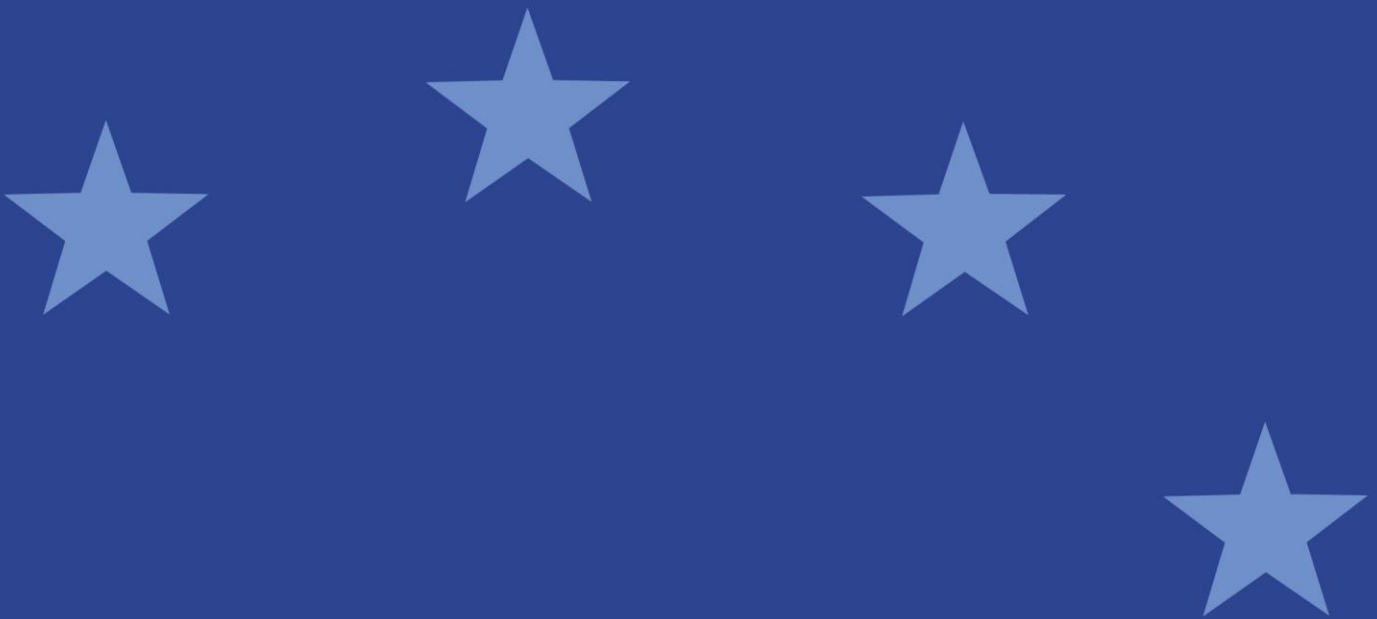


# Response form for the Joint Consultation Paper concerning ESG disclosures





## 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) 2018/1725<sup>1</sup>. 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.

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<sup>1</sup> 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	FuelsEurope
Activity	Non-financial counterparty
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>

FuelsEurope represents with the EU institutions the interest of 40 Companies operating refineries in the EU. Members account for almost 100% of EU petroleum refining capacity and more than 75% of EU motor fuel retail sales. FuelsEurope aims to promote economically and environmentally sustainable refining, supply and use of petroleum products in the EU, by providing input and expert advice to the EU Institutions, Member State Governments and the wider community, thus contributing in a constructive and pro-active way to the development and implementation of EU policies and regulations.

Particularly, we appreciate efforts to mobilise the financial sector in accelerating the move towards a prosperous and sustainable Europe in 2050. To achieve this, a stable and fair investment framework in Europe will be key. In that regard, FuelsEurope welcomes the opportunity of providing feedback on the European Supervisory Authorities consultation paper on ESG disclosures.

FuelsEurope is aware that currently the lack of a sufficiently acknowledged ESG reporting framework has resulted in numerous private entities and organisations collecting and selling ESG data to users. This creates concerns since this data could be mis-interpreted outside the context in which this data was provided. This practice may also contribute to inconsistencies when comparing company data. So we welcome the purpose of the Regulation on sustainability-related disclosures in the financial services sector (SFDR) of addressing the absence of harmonised Union rules on sustainability-related disclosures to investors.

The refining industry is already committed to reporting non-financial information related to sustainability issues. We believe that the Non-financial reporting directive (NFRD) and the Regulation on sustainability-related disclosures in the financial services sector (SFDR) sufficiently support the disclosure of non-financial information, for the benefit of relevant stakeholders. We believe that additional reporting requirements do not necessarily add to transparency but could increase reporting burdens..

FuelsEurope strongly supports alignment between existing EU legislations (such as the Taxonomy Regulation, the Non-Financial Reporting Directive (NFRD) and the SFRD) in order to avoid additional administrative burdens, duplication of reporting obligations and legislative overlap. For this reason, the refining sector asks both for the Regulatory Technical Standards (RTS) definition and for the NFRD revision to be based on the principles of flexibility and companies' materiality to enable socially responsible investment analysis and sustainable investment decisions.

FuelsEurope welcomes the possibility to provide our feedback to the ESAs proposal, while also calling for active involvement of a broad range of stakeholders for the duration of the entire legislative process.

<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>  
TYPE YOUR TEXT HERE  
<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>  
FuelsEurope strongly advocates for a flexible approach rather than a prescriptive “one-size fit all” principle, including sustainability-related disclosures requirements.

<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>  
FuelsEurope would very much welcome an approach based on **materiality** and on **flexibility**.

**Materiality:** disclosures should be based on individual companies ‘material’ and relevant information, in order to enable socially responsible investment analysis and sustainable investment decisions. This should apply to all sectors. It should be recognised that ‘material issues’ vary greatly based upon a company’s size, legal financial reporting obligations, operating locations and customer base, among other factors.

Beyond existing legal requirements, corporates must continue to be able to make judgements about what is ‘material’ to their investors and creditors in terms of non-financial or sustainability issues. This will allow companies to provide decision relevant information for specific portfolio of assets and operations and allow audiences to understand the rationale and governance around which issues are deemed ‘material’, rather than reporting as a “tick the box” exercise.

**Flexibility:** we are aware of different work streams that aim to identify “core” metrics that are sector agnostic. This is a rapidly developing area, including initiatives involving investors, rating agencies, framework designers and corporates. Any request for further disclosures should consider these initiatives, at the very least to ensure EU companies are not subjected to a web of complex, overlapping reporting requirements which also makes comparing of company information more complex.

<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>  
TYPE YOUR TEXT HERE  
<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>

The financial market players manage assets which are often owned/operated by companies that operate globally/across regions. Introducing this requirement may increase the administrative burden for companies. Furthermore, the EU policy and regulatory frameworks can be dynamic and the companies' obligations may change. For these reasons, we do not recommend to request for measures relative to the EU 2030 climate and energy framework targets. We would be more in favour of a flexible system asking companies to explain their contributions e.g. in the form of technologies/actions that drive GHG emissions reductions.

FuelsEurope would like to suggest that the eventual additional proposed relative measures should be developed by the regulators themselves by compiling the disclosures from all the constituents of the economy: by doing so, the collective progress could be smoothly monitored and tracked. <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>

As a general remark, we would advise not to include more advanced indicators or metrics and it is also unclear what 'advanced' would mean in this context. The EU legislation related to non-financial disclosure on sustainability issues already covers a sufficient number of KPIs.

However, in case any additional indicators would be created, they should be flexible, technology neutral and inclusive, to allow all technologies and sectors with a potential of providing their contribution to the EU energy and climate transition in a cost effective manner to make use of it. Moreover, Such a potential additional obligation could be applied only after an adequate impact assessment. <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>  
TYPE YOUR TEXT HERE  
<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>  
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<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>

As a general remark, the definition of a specific sector might be problematic since companies could operate across several different sectors leading to confusion and duplication of disclosure obligations. Some companies are multi-sector, others are not. These differences could render these metrics inherently unrepresentative and incomparable across different economic players. Finding a balance between principle-based and prescriptive disclosure with a set of pre-defined KPIs would also help avoid reporting to becoming a “tick-box” exercise and help investors to better understand metrics in a certain context. Relevant stakeholders should work together to develop common approaches, system-wide tools, sector and theme-specific metrics.

Within this context, we advocate for voluntary sector-specific reporting. FuelsEurope supports a reporting framework which enables companies to continuously improve their reports and to illustrate their contributions to the energy transition in a flexible and effective way.



For the specific case of 'solid fossil fuels', FuelsEurope welcomes the implicated distinction between solid and liquid and/or gaseous fossil fuels. This is in line with Article 19 of the Taxonomy Regulation which stresses that "power generation activities that use solid fossil fuels do not qualify as environmentally sustainable economic activities".

FuelsEurope Vision 2050 provides examples of very significant and promising R&D projects for the development of sustainable biofuels and e-fuels as well as gaseous hydrocarbons such as liquefied natural gas (LNG) and compressed natural gas (CNG) that have superior sustainability credentials both in terms of reducing GHG emissions and their impact on land use and ecosystems. Key regulatory measures are needed to help the development and deployment of these low-carbon liquid fuels.

<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>

"Good governance practices" are already included in the NFRD. We therefore discourage to also include "good governance practices" requirements in the RTS, since this could result in duplication of reporting obligations, potential misalignment and an additional burden on companies with no added value for investors decision making processes. <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>

FuelsEurope believes that the DNSH principle should be defined appropriately in order to allow all relevant activities with a potential of contributing to climate goals to access sustainable financing. In particular, an adequate introduction of DNSH principle under the EU Taxonomy Regulation could replace a possible "brown taxonomy" potentially foreseen in art.17 of the Taxonomy Regulation.

The taxonomy, and the DNSH principle, should adopt an inclusive approach towards different technologies; it should be technology neutral and lead to investment in innovation, infrastructure and solutions that help achieve the EU goals cost-effectively. It should adopt a transitional, evidence-based and pragmatic approach, which reflects today's technological development, available renewable and highly efficient low-carbon solutions significantly contributing to the transition, as well as current energy mixes and existing infrastructure. A defined "brown taxonomy" would potentially hinder and restrict the access to investments to economic opportunities contributing to the climate transition.

As far as the Taxonomy regulation is concerned, FuelsEurope would like to emphasise that the reporting on taxonomy-compliant activities will require companies to review their reporting processes and establish new systems/reporting functionalities, and internal processes enabling the changes in data collection, processing and assurance. We expect delegated acts with technical screening criteria on disclosure obligation in mid-2021. Given this very short timeline (between the publication and the implementation of the delegated acts), it will be very challenging for companies to adapt their reporting system in the course of 2021 and be ready to report on financial year 2021 in early 2022. The actual work on the reporting would have to start from January 1st 2021, ahead of the Delegated Acts. To ensure adequate implementation of the future rules, a realistic and well-sequenced application timeline is needed, especially regarding disclosure obligations. It includes ensuring there is sufficient time between the publication of the final technical measures (the so called "level 2") and the application date of various delegated acts. In addition to this, an appropriate impact assessment should always be provided prior to any legislative action, to avoid unintended consequences in the market.

The DNSH principle could be helpful in this sense. It should be inclusive, technology neutral and flexible enough to accommodate the potential challenges that the application of EU-based regulations/guidelines under the DNSH principle would pose to companies operating globally that already have to comply with the rules of different countries they operate within.

<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.
  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>  
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>