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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 2020ESMA 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:

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:

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 | AFEP |
| Activity | Non-financial counterparty |
| Are you representing an association? |[x]
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

AFEP, the French Association of Large Companies, represents the interest of over 100 of the largest corporations operating in France and takes part in the public debate to provide solutions to develop a competitive French and European economy.

AFEP members have been engaged for many years in putting CSR at the heart of their strategies. They present the highest level of non-financial information compared to companies worldwide and have made strong commitments to notably reduce their GHG emissions, to respect human rights, to preserve biodiversity and to engage in the circular economy. Our members insist on the fact that the challenge is not to make finance greener but to bring about a greener economy. Investors should provide financing resources to support companies in their transition process rather than implementing exclusion strategies. Therefore, companies call on policymakers and authorities to establish a framework which will enable progress on reporting regarding environmental topics and more broadly non-financial issues, whilst creating the conditions for a constructive and balanced dialogue between investors and corporates.

We welcome this consultation and would like to take this opportunity to address the following key issues:

* During the negotiations on the Taxonomy Regulation, we insisted that all reporting requirements should be dealt with in the context of the review of the Non-Financial Reporting Directive (NFRD) to ensure consistency of the reporting framework for issuers. The indicators put forward by the ESAs in this joint consultation are addressed to investors to allow them to assess the principal adverse impacts of their investment decisions (or financial advice). However, we believe that these indicators will directly impact reporting of non-financial information by issuers. When the data will not be available, investors will turn to investee companies to collect all necessary information.
* The risk we have identified here (building on the experience of French companies with the disclosure requirements from the French “Grenelle 2 Law”) is that the 32 core indicators put forward by the ESAs will add up to the new indicators laid down in the Taxonomy Regulation (sustainable proportion of revenue, capital expenditure and operating expenditure) and to the potential new KPIs that will come out of the review of the NFRD. Furthermore, each investor can potentially require additional data depending on their strategies and preferences or affinities with other well-established or future non-financial reporting standards, such as the SASB standard, GRI, CDP… This will result in excessive and unjustified administrative burden for issuers, without delivering relevant and useful information to investors and other stakeholders.
* Therefore, we call on EU policymakers and authorities to adopt a coordinated and holistic approach to ensure that the overall reporting framework for both investors and issuers is simple, usable, consistent and that all data reported are relevant. In practice and before the adoption of the delegated act, we recommend to:
	+ establish a close dialogue between investors and issuers - for instance within the Sustainable Platform provided for in the Taxonomy Regulation - to identify indicators that are really relevant for investors and can be produced by issuers;
	+ ensure coordination between the drafting of level 2 measures under the SFDR and the review of the NFRD;
	+ indicators required by the Taxonomy Regulation (proportion of revenue, Capex and Opex linked to sustainable activities) should be taken into account and serve as key factors in assessing negative impacts on environmental issues of investments in the concerned investee companies.

<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>

We consider that some indicators listed in Table 1 and therefore considered as core indicators should be transferred to Tables 2 and 3. In particular, indicators regarding biodiversity, deforestation and water should be subject to an ‘opt-in’ regime since these indicators are not relevant for all activities.<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>

The approach should not only take into account the size, nature, and scale of financial market participants activities but also the size of investments and/or of investee companies. In this regard, clarification should be provided on whether the assessment of the principal adverse impact should be performed for all investments, without any consideration of the amounts invested (compared to the total portfolio or AuM), or the size of the investee companies. As a matter of fact, some indicators listed in Table 1 can be difficult to produce for smaller companies. This could result in investors divesting or not investing in these smaller companies.<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>

Annex 1 of the draft delegated act defines the “enterprise value” as the sum, at fiscal year-end, of the market capitalisation of ordinary shares, the market capitalization of preferred shares, and the book value of total debt and non-controlling interests, excluding the cash and cash equivalents. The wording of this definition should be aligned with the definition of enterprise value laid down in the draft delegated act elaborated in accordance with the Climate Benchmark Regulation. Furthermore, we consider that the definition should be more precise: does fiscal year-end refer to the closing price of the last trading day of the fiscal year ? It would be more relevant to determine the market capitalisation based on an average price covering a longer period (average on the last 12 months or 3 years, for instance) to avoid variations of carbon emissions and footprint due only to market conditions (e.g. market capitalisations of many companies have plummeted in a few weeks due to the Covid-19 outbreak). Variations of market capitalisation both up and down should, therefore, be neutralised. <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 consider that some indicators should be transferred to Tables 2 and 3 (please refer to our answer to question 1).

Generally speaking, the definition and scope of the indicators should be more precise and aligned with current practices, existing legislation and reporting standards:

* Item 6 “Breakdown of energy consumption by type of non-renewable sources of energy” requires more detailed information than what is currently disclosed through the CDP;
* Item 19 “Excessive CEO pay ratio” is not in line with the disclosure obligation required under the Shareholder Rights Directive, which does not require a ratio *per se* but a comparison between the evolution of the performance of the company, the evolution of the remuneration of directors and of those of the employees of the company;
* Our members also question whether the proposed indicators regarding waste (items 15 and 16) really provide useful information;
* Item 26 and 27 are more detailed than the French Law on the Duty of Care, considered as the most ambitious legal framework on due diligence in the world. The law on the Duty of Care does not require companies to disclose the list or number of operations and suppliers at significant risk of child labour incidents or forced labour in terms of geographic areas. The Law requires companies to disclose their vigilance plan which may describe the most salient risks regarding human rights or the environment in more general terms, followed by a description of the action plan to mitigate these risks. Afep companies consider that the publication of the full list of their suppliers, or of suppliers at significant risk, is not acceptable for competitiveness reasons.

<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>

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>

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>

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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>

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>

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)