JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning Taxonomy-related sustainability disclosures

Date: 17 March 2021
ESMA34-45-1218

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (hereinafter "RTS") on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (hereinafter Sustainable Finance Disclosure Regulation "SFDR") and in particular on the specific questions summarised in Section 3 of the consultation paper under "Questions to stakeholders".

Comments are most helpful if they:

- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.

- Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.

- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

- When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.

- The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading 'Your input - Consultations' by 12 May 2021.

- Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[1]. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

[1] Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	MSCI Ltd.
Activity	Other Financial service providers
Are you representing an association?	☐
Country/Region	UK

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
MSCI appreciates the opportunity to comment on the Joint Consultation Paper concerning Taxonomy-related sustainability disclosures.

MSCI Equity Indexes

MSCI is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indexes, ESG research and tools, and portfolio risk and performance analytics. MSCI is headquartered in New York, with research and commercial offices around the world.

MSCI has been calculating indexes for more than 45 years. The MSCI equity indexes include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes.

MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI equity indexes.

MSCI equity indexes are used worldwide by:
• assets owners to help them with their mandate decisions and with reviewing their managers' perfor-mance;
• active asset managers so that they can actively manage their funds against an index and report performance;
• passive fund managers to issue passive funds and ETFs based on the indexes;
• broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
• stock exchanges to create equity index linked futures and options contracts; and
• CCPs to calculate the risks of its positions for index linked futures and options contracts.

During 2013 and 2014, MSCI implemented the IOSCO Principles for Financial Benchmarks, was externally audited during each of 2014, 2015 and 2016 for the MSCI equity indexes and select MSCI private real estate indexes, and posted the adherence statements and audit reports on the Index Regulation page of www.msci.com. During 2017, 2018 and 2019, MSCI devoted those resources to implementing the EU benchmark regulation ("BMR"), and MSCI posted the IOSCO adherence statements on the Index Regulation page of www.msci.com.

On 5 March 2018, MSCI Limited, which is a UK subsidiary of MSCI Inc., was granted authorization by the UK FCA as a UK administrator under the BMR for the MSCI equity indexes. MSCI was the first major global equity index provider to become authorized under the BMR. On 13 June 2019, MSCI notified the FCA in relation to specific UK MSCI Private Real Estate Indexes used as regulated benchmarks under the BMR. On 16 December 2019, MSCI notified the FCA in relation to the MSCI fixed income indexes.

MSCI ESG Research

For over 40 years, MSCI ESG Research has measured and modelled Environmental, Social and Governance (ESG) risk[a]. MSCI is a leading provider of ESG ratings, indexes and analytical tools. We aim to help investors integrate ESG across their entire investment process; powering better investment decisions.

Our solutions:

*First ESG provider to assess companies based on industry financial materiality, dating back to 1999. Only dataset with live history (12+ years) demonstrating economic relevance[b]. For over 11 years, we have rated companies on their exposure to, and management of, industry-specific ESG risks. We rate nearly 14,000 issuers representing more than 680,000 securities, with 90% of equity and fixed income market value. Our research is used by over 1,400 clients globally. Clients can use ESG ratings to support fundamental and quant analyses, portfolio construction and risk management and thought leadership and engagement.

* MSCI ESG Indexes: MSCI is the world's largest provider of ESG indexes with over 1,500 ESG equity and fixed Income Indexes leveraging MSCI ESG Research data to support ESG integration, screening and impact approaches. Several global asset owners have selected MSCI ESG Indexes, with over $180 billion allocated in recent years[c]. The indexes can also be used as the basis for exchange-traded-funds and other index-based products.

* MSCI ESG Analytics: Our ESG research, data and indexes are available within MSCI's analytics sys-tems. MSCI Analytics clients can explore ESG exposures on 680,000 securities and 8 million derivatives to support security selection, portfolio construction, stress testing, and risk and performance attribution analysis.

MSCI ESG Research products and services are provided by MSCI ESG Research LLC, and are designed to provide in-depth research, ratings and analysis of environmental, social and governance-related business practices to companies worldwide. ESG ratings, data and analysis from MSCI ESG Research LLC. are also used in the construction of the MSCI ESG Indexes.

For the purposes of the ESG metrics for the ESG benchmarks disclosures, the ESG metrics are provided by MSCI ESG Research LLC. MSCI ESG Indexes are provided by MSCI Inc. and utilize information from, but are not provided by, MSCI ESG Research LLC. MSCI Limited is the benchmark administrator for the MSCI Indexes under the UK Benchmark Regulation. ESG ratings, data and analysis from MSCI ESG Research LLC. are also used in the construction of the MSCI ESG Indexes.

MSCI ESG Research LLC is a Registered Investment Adviser under the Investment Advisers Act of 1940 and a subsidiary of MSCI Inc.

a. Through MSCI ESG Research and its legacy companies KLD, Innovest, IRRC, and GMI Ratings
b. Origins of MSCI ESG Ratings established in 1999. Produced time series data since 2007
c. Based on publicly available information in press releases published from 2014 to date

General Comment:

While we understand that the SFDR is aiming to provide structured disclosure requirements as it relates to Article 8 and 9 of SFDR, and now Article 5 and 6 of TR, we note the potential for confusion, where current delineations for Article 8 and 9 are not viewed in a uniform manner, as was also noted in an analysis by Morningstar (link). With the addition of TR Article 5 as a subset of SFDR Article 9 and TR Article 6 as a subset of SFDR Article 8, this may create more complexity in understanding the nuances across the different articles.
Considering that the EU Taxonomy will be the gold standard, there are far reaching implications for defining disclosure requirement, alignment definitions, and metric calculation; whereby green funds may be invalidated due to lack of disclosure or ambiguity of definitions. While the aim is to ensure high standards for EU Taxonomy-aligned investments, we would caution that the heavy burden of proof to demonstrate alignment with stringent and case-specific disclosure expectations for EU Taxonomy may cause an unintended negative impact as it may discourage FMPs from investing in such funds in the shortterm.
<ESA_COMMENT_ESG_1>

Q1 : 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?

<ESA_QUESTION_ESG_1>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_1>

Q2 : 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?

<ESA_QUESTION_ESG_2>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_2>

Q3 : 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?

<ESA_QUESTION_ESG_3>
In theory, operating expenditures that enable companies to meet EU Taxonomy technical thresholds should be considered as eligible and taxonomy-aligned investments. However, the current definitions of the technical criteria do not provide enough detail on qualifying expenditures in relation to economic activities. Some economic activities (e.g., reforestation, afforestation) are in general not revenue-generating business lines and could only be considered from the perspective of qualifying expenditures.
<ESA_QUESTION_ESG_3>

Q4 : 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?

<ESA_QUESTION_ESG_4>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_4>

Q5 : 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?

<ESA_QUESTION_ESG_5>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_5>

Q6 : 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?

<ESA_QUESTION_ESG_6>
We believe that this is a defensible, conservative approach, as otherwise the calculation may overstate exposure. We have found that if normalizing by coverage, aggregation results can be inflated, particularly if a financial product includes a significant portion of out of scope holdings.

Also note that EU Taxonomy criteria, and by extension EU Green Bond Standards, cannot uniformly apply to both corporate and sovereign issuers. It is evident that sovereign green bonds need to be treated differently – whether through defining specific alignment criteria, waiving selected alignment criteria, or excluding sovereign bonds from EU GBS scope entirely. The last of the three approaches may be the least preferred from the investment implication perspective as sovereign bonds constitute the largest portion of green bonds issued to-date, and if not considered to be in line with EU standards could become deprioritized by FMPs, unintentionally suppressing the flow of capital to these important green finance instruments.
<ESA_QUESTION_ESG_6>

Q7 : 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?

<ESA_QUESTION_ESG_7>
No comment on the proposed due diligence
<ESA_QUESTION_ESG_7>

Q8 : Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?

<ESA_QUESTION_ESG_8>
No comment on the proposed due diligence
<ESA_QUESTION_ESG_8>

Q9 : Do you have any views on the amended pre-contractual and periodic templates?

<ESA_QUESTION_ESG_9>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_9>

Q10 : 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?

<ESA_QUESTION_ESG_10>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_10>

Q11 : 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?

<ESA_QUESTION_ESG_11>
Please refer to our General Comment in the Introductory Section.
<ESA_QUESTION_ESG_11>

Q12 : Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

<ESA_QUESTION_ESG_12>
Not Applicable
<ESA_QUESTION_ESG_12>