FINANSTILSYNET

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Good practice report on the basis of thematic review of sustainability information for funds with sustainable investments as their objective

FINANSTILSYNET

1. Summary

Between June 2022 and February 2023, the Danish Financial Supervisory Authority (FSA) conducted a thematic review of six investment management companies' (financial market participants) compliance with the requirements for sustainability disclosures in prospectuses and documents with key investor information (KIID)[1]. The review comprised eight selected Danish UCITS (the financial product or the product) with sustainable investments as their objective. These are often referred to as "sustainable" funds.

The purpose of the review was, among other things, to investigate whether the investors receive the sustainability information they are entitled to, and whether this information is provided in a clear, adequate, and comprehensible manner.

The review showed that the six financial market participants have not ensured the disclosure of sufficient information on sustainability issues for the eight financial products. Overall, the level of information was too general, and in several key areas the information was insufficient because the disclosures were either unclear, inconsistent, or incomplete.

Based on the insufficient or incomplete sustainability information in the prospectuses and KIIDs, the Danish FSA issued orders to all six financial market participants, as they are responsible for ensuring compliance with the sustainability disclosure requirements. Orders issued by the Danish FSA are accompanied by a statement on the Danish FSA's webpage for each of the financial market participants. The individual statements describing each of the orders issued were published on 3 February 2023 (in Danish) along with a press release on the conclusion of the thematic review (in Danish and English)[2].

This report reviews the disclosure requirements and the Danish FSA's main observations in the thematic review and elaborates on the FSA's expectations and identified good practices in the Danish sector, considering its current level of maturity. This report is thus a continuation of the previously published individual statements and the press release.

Appendix 1 contains a schematic review of both good and inadequate compliance practices for each of the sustainability disclosure requirements included in the review, based on the FSA's observations in the review.

1.1 Integration of sustainability risks and their impact on the returns

In the prospectus for the financial product, the financial market participant must disclose how the financial market participant integrates sustainability risks in its investment decisions. The financial market participant must also assess the likely impact of sustainability risks on the financial product's returns and disclose the result of this assessment.

For several of the financial products under review, it was not clear from the information in the prospectuses that the financial market participants take the definition of sustainability risks in the disclosure regulation (SFDR)[3] into account. SFDR defines a sustainability risk as *"an*

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[1] In this report," investment management companies" is used to reference both investment management companies and administration companies, as the review comprised four investment management companies and two administration companies.

[2] "Thematic review of sustainability information for funds with sustainable investments as their objective", Press release, Danish FSA, 3 February 2023.

[3] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector ("SFDR").

environmental, social or governance event or condition that, if it occurs, could cause an actual or potential material negative impact on the value of the investment"[4].

Instead, some of the prospectuses contained information about the result of the financial market participant's own work on sustainability, and the impact of this work on the returns. For some of the financial products, the financial market participant also stated that sustainability risks might have a positive impact on the returns. This is misleading because it does not align with the formal definition of sustainability risks, which are to be understood as financial risks to which the financial product is exposed.

It is important that the financial market participant discloses the result of the assessment of the likely impact of sustainability risks on the returns (e.g. low, medium or high), and not only the factors related to sustainability risks, which may have an impact on the returns.

1.2 Sustainable investment objectives – how the contribution to the objectives is measured and the objectives are attained

The financial market participant must disclose in the prospectus, what the sustainable investment objectives of the financial product are, how the contribution to the objectives is measured, and how the financial market participant ensures that the objectives are attained. The prospectus should also state how the financial market participant ensures that the underlying investments do not significantly harm any social or environmental objectives, and that the financial market participant only invests in companies that follow good governance practices.

For several of the financial products reviewed, the information disclosed was incomplete or inadequate regarding how the contribution to the objectives is measured and how the attainment of the objectives is ensured. For some of the financial products, the prospectuses also contained inconsistent or unclear information about the sustainable investment objectives of the products.

Furthermore, for several of the financial products, the disclosures were inadequate regarding how the financial market participants ensure that the underlying investments do not significantly harm any social or environmental objectives. Information about the financial market participants' processes and criteria for ensuring that no significant harm occurs was insufficient.

1.3 Investments in environmentally sustainable economic activities

Financial products that disclose under article 9 of SFDR and invest in economic activities that contribute to an environmental objective are subject to additional sustainability disclosure requirements to the prospectus. The financial market participant must in the prospectus describe, among other things, how and to what extent the underlying investments are in economic activities that qualify as environmentally sustainable (i.e. are aligned with the taxonomy regulation (TR))[5].

[4] The definition of a "sustainability risk" follows from no. 22 in Article 2 of SFDR.
[5] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment ("TR").

For all the reviewed financial products, the financial market participants either did not – or did not adequately – disclose how and to what extent the underlying investments are in economic activities that comply with the requirements in TR. In other words, the financial market participants have not provided information on e.g., how and to what extent the underlying investments in the products are in economic activities that meet the specified thresholds and criteria for when an economic activity is environmentally sustainable.

1.4 Sustainability information in the key investor information document (KIID)

The financial market participants must state the sustainable investment objectives of the financial product in KIID. The information must be consistent with the information in the prospectus for the product. For several financial products, the description of their sustainable investment objectives in KIID was either missing or inconsistent with the information in the prospectus.

1.5 Rules and templates applicable since 1 January 2023

Since 1 January 2023, the SFDR delegated regulation[6] has applied and financial market participants and products offered to retail investors must comply with the rules in the PRIIP regulation[7] and its delegated regulation.

The Danish FSA has solely examined compliance with the sustainability disclosure requirements following directly from the SFDR, TR and KIID regulations[8]. The Danish FSA finds that the examples of good and insufficient practice described in this report and the appendix remain relevant after 1 January 2023, as the SFDR delegated regulation, for example, contains reporting templates for the information following from SFDR and TR. Similarly, the Danish FSA has in its ongoing procedures, continued to observe prospectuses updated after 1 January 2023, that contain the same shortcomings as those identified in the thematic review.

2. The Danish FSA's observations and expectations

2.1 Scope of the review

In June 2022, the Danish FSA initiated a thematic review of six financial market participants' sustainability disclosures for eight financial products with sustainable investment as their objective. The review comprised all pre-contractual disclosure requirements in TR and SFDR that were in force and applicable at the time[9].

The Danish FSA reviewed the sustainability disclosures in the prospectuses and KIID for the eight selected financial products. The sustainability disclosure requirements following from SFDR and TR must appear from the prospectus, whereas the sustainability disclosure requirements that follow from the KIID regulation must be included in the KIID.

[6] Commission delegated regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports ("the SFDR delegated regulation").

[7] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) ("the PRIIP regulation").

[8] Commission delegated regulation (EU) of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website ("the KIID regulation").

[9] Articles 6 and Article 9 of SFDR, Article 5 of TR, and Article 7(1)(c) of the KIID regulation.

The Danish FSA solely examined the six investment management companies' compliance with the sustainability disclosure requirements following directly from the SFDR, TR and KIID regulation. The information that financial market participants must provide under the SFDR delegated regulation, which has been in effect since 1 January 2023, was not included in the review.

The review aimed, among other things, to uncover whether the investors receive the sustainability information that they are entitled to, and whether this information is provided in a clear, adequate, and comprehensible manner. The Danish FSA did not examine the financial market participants' internal processes, such as whether these processes ensure that the financial products' investments are in accordance with the disclosed sustainable investment objectives.

2.2 Sustainability risks (Article 6 in SFDR)

A financial market participant must disclose how sustainability risks are integrated in the investment decisions for the financial product. The financial market participant must also assess the likely impact of sustainability risks on the product's returns and disclose the result of this assessment, pursuant to SFDR Article 6(1)(a) and (b).

If the financial market participant does not consider sustainability risks to be relevant, the financial market participant must give a clear and concise explanation of the reasons therefor, pursuant to the last paragraph of SFDR Article 6(1).

Common to Article 6(1)(a) and (b) of SFDR is that the disclosure requirements concern information to be given at the product level. Moreover, this information must be disclosed for all financial products comprised by SFDR, regardless of whether the financial product has sustainable investment as its objective.

2.2.1 The integration of sustainability risks in investment decisions must be clearly described

A clear description of the integration of sustainability risks in investment decisions for the financial product contributes to provide the investors understanding of how the financial market participant manages sustainability risks relevant to the product.

The review showed that the financial market participants, to a varying extent and level of detail, disclosed information in the prospectus on the integration of sustainability risks in the investment decisions for the product. For several financial products, the financial market participants' provided information that was too general and imprecise regarding how they integrate sustainability risks in investment decisions. Similarly, some of the financial market participants disclosed on these sustainability risk processes across their financial products, which made it unclear to what extent the descriptions were applicable for each individual product.

The disclosure requirement applies to the specific financial product. If parts of the description of the integration of sustainability risks in investment decisions relate to several products, the financial market participant must state clearly in the prospectus whether – and, if so, how – the general description is relevant to the specific product.

There may be information in the financial market participant's policy on the integration of sustainability risks in its investment decision-making process that is relevant to the specific product[10]. The financial market participant may refer to one or more relevant sections of the policy in the prospectus, provided that the prospectus also includes a separate description of the process integrating sustainability risks in investment decisions that is relevant to the specific product.

The information provided by the financial market participant on the integration of sustainability risks in the investment decisions for the product in the prospectus must be sufficient for the investor to understand, how the financial market participant actually integrates these risks in the investment decisions for the specific product. This means that the financial market participant must describe how and where in the investment decision-making process such risks are identified, prioritised and managed. For some of the financial products, this included a description of the screening criteria or exclusion criteria that were used to identify, minimise or otherwise consider the most relevant sustainability risks before an investment is made, or a description of the analysis and ongoing monitoring conducted after the investment is made.

Moreover, the most comprehensive prospectuses reviewed included information on *which* sustainability risks are identified by the financial market participant as relevant to the product. That is, which sustainability factors are most relevant to the product and may therefore have an impact on the product's returns. In this context, the financial market participant must use SFDR's definition of sustainability risks as a financial risk.

2.2.2 The impact of sustainability risks on the returns must be based on the definition in SFDR

A clear description of the result of the assessment of the likely impact of sustainability risks on the product's returns contributes to providing the investors with the information necessary for them to understand the risks of investing in the product.

The review showed that several of the reviewed financial market participants either did not include information about the result of the assessment of the likely impact of sustainability risks on the product's returns, or that the information included was either inadequate, inconsistent, or misleading.

Some financial market participants stated that they assess sustainability risks to have a positive impact on the returns of the specific product. This is not in accordance with the definition of "sustainability risk" in Article 2(22) of SFDR, as the definition does not allow for a positive impact on the returns of the product. Some prospectuses also included an assessment of the financial market participants' work with sustainability and the impact of this work on the returns. This is not relevant for compliance with the disclosure requirement and may potentially be misleading, if the assessment of the financial market participant's work with sustainability and the impact of this work on the returns is not clearly separated from the description of the result of the assessment of the likely impact of sustainability risks on the returns.

Some financial market participants did not include information about the *result* of the assessment of the likely impact of sustainability risks on the product's returns, or they included only

[10] Pursuant to Article 3(1) of SFDR the financial market participant must disclose information about its policy for the integration of sustainability risks in its investment decision process on its website.

general information not specific to the product. For instance, some financial market participants stated that certain factors may indicate a considerable impact of sustainability risks on the returns of the product, whereas other factors may indicate a limited impact, without drawing an overall conclusion – and thus an overall *result* – of the assessment.

The financial market participant must state the magnitude of the likely impact of sustainability risks on the product's returns (e.g. low, medium or high). Moreover, the financial market participant may state whether and how the financial market participant considers sustainability risks to be relevant to the product[11].

For the most comprehensive prospectuses the financial market participants also disclosed *which* sustainability risks had been identified as relevant to the product. One financial market participant also described how sustainability risks may affect the volatility of the product's returns.

2.3 Sustainable investment objectives (Article 9 of SFDR)

In addition to the disclosure requirements on sustainability risks, SFDR contains a number of disclosure requirements, which the financial market participant must meet for financial products that have sustainable investments as their objective. These requirements follow from Article 9 of SFDR.

The underlying investments in a financial product with sustainable investments as the objective must all be sustainable investments (except investments made for certain specific purposes such as hedging and liquidity). Article 9 of SFDR should be considered in conjunction with Article 2(17) of SFDR, which defines what constitutes a "sustainable investment".

The financial market participant must state how it is ensured that the underlying investments in the financial product covered by Article 9 of SFDR are sustainable investments. This means explaining how it is ensured that the investments meet the individual elements included in the definition of a sustainable investment in Article 2, point (17), in SFDR on:

- contributing to an environmental or social objective (a sustainable investment objective)
- measuring the contribution to the sustainable investment objectives
- not significantly harming any environmental or social objectives
- only investing in companies that follow good governance practices.

There are also disclosure requirements on how the sustainable investment objectives for the financial product are to be attained, cf. Article 9(1) to (3) in SFDR. The disclosure requirements depend on how the financial product is designed and on whether:

- an index is designated as reference benchmark for the sustainable objectives
- no index is designated as reference benchmark for the sustainable objectives
- there is a sustainable investment objective to contribute to the reduction of GHG-/carbon emissions.

[11] Where financial market participants do not consider sustainability risks to be relevant, the prospectus must comprise a clear and concise statement of the reasons for this, cf. Article 6(1) of SFDR.

2.3.1 Each sustainable investment objective must be clearly stated

A clear description of the sustainable investment objectives will contribute to the investors' ability to make an adequately informed decision about whether they want to invest in a particular product. Moreover, the description is a prerequisite for understanding how the contribution to the individual sustainable investment objectives is measured and how the objectives are attained. The financial market participant may decide to have one or several sustainable investment objectives for the product.

Several of the financial market participants gave clear and consistent information in the prospectus on some of the sustainable investment objectives for the financial product. This was the case, for example where the financial market participant stated that the objective of the product was to contribute to multiple environmental objectives covered by the TR and to which of the TR's environmental objectives it contributes.

However, the review also showed that the financial market participants provided unclear information about some of the sustainable investment objectives. In some cases, the information was inconsistent across the prospectus. For instance, one section of the prospectus contained a list of a number of objectives, while other sections stated that no contribution would be made to these objectives – or to only some of the objectives. For a number of the products with the objective to contribute to all 17 UN Sustainable Development Goals, the individual goals were not listed in the prospectus.

The financial market participants must clearly and unambiguously disclose in the prospectus each sustainable investment objective for the financial product. For example, the prospectus must refer to and describe each of the 17 UN Sustainable Development Goals, if the objective of the financial product is to contribute to these.

2.3.2 It must be clearly stated how the contribution to the objectives is measured and how the objectives are to be attained

A clear description of how the financial market participant measures whether the financial product contributes to the sustainable investment objectives and how it is ensured that the objectives are attained – contributes to the investors' understanding of what the sustainability objectives mean for the way their funds are invested. Such a description also indicates that the financial market participant has a credible plan for ensuring that the sustainable investment objectives can be measured and attained. Furthermore, this makes it easier for the investors to compare the financial product with other financial products.

The review showed that for most financial products, there was generally insufficient or inadequate information on how the financial market participants measure the contribution to the sustainable investment objectives and ensure that these objectives are attained. Some of the financial market participants had listed 20 or more sustainable investment objectives for the financial product, without describing how the individual sustainable investment objectives should be measured and the attainment of these ensured. Instead, the respective financial market participants disclosed how they measured the contribution of the underlying investments to several of the objectives *collectively*, and not for *each* of the objectives.

The financial market participant must disclose in the prospectus, how the contribution to each individual sustainable investment objective is *measured*, for example, by means of key indicators. If a financial market participant states one of the 17 UN Sustainable Development Goals as one of the product's sustainable investment objectives, the financial market participant must also disclose in the prospectus, how the financial market participant measures the product's contribution to the individual goal based on, for example, one or more of the specific indicators for the UN Sustainable Development Goals. The contribution to the sustainable investment objective in question may also be measured by designating an index as reference benchmark.

The financial market participant must also disclose how the attainment of the individual sustainable investment objectives for the product is ensured. The disclosure requirements for this information depend on whether an index has been designated as a reference benchmark, as described below.

For objectives where an index is designated as a reference benchmark (Article 9(1) of SFDR)

If the financial market participant designates an index as a reference benchmark for one or more sustainable investment objectives for the product, the prospectus must explain *how* the designated index is aligned with the actual objectives. Furthermore, the financial market participant must state *why and how* the designated index, which is aligned with the specific objectives, differs from a broad market index.

It is possible to designate an index as a reference benchmark for several of the product's objectives, but it must be clearly stated, which objectives are involved. Regarding the objectives for which no index has been designated as a reference benchmark, the financial market participant must separately disclose, how the objectives are to be attained (also in accordance with the section below on Article 9(2) of SFDR).

Most of the financial market participants reviewed had designated an index as a reference benchmark. The index was typically designated to ensure the attainment of a single objective, or a subset of the sustainable investment objectives stated for the product. The designated indices were typically not aligned with all the sustainable investment objectives that the financial market participant had stated for the product.

The review showed that none of the financial market participants clearly specified the sustainable investment objectives for which the index was designated as reference benchmark, neither had they included a clear description of how the objectives, which were not covered by the reference benchmark, were to be attained. Similarly, most of the financial market participants, that had designated an index as a reference benchmark for one or more of the sustainable investment objectives, inadequately disclosed how the index construction is aligned with the product's sustainable investment objectives.

Financial market participants must not only state *whether*, but also *how* the index is aligned with the stated sustainable investment objectives. In the description, the financial market participant may, for example, mention that the investments in the index are only, or mainly, within certain sectors or activities that the financial market participant assesses as contributing to the attainment of specific sustainable investment objectives for the product.

The review also showed limited compliance with the disclosure requirement to explain *why and how* the designated index which has been aligned with the specific objectives differs from a broad market index. The financial market participant must justify this and not merely state that the index is not an ordinary market index. The explanation may include information on what the financial market participant believes makes the designated index different from a broad market index based on the information in the methodology document for the designated index.

Furthermore, the financial market participant must disclose in the prospectus where the methodology used for calculating the respective index can be found. In other words, the financial market participant must in the prospectus include a direct reference to the methodology document for the designated index used as a reference benchmark, in addition to the above-mentioned explanation.

For objectives where an index is not designated as a reference benchmark (Article 9(2) of SFDR)

If the financial market participant does not designate an index as a reference benchmark for one or more of the product's sustainable investment objectives, the financial market participant must in the prospectus disclose, for each of these sustainable investment objectives, *how* the individual objective is to be attained.

The review showed, as mentioned in the above section, that for the majority of the financial products included, an index was designated as a reference benchmark, but the index was only aligned with one or some – and not all – of the sustainable investment objectives for the financial product. The information on how the other sustainable investment objectives were to be attained and how the contribution to the objectives was to be measured was either not included in the prospectus or described too generally.

The financial market participant must explain how the sustainable investment objectives are to be attained, including *what* measures the financial market participant takes to ensure that the sustainable investment objectives are attained. Exclusion criteria[12] and positive screening criteria[13] could, for example, be measures that the financial market participant uses to ensure that the sustainable investment objectives are attained. If the criteria are increasingly restrictive over time, the financial market participant may describe how this supports the attainment of the objectives over time. The review showed that exclusion criteria and other screening criteria were used for most products, but it was not always sufficiently clear whether and how these supported the attainment of the specific objectives etc.

For sustainable investment objectives to reduce GHG/carbon emissions (Article 9(3) of SFDR)

Specific disclosure requirements apply to products that have a sustainable investment objective to reduce GHG/carbon emissions[14].

[12] Examples of exclusion criteria may be the exclusion of investee companies engaged in the extraction fossil fuels or the use of a specific upper threshold value for the share of a given investee company's revenues that may come from a certain activity.

[13] An example of positive screening criterion is that investments are solely in companies which e.g. have minimum X per cent women on the board or in management.

[14] SFDR does not prevent a product from promoting reduction of GHG/carbon emissions as part of its investment strategy if the product does not have sustainable investments as its objective. However, precontractual information, information on the website and periodic

The review showed that several of the financial market participants disclosed that the financial products have the reduction of GHG/carbon emissions as a sustainable investment objective. For most of these financial products, the disclosed objective was to invest in accordance with the Paris Agreement's objective of limiting global temperature rise to a maximum of 2 degrees.

The financial market participant must clearly state whether the product has a sustainable investment objective of reducing GHG/carbon emissions. As part of this description, the financial market participant must state how the sustainable investment objective of reducing GHG/carbon emissions relates to the Paris Agreement's long-term global warming objectives, that is, the objective of limiting the global average temperature increase this century to well below 2 degrees Celsius above preindustrial levels, while pursuing efforts to limit the increase to 1.5 degrees Celsius.

Several of the financial market participants designated an EU Climate Transition Benchmark (CTB) or an EU Paris-aligned Benchmark (PAB) (collectively referred to as EU climate benchmarks) in accordance with the additional disclosure requirements for financial products with a sustainable investment objective to reduce GHG/carbon emissions[15].

Several of the financial market participants had – in addition to the designated benchmark, which according to their information meets the requirements for an EU climate benchmark – also included information in the prospectus on how the sustainable investment objective of reducing GHG/carbon emission is to be attained. However, the Danish FSA in some cases assessed that the information, given its limited length and level of detail, was not adequate to meet the disclosure requirements.

It is up to the individual market participant to decide whether to specify an EU climate benchmark for the for the respective product that has a sustainable investment objective to reduce of GHG/carbon emissions. An EU climate benchmark may be applied in a passively or actively managed investment strategy. There are different disclosure requirements depending on whether an EU climate benchmark is used and whether the product is passively or actively managed.

If it is stated that an EU climate benchmark is used in an actively managed product that has a sustainable investment objective to reduce GHG/carbon emissions, the financial market participant must provide a detailed explanation of *how the continued effort of attaining the objective* of reducing GHG/carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement. The same applies when no EU climate benchmark is designated.

information may not mislead investors to believe that this aspect is part of the product's objective and, therefore, that the product has sustainable investments as its objective under Article 9(3) of SFDR. Moreover, it follows from Article 13 of SFDR that marketing communication cannot contradict the information disclosed pursuant to SFDR. This entails that marketing communication cannot make investors believe that the product pursues sustainable investments, where promotion of reduction of GHG/carbon emissions is merely a characteristic of the product's investment strategy, cf. the answer to question 4 (FISMA/2929) in the Commission's SFDR Q&A published on 6 April 2023.

[15] The requirements to CTB and PAB are described in Commission delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.

If it is stated that an EU climate benchmark is used in a passively managed product, the financial market participant is not required to include a detailed explanation of *how the continued effort of attaining the objective* of reducing GHG/carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement. This is due to the fact that the EU climate benchmark is expected to ensure that the contribution to the objective is measured and attained, when this type of benchmark is used in a passively managed product.

The Danish FSA also draws attention to the fact that the financial market participant must ensure that the designated index used as a reference benchmark is a PAB or CTB. This means that the financial market participant must check, firstly, that the name of the designated reference benchmark matches the name in the methodology document referred to. Secondly, the financial market participant must ensure that the designated index also meets the requirements for a CTB or PAB according to the methodology document.

The financial market participant must refer to the methodology used to determine the respective EU climate benchmark in the prospectus. In other words, the financial market participant must link directly to the methodology document for the designated EU climate benchmark. The review showed that some financial market participants had not linked to the methodology for the designated EU climate benchmark.

2.3.3 It must be described how it is ensured that the remaining requirements for sustainable investments are met (the principle of "do no significant harm" and "good governance practices")

A clear description of how the financial market participant ensures compliance with the principle of "do no significant harm" and the requirement to only invest in companies with good governance practices gives the investors an understanding of how the money is invested and allows for a comparison of the product's approach with other financial products.

The principle of "do no significant harm" to any environmental or social objectives

The review showed that several of the financial market participants had not disclosed information in the prospectus on *how* they ensure that the product's investments do not significantly harm any environmental or social objectives.

For instance, the prospectuses included information on how the financial market participant uses exclusion lists and negative screening. The prospectuses also described how the financial market participants set their own threshold values for when, within different parameters, significant harm is considered to be done to any environmental or social objectives. The latter was seen, for example, in the prospectuses where the financial market participants had stated a specific percentage for the proportion of the revenue in the underlying investee companies they invest in, that may come from, for example, oil- or gas-related activities.

However, for several of the financial products there was insufficient or inadequate information on how it is ensured that no significant harm is done to any environmental or social objectives.

The financial market participants must state in the prospectus *how* they ensure that none of the product's underlying investments significantly harm any social or environmental objectives[16]. It is not sufficient to state in the prospectus that no significant harm is done to climate objectives or that the financial market participant strives to ensure that no significant harm is done to any environmental or social objectives.

The financial market participant must disclose in the prospectus the specific measures it takes to ensure that no significant harm is done to any environmental or social objectives. Moreover, the prospectus must state which parameters are included in the method for excluding companies and, therefore, are not part of the product's investment universe.

Good governance practices
financial market participants must disclose in the prospectus how they ensure that investments are only made in companies that follow good governance practices.

Several of the financial market participants had only stated that this is part of the investment process, without describing how it is part of it, or what parameters are included in the assessment.

Some of the financial market participants mentioned some overall parameters (e.g., sound management structures, good employee relations, appropriate employee remuneration, and tax compliance) or referred to international standards (e.g. OECD Guidelines for Multinational Enterprises and UN's Guiding Principles on Business and Human Rights) that they screen for.

Financial market participants must state in the prospectus how they ensure that the product's underlying investments are only in companies that follow good governance practices[17]. This will, for example, include information on what parameters, and possibly what threshold values, are used in the assessment of whether an underlying company follows good governance practices.

2.4 Investments in environmentally sustainable economic activities (Article 5 of TR)

For financial products covered by Article 9(1), (2) or (3) of SFDR that invest in an economic activity contributing to an environmental objective, additional disclosure requirements apply. These requirements follow from Article 9(4)(a) of SFDR, which refers to Article (5) of TR.

For such products, the financial market participant must state in the prospectus:

- the environmental objectives in TR that the underlying investments of the product contribute to,

[16] If an EU climate benchmark is used in a passively managed product with a sustainable investment objective of reducing GHG/carbon emissions, cf. Article 9(3) of SFDR, the information on how it is ensured that no significant harm is done to any environmental or social objectives must be included in the prospectus. However, the financial market participant may rely on information from the administrator of the EU climate benchmark for this disclosure requirement. If, the financial market participant uses its own criteria in addition to the method of the reference benchmark to ensure compliance with the requirement, these must also be described.

[17] If an EU climate benchmark is used in a passively managed product with a sustainable investment objective of reducing GHG/carbon emissions, cf. Article 9(3) of SFDR, the information on how it is ensured that investments are only made in companies that follow good governance practices must be included in the prospectus. However, the financial market participant may rely on information from the administrator of the EU climate benchmark for this disclosure requirement. If the financial market participant uses own criteria, in addition to the method of the reference benchmark to ensure compliance with the requirement, these must also be described.

- how and to what extent the underlying investments of the product are in economic activities that qualify as environmentally sustainable,
- a percentage for the proportion of the underlying investments of the product, which are in environmentally sustainable economic activities, including a percentage for both transitional and enabling activities.

The disclosure requirements above should be understood as a *commitment* from the financial market participant regarding the *minimum share* of the underlying investments of the product, which are in environmentally sustainable economic activities[18].

In the description of how and to what extent the underlying investments of the product are made in economic activities which qualify as environmentally sustainable, the financial market participant must explain how the requirements for environmentally sustainable activities in TR are met, i.e. how it is ensured that the underlying economic activities:

a) contribute substantially to achieving one or more of the environmental objectives in TR
b) do no significant harm to any of the environmental objectives in TR
c) are carried out in compliance with the minimum safeguards
d) comply with the technical screening criteria.

2.4.1 It must be clearly stated whether a contribution is made to the environmental objectives in TR

An investor may consider it important that a financial product invests in economic activities contributing to one or more environmental objectives in TR. Therefore, a clear description of the contribution to these objectives is essential for the investor to make an informed investment decision.

All the financial market participants in the review stated, to varying degrees, that the underlying investments of the product contribute to one or more of the environmental objectives in TR.

Several financial market participants provided inconsistent information in the prospectus on whether the underlying investments of the product contribute to one or more of the six environmental objectives in TR. For instance, some financial market participants stated on one page of the prospectus that the product's underlying investments contribute to the two first environmental objectives in TR, while another page of the prospectus stated that the product's underlying investments contribute to all six environmental objectives. One financial market participant stated that the product's sustainable investment objective is suitable for contributing to the first environmental objective in TR. Thus, it is unclear whether the product's underlying investments contribute to the environmental objective stated.

If the product's underlying investments contribute to one or more of the environmental objectives in TR, the financial market participant must explicitly state which *specific* environmental objectives in TR.

[18] "Commitment" means commitment regarding the minimum share of the underlying investments of the product in environmentally sustainable economic activities pursuant to Article 3 in TR. That is the total percentage of the commitment regarding the minimum share of the three types of activities which according to TR meet the requirements of being environmentally sustainable economic activities.

2.4.2 It must be described how and to what extent the product's underlying investments are in environmentally sustainable economic activities

A clear description of how and to what extent the product's underlying investments are in environmentally sustainable economic activities will contribute to the investor's understanding of whether the financial product invests in such activities.

The description of how and to what extent the underlying investments are in environmentally sustainable economic activities

The review showed that all the financial market participants disclosed insufficient or inadequate information about how and to what extent the product's underlying investments are in environmentally sustainable economic activities.

Generally, all the financial market participants provided inadequate descriptions in the prospectus on how they ensure that the product's underlying investments, or a share of these, are in environmentally sustainable economic activities. In other words, they did not sufficiently describe how the underlying investments of the product comply with the criteria set out in Article 3 of TR, which states that they must:

a) contribute substantially to achieve one or more of the environmental objectives in TR
b) do no significant harm to any of the environmental objectives in TR
c) be carried out in compliance with the minimum safeguards
d) comply with the technical screening criteria.

Several financial market participants provided examples of the types of activities they invest in to contribute to one or more of the environmental objectives in TR. However, they did not describe how they ensure that the activities contribute *substantially* to the environmental objectives in TR.

First and foremost, the financial market participant must describe *what* method or approach the financial market participant uses to ensure compliance with the four criteria for environmentally sustainable economic activities set out in Article 3 of TR. To meet this requirement, the financial market participant may provide examples of economic activities in which investments are made to contribute substantially to the selected environmental objectives in TR. Additionally, the financial market participant must state how they ensure that the do no significant harm requirement is met, including how the threshold values for the environmental objectives in TR are adhered to.

Finally, the financial market participant must state how they ensure that minimum safeguards are met and how the technical screening criteria are complied with.

Description of percentage for the minimum proportion commitment

Some financial market participants stated in the prospectus that the product's underlying investments contribute to one or more of the environmental objectives in TR, but simultaneously stated that the minimum proportion commitment is 0 per cent without justifying whether this is due to a lack of data. Other financial market participants stated that the product's underlying investments contribute to one or more environmental objectives in TR. In this connection they stated that the percentage for the total commitment is *greater than* 0 per cent, but without specifying the percentages for the committed minimum proportion of the product's underlying investments in transitional or enabling activities.

The financial market participant should primarily use complete, timely and reliable data when disclosing the minimum proportion commitment.

If a financial market participant states that the product's underlying investments contribute to one or more environmental objectives in TR, they must state the percentage of the commitment as greater than 0 per cent in the prospectus. In this context, the financial market participant may only in exceptional circumstances state a commitment of 0 per cent, if it is expected that the participant may not reasonably, in such an exceptional case, be able to obtain complete, timely and reliable data. In such an exceptional case, the financial market participant must state how they continue to attempt to obtain reliable data. The financial market participant must also state whether the minimum commitment percentage of 0 per cent is due to it, as an exception, not being possible to obtain reliable data.

If the financial market participant states that the product's underlying investments contribute to one or more of the environmental objectives in TR and the percentage commitment is therefore greater than 0 per cent, the commitment for the product's underlying investments in transitional and enabling activities does not necessarily need to sum to the percentage commitment. This is because there are three separate categories of activities in TR which may contribute substantially to the environmental objectives in TR:

1. activities which in themselves contribute substantially (described in Articles 10-15 of TR)
2. enabling activities which make it possible for other activities to contribute substantially (described in Article 16 of TR)
3. transitional activities which cannot yet be replaced by technologically and economically feasible low-carbon alternatives, but which support the transition to a climate-neutral economy (described in Article 10(2) of TR).

If the financial market participant states that the underlying investments of the financial product do *not* contribute to one or more environmental objectives in TR, they must state the percentage for the commitment as 0 per cent.

2.5 The key investor information document (KIID regulation)

KIID must contain information on the material characteristics of the Danish UCITS, compartment or share class, so that a retail investor can understand the characteristics of, and the risks of investing in, the shares offered[19].

[19] This follows from section 103(1)(2) of consolidated act 2022-03-11, no. 336 on investment funds etc. ("LIF"). In addition to the national implementation of the UCITS directive, the KIID regulation lays down the substantive requirements and procedural requirements for KIID, which are exhaustive, cf. Article 3(1) of the KIID regulation. It therefore follows from section 103(1)(1) in the current LIF that KIID must meet the requirements of the KIID regulation.

Article 7(1)(c) of the KIID regulation stipulates that the section "Objectives and investment policy" in KIID must[20] cover the material features of UCITS that the investors must be informed about. This includes whether the UCITS has a particular objective regarding any industrial, geographical, or other market-specific sectors or specific asset categories.

The information about the compartment's sustainable investment objectives must be included in the KIID. As mentioned above, this is due to the Danish FSA's assessment that the information about the compartment's sustainable investment objectives to be a material characteristic and feature of the UCITS, including the compartment, that the investor must be informed about.

2.5.1 The most material sustainability information must appear from KIID

The review showed that in several cases, information about the specific compartment's sustainable investment objectives in KIID was missing or was inconsistent with the information in the prospectus for the same compartment.

The information about the compartment's sustainable investment objectives must be included in the KIID. This is due to the Danish FSA's assessment that the information about a compartment's sustainable investment objectives is a material characteristic and feature of the UCITS, including the compartment, that the investor must be informed about.

If the financial market participant discloses information for a given compartment in accordance with Article 9 of SFDR, the KIID should also contain information about this. If the financial market participant assesses that the magnitude of the likely impact of sustainability risks on the returns of the product is high, this should also be reflected in the KIID.

Finally, the sustainability information included in the KIID must be consistent with the information included in the prospectus for the same compartment.

3. Rules and templates applied since 1 January 2023

3.1 Level 2 regulation to SFDR and TR

The SFDR delegated regulation has been in effect since 1 January 2023. The delegated regulation includes, among other things, reporting templates to be used by the financial market participants when offering financial products covered by the disclosure requirements in Articles 8 or Article 9 under SFDR and by the additional disclosure requirements following from TR. As mentioned, the disclosure requirements following from these provisions in the SFDR delegated regulation was not part of this review.

3.2 PRIIP KID – replaces KIID to retail investors

Since 1 January 2023, investment management companies and Danish UCITS marketed towards retail investors have been among the financial market participants that must comply with the rules in the PRIIP regulation. This means that investment management companies

[20] The UK version of the KIID regulation states *"[…] the key investor information document shall […]"* in Article 7(1)(c), whereas the Danish translation of this provision in the KIID regulation states *"[…] dokumentet med central investorinformation bør […]"*. In the opinion of the Danish FSA, the correct translation of the UK version of this provision in the KIID regulation is "skal".

and Danish UCITS must prepare and publish a key information document (PRIIP KID) for retail investors, cf. Article 5(1) of the PRIIP regulation and section 103(1) of LIF[21].

The delegated regulation to the PRIIP regulation has also been in effect since 1 January 2023[22]. It entails several changes to the technical requirements that apply for preparation, review, and publication of PRIIP KID.

The information about the sustainable investment objectives for a compartment must be included in PRIIP KID[23]. If the financial market participant for the compartment in question discloses under Article 9 of SFDR, then PRIIP KID must also include information about this[24]. Moreover, PRIIP KID must state that the magnitude of the likely impact of sustainability risks on the compartment's returns is high, if the financial market participant assesses that this is the case and if it is not adequately reflected in the summary risk indicator[25].

[21] As from 1 January 2023, PRIIP KID therefore replaced KIID for Danish UCITS marketed to retail investors. A PRIIP KID must basically have the same function and serve the same purpose as KIID. In relation to Danish UCITS marketed to professional investors, a KIID (instead of a PRIIP KID) may, however, be prepared and published in accordance with the rules in the KIID regulation, cf. section 103(2) of consolidated act 2023-01-13, no. 46, on investment funds etc. ("LIF").
[22] Commission delegated regulation (EU) 2021/2268 of 6 September 2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by packaged retail and insurance-based investment products (PRIIPs) offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged transitional arrangement laid down in that Article ("the delegated regulation to the PRIIP regulation").
[23] This follows from no. ii of article 8(3)(c) of the PRIIP regulation.
[24] This follows from no. i of article 8(3)(c) of the PRIIP regulation.
[25] This follows from no. i of article 8(3)(d) of the PRIIP regulation.