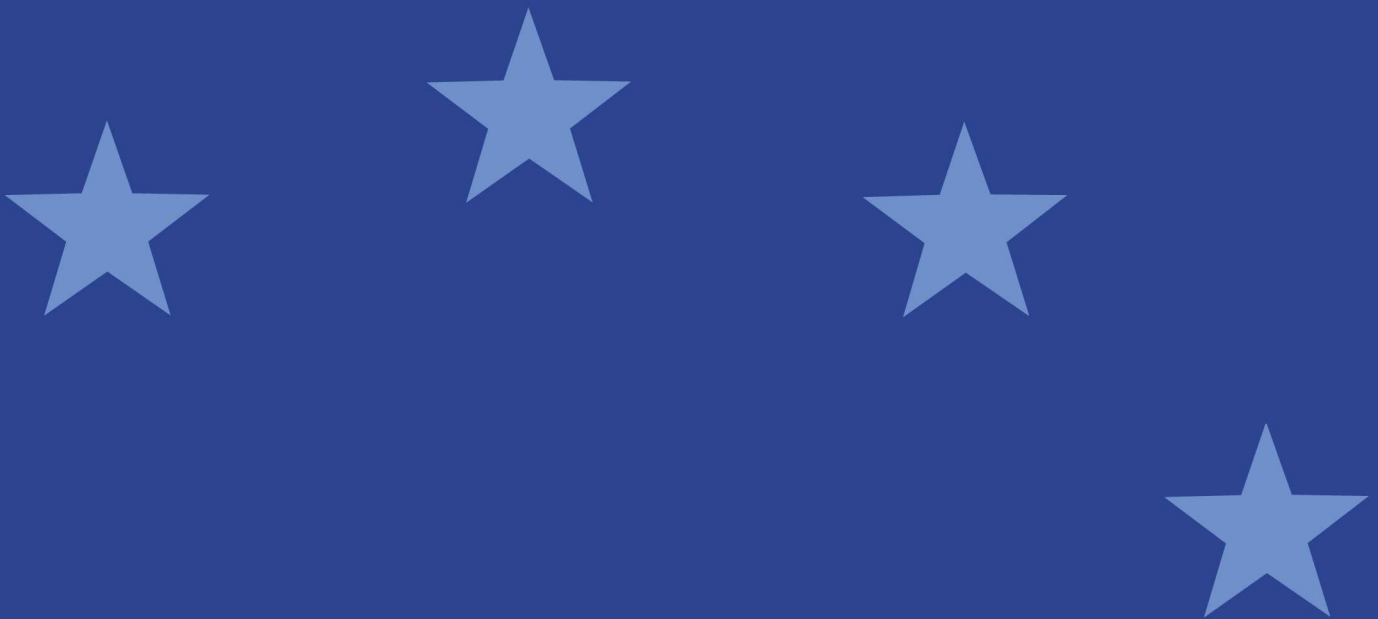


Response form for the Joint Consultation Paper concerning ESG disclosures





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	Accounting Standards Committee of Germany (Deutsches Rechnungslegungs Standards Committee)
Activity	Government, Regulatory and Enforcement
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

TYPE YOUR TEXT HERE

<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>

We do not agree. The principle of materiality is one of the main qualitative characteristics of financial corporate reporting, also referred to as mainstream corporate reporting. This principle is intended to ensure that the user of the report only receives information that is essential to him/her in view of the purpose for which the report is prepared. Therefore, the provision of zero values is not required in general. However, the draft RTS stipulates disclosure of a value for each of the indicators mentioned in table 1 of Annex I, regardless of zero values. Such a requirement is in conflict with the principle of materiality per se, which is not appropriate in our view.

<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>

No, we do not believe it does. In spite of the comply-or-explain clause in article 11 of the draft RTS we have the following concern: To our knowledge, there are often only minor differences in the product mix between large and small financial market participants. Therefore, the costs for gathering and processing information are unlikely to depend very much on the size of the respective financial market participant, as mentioned on page 74 of the consultation document. In particular, the disclosure requirements under the draft RTS will lead to an undue cost or effort burden for smaller financial market participants, which should be avoided.

<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>

We disagree with the approach chosen. The draft RTS results in transparency obligations for investees that are not in the scope of the Sustainable Finance Disclosure Regulation (SFDR). In other words, the requirements for investees are defined on level II (by way of the RTS), which were not the subject of discussions at level I, i.e. the SFRD. We see a clear connectivity between the Green Finance initiatives at EU level and the Non-Financial Reporting Directive (NFRD). This link is also apparent in the Taxonomy Regulation; however, this regulation contains disclosure requirements for investees that are in the scope of the NFRD (Art. 8 of the Taxonomy Regulation). This connectivity requires direct engagement with non-financial reporting; and, in addition, the consideration of the transparency obligations of investees precedes the consideration of the transparency obligations of financial market participants. However, the path taken by the European Commission and the ESAs puts the cart before the horse, as the draft RTS seems to take precedence over the currently discussed content of the NFRD.

Furthermore, a comparison between global investment portfolios and the limited scope of the NFRD highlights the international dimension of the issue. In many cases, in order to meet their transparency obligations, financial market participants can only obtain the necessary information through bilateral agreements, or they are restricted in their investment options if such agreements do not come into force. Therefore, going this path alone at a European level does not seem meaningful from a macroeconomic perspective. We urge for a stepwise expansion of disclosure requirements with a sense of balance and in consideration of international trends. This means, for example, to define the disclosures, such as KPIs, based on a conceptual framework (see question 5) including the aspect of materiality (see question 1) and, further, to focus on a short list of KPIs required.

<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>

TYPE YOUR TEXT HERE

<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>

No, we do not agree. Firstly, we do not see any conceptual framework that underpins the KPIs chosen (see question 3). Secondly, the draft RTS does not contain any discussion of the information needs of the users the KPIs are designed to address and whether the KPIs mentioned serve those information needs. In other words, the ESAs do not substantiate the KPIs chosen. Therefore, we are not in a position to give a positive answer on this question in general. Furthermore, we think that KPI disclosure requirements should focus on the indicators itself. Evaluative attributes, such as "insufficient" (KPI "insufficient whistleblower protection") or "excessive" (KPI "excessive CEO pay") should be avoided.

<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>

Please see our answer on question 5.

<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>

TYPE YOUR TEXT HERE

<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>

Please see our answer on question 5.

<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>

In general, we acknowledge that the indicators mentioned in the question are just as much part of the ESG issues as environmental protection. However, we note that practice is currently focusing more on reporting on environmental issues and gaining valuable experience, whereas other ESG issues are often still in their early stages. We think that practice should be granted room for gaining experience on the S and G topics.

<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>

In general, we agree. In traditional financial reporting the time horizon that disclosures are reported on tends to be shorter. However, as many ESG issues are considered and compared based on a longer time horizon, we acknowledge that comparatives for ESG indicators should therefore also cover a mid to long-term historical period of 5 to 10 years.

However, we note that the ESAs do not address the issue of comparability over time in this context. In traditional financial reports prior year figures are adjusted by certain effects to achieve comparability. The issues such adjustments are made for include changes in the legal structure of the reporting entity or changes in measurement and/or recognition methods. Whether or not the ESAs have such a model in mind for the nonfinancial KPIs developed in the draft RTS, we believe that retrospective adjustment of data over a such a long time period is very burdensome and in many cases arbitrary; further, we are not convinced that the usefulness of the information obtained will justify this effort. Therefore, our answer above is subject to such adjustments not being required.

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>
TYPE YOUR TEXT HERE
<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>
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<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>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_16>

Q17 : 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>

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>
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<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>
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<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>
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<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>
We believe that disclosures on corporate governance are an essential part of corporate reporting in general. However, Corporate Governance Reporting is already a well-developed instrument of financial market communication on this issue. Therefore, we think that disclosures on corporate governance should not be addressed in the RTS in order to avoid redundancies and conflicts.
<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>
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<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>
TYPE YOUR TEXT HERE
<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>
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<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>
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<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>
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<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>
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<ESA_QUESTION_ESG_27>