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| 23 April 2020 |

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| Response form for the Joint Consultation Paper concerning ESG disclosures |
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| Date: 23 April 2020  ESMA 34-45-904 |

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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. 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.
3. 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.
4. 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.
5. 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](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 1 September 2020.
6. 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]](#footnote-2). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | ACV Puls |
| Activity |  |
| Are you representing an association? |  |
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

I am responding in the name of ACV Puls, a Belgian trade union representing 293.000 members (Finance, Services, Retail, Not for profit, employees in some industries)

<ESA\_COMMENT\_ESG\_1>

* : 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>

It is useful to define a set of reference indicators for the following reasons:

* The Non Financial Reporting Directive is currently being reviewed. The indicators suggested in Annex 1 may serve as input for the review.
* For reasons of transparency and comparability, it is important to have standardized reference indicators. This is particularly relevant to assist the disclosure at product level, because investors are entitled to know how the fund they invest in, affects sustainability.

Hence, we support the use of standardized reference indicators.

However, the approach also has some major shortcomings.

* The choice of indicators reflects the political consensus existing at this moment in time, with a Taxonomy on E(nvironmental) being agreed on. The large set of mandatory indicators to a large extent reflects this. However, at the same time, the large set of mandatory indicators risks to result in data overload, which will become incomprehensible for the average investor. Adding additional social indicators -although useful- would add to this data overload. In this respect, we are afraid that the high number of mandatory indicators seals the possibility to add social indicators, even optional indicators (as one is only required to select one indicator per issue).
* The approach of mandatory and opt in indicators refers to information at the level of the financial institution, i.e. aggregated over all investment funds of a financial institution (i.e. under article 4). However, the information at the level of the *products* (investment funds) is much more relevant, as this is what clients buy. Unfortunately, as the draft RTS stands right now, financial institutions will need to focus most of their efforts on aggregating data over all their funds. On their turn, employees in bank branches (financial advisors) will have to explain this to clients whose prime interest goes to the particular product they are interested in.
* There is fear for data overload. The high number of indicators are difficult to understand and interpret by the investor. For the financial advisor it will be quite challenging to explain these to clients. More selectiveness is needed.
* A degree of flexibility in the selection of indicators at *product* level is useful. For a fund that invest into multinational companies, adherence to the OECD Guidelines for MNC is quite relevant. That same indicator would be much less useful for a fund that invests into Small and Medium Sized Companies. However, what is important is that there is clarity and transparency on why and according to which criteria particular indicators are selected. Unfortunately, the draft RTS provides few guidelines on how to select the relevant indicators at product level. SFDR art 4 (2a) states: *“financial market participants shall include in the information provided… a) information about their policies on the identification and prioritisation of principal adverse sustainability impacts and indicators; “* We believe that this wording enables the ESA’s to include in the draft RTS guidelines requirements for financial market participants on how they select the relevant indicators at product level.

A much smaller core set of mandatory indicators at entity level (if any), but an enhanced list of standardized opt-in indicators (enhanced with social indicators), combined with disclosure requirements on why particular indicators are chosen at product level would probably be more useful, because it would allow to meet different concerns:

* An enhanced set of social indicators
* Less data overload
* Better disclosure on the selection of indicators at product level
* While at the same time the use of standardized reference indicators is maintained

<ESA\_QUESTION\_ESG\_1>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_2>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_4>

* : 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>

**We would like to add an indicator respecting social dialogue in table 1**

**Implementing principle 8 of European Pillar Of Social Rights social dialogue and involvement of workers**

1. Share of investments in entities without respecting social dialogue and involvement of workers principle 8 of EPSR

2. Share of investee companies without respecting social dialogue and involvement of workers principle 8 of EPSR

For example not respecting I&C procedures (workers councils, European Work Councils not established) according EPSR

* involvement of workers, trade unions, workers representatives, including works council members and members of European works councils and worker board level representatives, as well as other stakeholders, can play an even more important role in ensuring more sustainable and long-term oriented decisions by companies, as long as they can act in a legal framework which empowers them and which makes sure that directors act in the interest of society as large, and not only in the interests of shareholders

**HR indicator : GVC indicators (global value chain) :a supplier’s code of conduct**

**We would like to add indicator Supplier code of conduct through their GVC in table 1**

**Implementing Supplier code of conduct through their GVC**

1. Share of investments in investee companies without any supplier code of conduct (against unsafe working conditions, precarious work, child labour and forced labour) in their GVC

2. Percentage of specific control and/or certified compliance for this code of conduct among suppliers of investee companies in their GVC

* The need to take into account ~~(~~due diligence in GVC~~)~~ (indicators need also incentives to enhance investments in developing countries) to introduce a supplier’s code of conduct. In this respect, we would like to point at some particular problem which results from the differentiation between mandatory and optional indicators. Indicators 26 and 27 within the mandatory set of indicators look at the risks, either through own operations, or through suppliers, of being exposed to child or forced labour, through the geographic areas in which a company is active. The higher this indicator, the worse. However, here we have several remarks:
  + The exposure to such regions as such does not imply that a company effectively uses either directly or through its suppliers child labour, forced labour… The use of this indicator could have as side effect to discourage investment into these regions. But is really what we want? Developing countries need investment, be it ethical investment.
  + Child labour, forced labour is not exclusively confined to specific regions. It can occur in the EU as well (for example abuse of illegal migrant labour).
  + At present, the indicator which we consider to be more relevant (supplier’s code of conduct) is just an optional one. If the hierarchy between mandatory and optional indicators is maintained, it would be good to move this indicator to the mandatory set.
* Not all indicators mentioned under art 18 (minimum safeguards) of the “Taxonomy Regulation” are in the indicators in Annex 1 (see for example OECD guidelines for MNC).
* The remarks made above do not intend to be complete, but rather indicative of the need to further investigate the social indicators
* Study on due diligence requirements through the supply chain [Final Report](https://data.europa.eu/doi/doi:10.2838/39830)

<ESA\_QUESTION\_ESG\_5>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_6>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_7>

* : **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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_8>

* : 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>

Yes,

As defined in art. 2 17) ‘sustainable investment’ means an investment in an economic activity that contributes to the triple objective of ESG.

The principal merit of delivering indicators for social and employee matters, respect for human rights , anti-corruption and anti-bribery at the same time as the environmental indicators is that they could be used as input for the review of the NFRD.

However, we also see important disadvantages. We are afraid that by delivering these indicators earlier than scheduled for in the Level 1 legislation, the ESA’s will consider their job as ‘done’ and there will not be a follow-up.

The level 1 legislation sets as deadline for the delivery of social indicators 30 december 2021. This later date is no coincidence and an implicit recognition of the Level 1 legislation that the social indicators need more time, given the present status of the debate. We believe that the draft RTS should recognize this concern of the Level 1 legislation and not overhurry the delivery of indicators for social and employee matters, respect for human rights , anti-corruption and anti-bribery.

While the present proposal is a useful first step, it remains incomplete.

<ESA\_QUESTION\_ESG\_9>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_10>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_11>

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

<ESA\_QUESTION\_ESG\_12>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_12>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_13>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_14>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_15>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_16>

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

<ESA\_QUESTION\_ESG\_17>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_17>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_18>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_19>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_20>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_21>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_22>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_23>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_24>

* : 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.

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);

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);

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

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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_25>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_26>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_27>

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. [↑](#footnote-ref-2)