonds, as is usually the case of IORPs, the criterion proposed in the draft RTS seems to follow a penalizing approach, as they would appear as financial products not very much taxonomy-aligned. Considering the government bonds only for

the purpose of the KPI would reflect a misleading picture of the portfolios of financial products issued by IORP's as poor pro-environment investors. It could cause pressure on the board of the occupational pension funds to change the asset allocation of their investments in a direction not fully aligned with the interests of members/beneficiaries, while the IORP II directive requires the occupational pension funds to invest their assets on a prudent basis, taking into account the long-term interests of the members/beneficiaries.

Besides, it should be noted that the final report on SFDR RTS, published on 4 February 2021, provides for investments in sovereign and supranational principal adverse impact (PIA) indicators. The fact that there are separate indicators for this type of assets may allow comparisons for sustainability purposes among debt and other kinds of assets. Therefore, the ESAs should clarify whether, and under which circumstances, consideration of PIA may provide other criteria to determine a percentage of public debt sustainability in case the latter is included in the above-mentioned denominator

Question 7: *Do you have any views on the statement of taxonomy compliance of the activities the financial product invests in and whether those statements should be subject to assessment by external or third parties?*

We are strong advocates of ensuring that companies report reliable data on non-financial issues. Data that cannot be obtained from companies directly will be provided by data providers. While at first sight the statement could be seen as an assurance of more transparency, it does not seem to add real value to the information already provided to assess the taxonomy alignment of the financial product (KPI graphical breakdown of the assets).

National competent authorities should be responsible for supervising compliance of Financial Market Participants with the Taxonomy Regulation. We do not recommend requiring external assurance by third parties, as this would not entail the assurance of the underlying data.

Particularly in the first phase of application of the KPI, a self-certification disclosure mechanism seems more appropriate. In any case, the statement should never be intended as mandatory.

It is not clear what entity would be considered as an external or third-party and what level of assurance this could provide to the members of IORPs on Taxonomy compliance. In the end, the statement would most likely be carried out by a consultancy or a rating agency, adding extra costs to the pension plan. These costs would be transferred to members/beneficiaries and would damage their final pension without adding real value to them.

Question 8: *Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?*

In principle, PensionsEurope agrees on that as it will simplify the requirements for financial entities. Nevertheless, as companies begin to report their taxonomy alignment only in 2022, the periodic disclosures level 2 requirements should enter into application in 2023, given that investors will not have the data available for periodic disclosures yet in 2022.

However, if the requirement continues to be compulsory in 2022, in this context of operational implementation challenges relating to the Taxonomy asset ratio disclosures, we recommend a transitional best-effort approach in the first year of the application of the Taxonomy Regulation. Such

a transitional period would help investors address the uncertainties related to the calculation of green asset ratios stemming from the lack of available ESG company disclosures, non-availability of data against the Taxonomy DNSH and overreliance on the sector-based coefficient methodology developed by the JRC and data vendors.

Question 9: *Do you have any views on the amended pre-contractual and periodic templates?*

Disclosure towards members/beneficiaries of IORPs (and, more broadly, towards any consumer purchasing a financial product) should be simple and focused on the main features (included ESG factors) of the product. Instead, the templates provided to the EU Commission by EIOPA, EBA and ESMA on 4th February 2021 are complex and too long. They are not easy to understand by members and in the end, there is the risk that those to whom such information is directed will not be keen to read them. As an example, in some MS, the sustainability annex in the PreContractual Information risks being longer than the key information document with the main features of the IORPs.

In general, pre-contractual documents should give more qualitative information as opposed to quantitative data, even more so when the data are not yet at the FMP disposal. The narrative disclosures would explain how and to what extent the Taxonomy will be used in determining the sustainability of the underlying investments. As part of this qualitative disclosure, financial market participants could choose whether to include an expected alignment percentage instead of a minimum. It could be premature to indicate a minimum commitment alignment percentage when the real alignment of the EU market is still unknown

The SFDR does not take into account the proportionality principle for different financial entities, which instead would be very useful for IORPs. Based on that, changes to the RTS following this consultation phase should be as limited as possible and should not further increase their complexity. This would be useful both in terms of clear and adequate disclosure to members/beneficiaries of IORPs and to ease the compliance by IORPs and other financial entities.

Finally, the difference between Article 8 and 9 products is not clearly defined and currently we are still waiting for more clarity from the European Commission on this matter. We believe that more clarity is required on the terminology of 'sustainable investments'. Recital 19 of the Taxonomy Regulation suggests that sustainable investments include taxonomy-aligned investments. However, the difference between 'sustainable investments' and 'investments with other E/S characteristics' as in the templates is not clear. The ESAs should clarify if on the annex for pre-contractual and periodic reporting for the case in which a product has two or more sustainable investment options qualifying as a financial product referred to Art. 8 and Art. 9 of Regulation 2019/2088, there should be an annex for any investment option qualifying for Art. 8 and Art. 9 or all the information could be filled into a unique single document. As regards art. 63 and 69 of the RTS further clarification could be provided on how to compare the performance of the product with the other indexes requested.

Question 10: *The draft RTS propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products (including Article 5 and 6 TR products which are a sub-set of Article 8 and 9 SFDR products). Do you believe it would be preferable to have separate pre-contractual and*

periodic templates for Article 5-6 TR products, instead of using the same template for all Article 8-9 SFDR products?

SFDR makes a distinction between Article 8, Article 9 products and products that do not consider sustainability risks relevant or do not consider principal adverse impacts. Adding additional product categories or more templates would be confusing to pension scheme participants or end investors while not providing additional insights. It would be sufficient to clearly articulate the investment objective (Article 9) or the ESG characteristics that are promoted (Article 8) by the product.

If ESAs proceeded with the unified pre-contractual and periodic templates applicable to all art. 8 and 9 SFDR products, ESAs should clarify whether the templates allow the flexibility of constructing the templates according to the product characteristics and eliminating from the template those subsections that do not apply. ESAs should also clarify if the templates should be handed out to the investors in full even though some of the subsections will not be fulfilled since they do not apply to the product characteristics, especially for article 9 products that have an environmental objective but do not invest in environmentally sustainable activities.

Question 11: *The draft RTS propose in the amended templates to identify whether products making sustainable investments do so according to the EU taxonomy. While this is done to clearly indicate whether Article 5 and 6 TR products (that make sustainable investments with environmental objectives) use the taxonomy, arguably this would have the effect of requiring Article 8 and 9 SFDR products making sustainable investments with social objectives to indicate that too. Do you agree with this proposal?*

We are currently not sure to which extent pension funds would consider that they make environmental 'sustainable investments', which would trigger the use of the Taxonomy. Given that the social taxonomy has not been defined yet, the proposal conflicts with Article 5 of the Taxonomy Regulation, which only requires Taxonomy disclosures for products that contribute to an environmental objective. It, therefore, seems to put an additional burden on pension funds that only focus on social issues with their sustainable investments.

The ESAs should clarify whether and, should that be the case, under which circumstances, arts. 8 and 9 SFDR products, as well as article 7 of Taxonomy Regulation products, must include the same disclaimers as regards "do not take into account the EU criteria for sustainable economic activities.

Question 12: *Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?*

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About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes.

PensionsEurope has **24 member associations** in 17 EU Member States and 4 other European countries¹.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **25 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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¹ EU Member States: Austria, Belgium, Bulgaria, Croatia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.