

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:

1. contain a clear rationale; and
2. 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:

- Q1** Insert your responses to the questions in the Consultation Paper in the present response form.
- Q2** 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.
- Q3** 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.
- Q4** 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.
- Q5** 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**.
- Q6** 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	PensioPlus
Activity	Insurance and Pension
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

As the Belgian association of Pension Funds, PensioPlus represents the 85 percent of the Belgian IORPs in terms of assets. These IORPs are very heterogeneous in size from but all are very small compared to other financial market participants in Europe. End 2018 Belgium had 196 IORPs with in total 34,3 billion EUR under management. Only nine IORPs have more than one billion EUR of assets and 51 IORPs have less than 10 million EUR. Given the heterogeneity of our sector it's extremely important that the regulatory technical specifications (RTS) of the Regulation takes into account the heterogeneity, size and nature of the financial market participants and financial products involved.

As such it is very important for our IORPs that the size, nature and scale of activities is taken into account in article 4 of the Regulation. Given the size of our IORPs, having to comply in full with article 4 would impact their objective: providing pensions to their members. Indeed, the cost involved would have a considerable negative impact on the pensions for the members estimated up to 1 percent of return per annum for small pension funds.

Most of Belgian IORPs and pension plans have the following characteristics:

- Based on social and labour law, all employees are compulsory affiliated to the pension plan
- The employees take no investment decisions
- All investment decisions are taken by the board of the pension fund (often the board of the IORP has an equal representation of the employees and employers)
- Following the IORP legislation the board takes into account ESG considerations in their risk management and can opt to consider ESG in the investment decisions at entity level

To our understanding, in these cases, following the definitions of the Regulation the IORP could also be considered the end investor. All investment decisions are taken by the board of the pension fund.

As end users of the data provided we would like to make the following comments:

- The implementation of the Regulations should be aligned and integrated with the other initiatives of the commission on the non-financial reporting directive, taxonomy,...
- If Europe wants to make this disclosure regulation successful it should invest in setting up a database with the requested disclosure information. This database should be accessible free of charge and can be used by all investment market participants and end investors.
- The timelines set for the implementation of these disclosures are very ambitious. Together with the lack of available data we expect this will lead to poor quality in the disclosures. Starting with a less ambitious scope of disclosures but ensuring quality information would provide higher added value to the end investors.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

In recital 21 of the RTS, the ESAs describe their understanding of “financial products promoting ESG”. This goes beyond the Regulation and we question the competence of the ESAs on this matter. In this recital it should also be made clear that this only applies to information provided to the end-investors to enable them to make an informed investment decision.
<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>

As end investors we support the objective of the EU to increase transparency on sustainable investments. However we doubt that reporting against a total of 32 indicators will achieve this objective. What is the added value to the end investors?

The detail of the information required is not consistent with available market information. If the information is not available then the financial market participants are not able to disclose this information either.

The EU should align the development of indicators with the initiatives on NFRD and the development of the taxonomy.

We welcome the comply or explain option for financial market participants with less than 500 employees. This option is very important for our IORP members who most of them have no staff and have a limited amount of asset under management. If this option would not exist, given the size of the Belgian IORPs, the cost involved in this reporting would have a considerable negative impact on the pensions for the members estimated up to 1 percent of return per annum for the majority of the Belgian pension funds.

Considering that most of the required data on investee companies is not readily available, complying with the new disclosure requirements will require a significant effort with significant costs for financial market participants. As a result, smaller market participants may be driven in the wrong direction as they would be asked to cover all the required information instead of addressing the relevant material themes.

Financial market participants should also be able to take into account materiality when disclosing the principal adverse impacts.

<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>

No, it does not because Chapter II on transparency of adverse sustainability impacts and Annex I on the template for principal adverse impacts statement adopt a one size fits all approach without any consideration of the size, nature and scale of financial market participants.

As mentioned in the IORP II Directive, IORPs are financial institutions with a social purpose which are often managed by social partners. They are not considered as providers of financial products as such but more as executors of a pension promise by the sponsoring undertaking to its employees. Belgian IORPs have no commercial character and there is no competition between them due to the mandatory nature of the affiliation of members and affiliates. It would be inappropriate to impose to these IORPs the same transparency requirements than those applying to big commercial financial entities. Many IORPs are very small entities, which makes them very sensitive to any additional administrative burden. The disclosure requirements should recognize these IORPs as end investors.

<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>

The ESG data that are currently available are not reliable and very expensive specially for small financial market participants. The correlation between the data for different data providers is low and therefore by definition the different disclosures of the different financial market participants will be difficult to compare. The EU should set up a database and make available the underlining data to be used for the disclosure. Financial market participants should be able to use these data at no additional cost. The disclosure should focus on the data that are readily available and provide quality information.

<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>

In most Belgian IORPs employees do not have an investment choice and cannot choose which IORP they will join. Disclosures of extensive information on adverse impacts to members and beneficiaries would not be appropriate. IORPs should be considered as end-investors: The Board of the IORP is able to understand and use ESG Principal adverse impact information when being involved in an investment decision making process. We would recommend the ESAs to consider the possibility of differentiating between size, nature, and scale of financial market participants' activities for the purpose of the reporting template provided in Table 1 of Annex I to ensure that the disclosure requirements are proportional and feasible.

<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>

ESG data on investee companies necessary to produce most indicators is currently not available. If new systems are set up and companies develop their disclosure further, this should be done in a way which leads to the most useful data to enable the transition.

The principal adverse impacts disclosures should require fewer indicators than the proposed list of 32 indicators. The concept of materiality should also be taken into account. <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>

No, adding even more complexity will only result in confusing. To allow end investors to understand the information less indicators will be required. <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>

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<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>

Other indicators can only be included if the data is available at no cost to the financial market participants and if the data is of good quality.

<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>

It's important to consider the materiality of the indicators, to introduce proportionality in the framework and to tailor the requirements to the specificities of the different financial market participants.

<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>

No, in a large number of indicators this data is not available. For a number of indicators looking ten years ahead makes much more sense.

<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>

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<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>

In recital 21 of the RTS, the ESAs describe their understanding of “financial products promoting ESG”. This goes beyond the Regulation and we question the competence of the ESAs on this matter. In this recital it should also be made clear that this only applies to information provided to the end-investors to enable them to make an informed investment decision.

Referring to article 8 products, the draft RTS should recognize the specificities of IORPs and their members and beneficiaries’ information needs, avoiding stifling them with inappropriate and burdensome rules with very little added value in improving members and beneficiaries’ ESG awareness.

According to the IORP II Directive, IORPs are financial institutions with a social purpose which are often managed by social partners. They are not considered as providers of financial products as such but more as executors of a pension promise by the sponsoring undertaking to its employees. In Belgium, IORPs have no commercial character and there is no competition between them due to the mandatory nature of the affiliation of members and affiliates. Most pension plans are set up by a company or a sector with the following characteristics:

- Based on social and labor law, all employees are compulsorily affiliated to the pension plan
- Employees have no investment choice and do not take any investment decisions
- All investment decisions are taken by the board of the pension fund (which in many cases also include employee representatives)
- Following the IORP legislation, the board takes into account ESG considerations in their risk management and the board can decide also to take ESG considerations in the investment decisions.

It would be inappropriate to impose to IORPs with the above-mentioned characteristics, the same transparency requirements than those applying to big commercial financial entities. The purpose of pre-contractual ESG disclosures is to promote greater transparency for end investors.

In these situations where investment decisions are taken by the board and not by IORPs' members and beneficiaries, the IORP itself must also be considered as the end investor.

Further disclosures by IORPs should be required only in situations where members and beneficiaries can take investment decisions or need to make a choice for affiliation or not.<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>

We prefer the ESAs not to prepare such templates. If however these templates are developed they should be easily readable for consumers and take into account the nature of the different financial products.

<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>

Pension fund members have often limited financial literacy relating to the functioning of capital markets, corporate governance and sustainable finance. Information overload leads to loss of interest. This may make it more difficult for pension funds to engage members when trying to inform them of situations where action is required. Therefore, disclosures should be made much simpler, allowing as much as possible the layering of information.

<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>
IORPs will not offer article 9 products.
<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>
IORPs may use different strategies to include ESG in their investment decisions (e.g. exclusion and best in class). These cannot be captured in a single graphical representation. In addition due to the nature of their liabilities IORPs invest a considerable part of their assets in government bonds. As a result an IORP always has a considerable part of its portfolio that cannot be taken into account as sustainable investment and therefore cannot be compared to other financial products. The use of a single graphical representation is therefore misleading to end-investors.
<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>
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<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>
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<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>
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<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>
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<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>
For the average pension fund member (and retail client) this type of information would be too difficult to understand. Investment professionals working for pension funds are well aware of the different strategies. There is no added benefit of regulating these definitions for pension fund participants.
<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>
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<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.**
1. **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);**
 2. **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);**
 3. **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**

4. **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>

We recommend only including this type of information in the periodic report.

<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>

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<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>

Belgian IORPs are very heterogeneous in size but all are very small compared to other financial market participants in Europe. End 2018 Belgium had 196 IORPs with in total 34,3 billion EUR under management. Only nine IORPs have more than one billion EUR of assets and 51 IORPs have less than 10 million EUR. It's extremely important that the regulatory technical specifications (RTS) of the Regulation takes into account the heterogeneity, size and nature of the financial market participants and financial products involved. If Belgian IORPs should in the future have to apply the full disclosure requirements the cost would be substantial compared to their size. For a large number of the IORPs the cost could amount to more than 1% of assets each year. This would result in a considerable reduction of the pension benefits of the participants. <ESA_QUESTION_ESG_27>