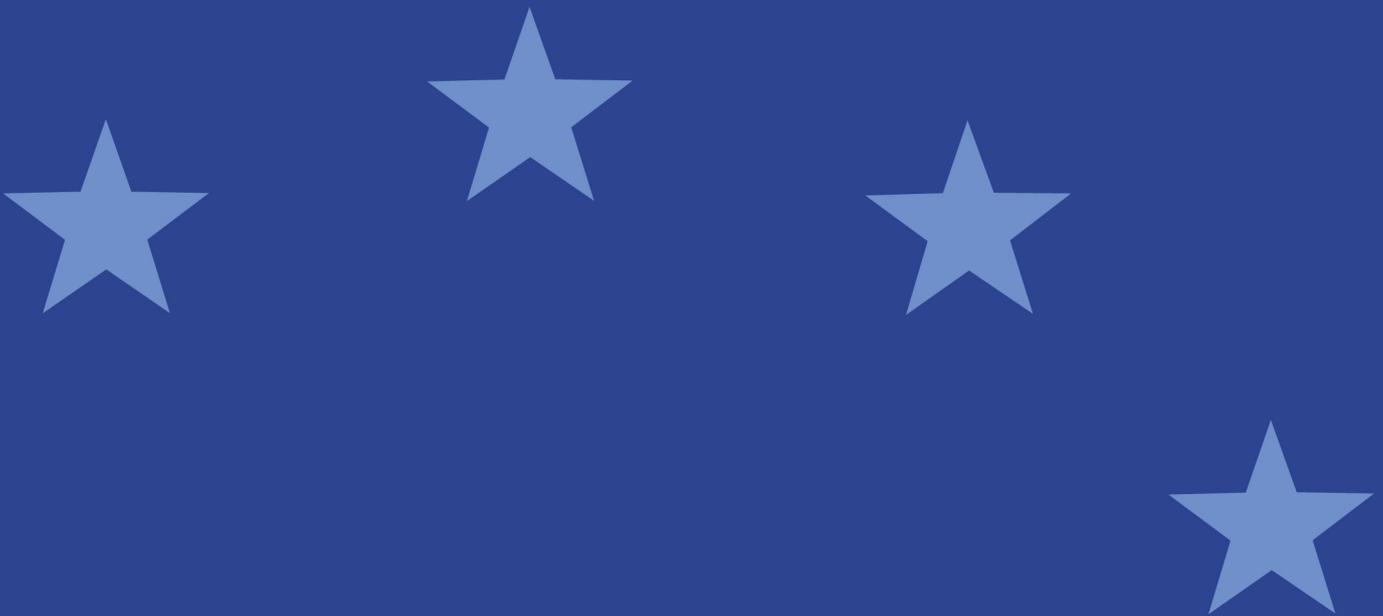


Response form for the Joint Consultation Paper concerning ESG disclosures





Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter “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 **1 September 2020**.
- 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) 2018/1725¹. 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	Actuarial Association of Europe
Activity	Insurance and Pension
Are you representing an association?	x
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

The AAE believes that ESG-related disclosures are important and can support the process of achieving the environmental goals of the EU. We welcome and support the introduction of harmonised rules on disclosure of ESG-related data for end investors. Disclosure should be concise, readable and understandable. Disclosure requirements should be aligned with a clear taxonomy. As far as possible, the requirements should be integrated into current disclosure requirements.

The AAE would like to highlight that, although the questions asked in this consultation paper address a broad scope of products and businesses, the specific determining features of different types of product should be considered in the disclosure requirements.

The extension of the disclosure requirements to social factors is not covered by the first phase of RTS developments required and should therefore not be included in the RTS at this point in time. While we can rely on an elaborated taxonomy for climate risks, comparable taxonomy is missing for social and governmental risks. A number of indicators, e.g. gender pay gap or CEO ratio, are not clearly defined and, in the absence of definition, their use in a comparison between undertakings and products would be inappropriate.

The definition of sustainability risk as contained in the Sustainable Finance Disclosure Regulation (SFDR) should be a guiding principle for the development of the final templates and disclosure requirements. This means an *environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment*.

The role of insurers is not adequately considered in the proposed RTS. To meet their obligations to their customers, insurers are acting as investors, especially for life and pension business. Underlying features of such products should be taken into account in disclosure requirements in order to achieve an appropriate treatment of such products (for example conflict between performance measures and ESG criteria).

New disclosure requirements for ESG reporting can only work as intended if undertakings and the whole industry are able to provide the required data. A full analysis and understanding of potential variables for which access may not be possible or only in limited form is necessary. If the required information could not be made available at the level of granularity stipulated, development of proxies may follow and this could impede comparability and credibility of such disclosures. This would not be consistent with the goal of this exercise.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Disclosures should be kept comparable, reliable and to the point in order to be of real use to consumers and the public in their decision making.

<ESA_COMMENT_ESG_1>

Q1 : Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an “opt-in” regime for disclosure??

<ESA_QUESTION_ESG_1>

In our opinion, and subject to following comments, the approach and the structure of the table is fine, comparing the last two years.

We consider that new disclosure requirements for ESG reporting can only work as intended if undertakings and the whole industry are able to provide the required data. A full analysis and understanding of potential variables for which access may not be possible or only in limited form is necessary.

We do agree with minimum, compulsory indicators.

We do agree that there should be some compulsory and simple adverse impact indicators that are the same for all market participants in order to facilitate comparability.

Additional voluntary indicators should be transparent and have a benefit for market participants, especially if they could be the source of a risk which could cause “*an actual or a potential material negative impact on the value of the investment*”.

We see the need to limit the number of indicators and keep the most meaningful and reliable ones. A key reason for limitation is that valuation of products has to be transparent and there are a lot of other dimensions to be taken into account besides ESG criteria.

We would suggest organizing a client study (at European level) on the understanding and usefulness of each indicator, with only the most relevant indicators being retained as compulsory.

<ESA_QUESTION_ESG_1>

Q2 : Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?

<ESA_QUESTION_ESG_2>

In our opinion, these characteristics are not sufficiently taken into account; it would be more appropriate to establish a homogeneous principle of proportionality for all the financial market participants.

In addition, Annex I relates the adverse impacts generated to the value of the investment the final market participant is making. However, it fails to properly differentiate the different type of products and their characteristics and therefore is not increasing transparency.

<ESA_QUESTION_ESG_2>

Q3 : If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?

<ESA_QUESTION_ESG_3>

To ensure sufficiently comparable disclosure against key indicators, we would suggest

- favouring a common template at European level,
- favouring quantitative indicators with a common unit of measure;

- harmonizing the KPI in relative terms (in % or in units per million EUR invested).
<ESA_QUESTION_ESG_3>

Q4 : Do you have any views on the reporting template provided in Table 1 of Annex I?

<ESA_QUESTION_ESG_4>

The reporting template should have common parameters, clear definitions, a clear formula to calculate, description of data source used in the calculation, etc., in order to achieve comparability.

Only indicators which directly affect sustainability risk should be considered, i.e. those causing an actual or a potential material negative impact on the value of the investment.

The nature of the business should be considered in assessing appropriate variables to be reported.

<ESA_QUESTION_ESG_4>

Q5 : Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies' GHG emissions)?

<ESA_QUESTION_ESG_5>

There are too many and too detailed indicators in Table 1. This appears to be contrary to Level 1 Regulation which is looking for disclosure of "principal" adverse impact.

We agree with the indicators relating to environmental risk, where an explicit definition and calculation methodology is available.

We do not agree with the inclusion of forward looking indicators, as these could be subjective in the way they reflect future improvements. We consider that there is a risk that forward-looking indicators could offer discretion to undertakings and thereby impede comparability.

<ESA_QUESTION_ESG_5>

Q6 : In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?

<ESA_QUESTION_ESG_6>

n/a

<ESA_QUESTION_ESG_6>

Q7 : The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?

<ESA_QUESTION_ESG_7>

"Share of investment", understood as percentage of the total investments a company holds, looks fine for us, but note our concern re the necessity of limiting the number of indicators to facilitate customer understanding.

<ESA_QUESTION_ESG_7>

Q8 : Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?

<ESA_QUESTION_ESG_8>

GHG emissions related metrics might be useful for market participants to set up plans that contribute to a greener economy. However, “advanced” metrics, or insufficiently explained indicators, should be optional. They can potentially be even counterproductive for the financial markets if a reliable definition is not available. “Advanced” metrics relating to only one (although important) goal of sustainable investments could even blur the disclosure. It is important to restrict the disclosed indicators to the main risk-drivers.

<ESA_QUESTION_ESG_8>

Q9 : Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?

<ESA_QUESTION_ESG_9>

We do not agree that this should be a goal for the first phase; it should be given effect for adaptations after a first phase of experience, where the impact of a more limited set of variables can be properly assessed and enable more informed introduction of additional variables.

Indicators should be clear and concise. This is not the case in the currently proposed approach. While we can refer to an elaborated taxonomy and clear definitions relating to economic (climate change) issues, a comparable basis is required before disclosing indicators for social and employee matters.

Some of the indicators are not suitable to allow investors to make informed decisions, which is a key objective of the RTS.

We do not agree at this point in time with these disclosure requirements. Clarification is vital in advance of their introduction.

Examples

(i) *the gender pay gap* (number 18 of adverse sustainability indicators)

Definition in Annex I: *‘gender pay gap’ means the difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings;*

Such a figure, without a reliable definition, is without any value for the investor. An average value without consideration of the structure of the staff does not make sense.

(ii) *No. 21: Whistleblower protection*: The concrete meaning of whistleblower protection remains unclear.

<ESA_QUESTION_ESG_9>

Q10 : Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?

<ESA_QUESTION_ESG_10>

No. Historical comparison is too ambitious for most financial market participants.

<ESA_QUESTION_ESG_10>

Q11 : Are there any ways to discourage potential “window dressing” techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?

<ESA_QUESTION_ESG_11>

Timing of reporting should be aligned with already existing reporting frequencies – considering proportionality.

Consistency of reporting should be encouraged but absolute consistency is unlikely to be attainable. Undertakings should have some latitude in determining and reporting the required variables.

<ESA_QUESTION_ESG_11>

Q12 : Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?

<ESA_QUESTION_ESG_12>

We agree with the approach to have transparent and comparable information. Mandatory templates can help to achieve this goal, but, as discussed elsewhere in this response, requirements must be practicable at a level which enables effective comparison and understanding. It is necessary that undertakings are able to provide these templates and to depict the specificities of their products and business.

<ESA_QUESTION_ESG_12>

Q13 : If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?

<ESA_QUESTION_ESG_13>

See Q12.

Mandatory templates should be developed in close cooperation with the industry concerned. Mandatory templates showing incomplete or even misleading information are useless for the public.

<ESA_QUESTION_ESG_13>

Q14 : If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.

<ESA_QUESTION_ESG_14>

We do agree subject to comments in Q12 and Q13.

<ESA_QUESTION_ESG_14>

Q15 : Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?

<ESA_QUESTION_ESG_15>

n/a

<ESA_QUESTION_ESG_15>

Q16 : Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.

<ESA_QUESTION_ESG_16>

We think that the definitions of "sustainable investment products" and "products that promote environmental or social characteristics" may result in varying interpretations.

More guidance in RTS is needed to determine when a product will qualify for either product category and facilitate compliance from insurers.

Unless more guidance is given, it would be possible that national supervisors would supply different interpretations.

<ESA_QUESTION_ESG_16>

Q17 : Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?

<ESA_QUESTION_ESG_17>

The scope of the indirect investments is not clear and not effectively defined.

We consider that the sentence "those that contribute to the attainment of the environmental or social characteristics", is expected to be understood as "those products which promote environmental or social characteristics", and recommend that the latter sentence, being more explicit and specific, should be included instead of the former.

<ESA_QUESTION_ESG_17>

Q18 : The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?

<ESA_QUESTION_ESG_18>

Graphical representations are attractive communication tools but experience shows that they can often be misinterpreted by non-professionals.

The same graphical representation for very different types of products can end up misleading final clients, as it does not consider the constraints and the allocation of different products types.

See also Question 12.

<ESA_QUESTION_ESG_18>

Q19 : Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?

<ESA_QUESTION_ESG_19>

n/a

<ESA_QUESTION_ESG_19>

Q20 : Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?

<ESA_QUESTION_ESG_20>

No. See comments above.

<ESA_QUESTION_ESG_20>

Q21 : While Article 8 SFDR suggests investee companies should have “good governance practices”, Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including “sound management structures, employee relations, remuneration of staff and tax compliance”. Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?

<ESA_QUESTION_ESG_21>

For insurance undertakings such governance principles are already part of the Solvency II regime and have to be disclosed in the SFCR. Sound management structures are already explicitly required. The topics mentioned will be (or are already in some cases) part of risk management considerations for undertakings. We do not see an additional benefit from explicitly listing such issues in these requirements.

<ESA_QUESTION_ESG_21>

Q22 : What are your views on the preliminary proposals on “do not significantly harm” principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?

<ESA_QUESTION_ESG_22>

n/a

<ESA_QUESTION_ESG_22>

Q23 : Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?

<ESA_QUESTION_ESG_23>

No. Investment strategies are likely to reflect a number of factors including for instance the expected term of the investment and need for customer security. We do not see merit in the ESAs defining widely used ESG investment strategies as they could not be sufficiently comprehensive to cover all of the factors which determine actual strategies. We consider that each financial market participant must define and disclose its own strategy.

<ESA_QUESTION_ESG_23>

Q24 : Do you agree with the approach on the disclosure of financial products' top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?

<ESA_QUESTION_ESG_24>

We agree with the approach on the disclosure of financial products' top investments in periodic disclosures in order to know the evolution of sustainable investments.

<ESA_QUESTION_ESG_24>

Q25 : For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.

- a) an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);
- b) a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);
- c) a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and
- d) a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.

<ESA_QUESTION_ESG_25>

n/a

<ESA_QUESTION_ESG_25>

Q26 : Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?

<ESA_QUESTION_ESG_26>

From our point of view it would be better to integrate this section with the graphic and narrative explanation of the investment proportions since it makes it easier for the client to understand the information.

Taking into account the substantial information proposed to be disclosed, a separate focus on derivatives is not necessary and seems excessive and complex for clients.

The use of derivatives should be covered in the financial market participant's investment and risk policy instead.

For the insurance sector, the usage of derivatives is already covered under the prudent person principle (article 132 (4) of the Solvency II Directive which dictates that the use of derivative instruments shall be possible only insofar as they contribute to a reduction of risks or facilitate efficient portfolio management.

<ESA_QUESTION_ESG_26>

Q27 : 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_27>

No

<ESA_QUESTION_ESG_27>