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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 | Fundación ONCE |
| Activity | Non-financial counterparty |
| Are you representing an association? |[ ]
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

There are over a billion people with disabilities in the world, which represent 15% of the world’s population. In Europe, people with disabilities are estimated to be 100 million.

In order to endow the EU with a sustainable, fair and inclusive economy, the European Commission has taken relevant steps during the last 10 years to include disability and accessibility as part of the corporate social responsibility (CSR), diversity, sustainability, business & human rights, and non-financial reporting agendas, and **Fundación ONCE would like to underline the need and opportunity to include diversity and disability related indicators** in the Regulatory Technical Standards (RTS) on sustainability-related disclosures consolidating a coherent evolution in this field. These are relevant milestones to take into account for this purpose:

* The **2030 Agenda and the SDGs**, the **UN Convention on the Rights of Persons with Disabilities** (ratified by the EU and all EU member states), together with **EU non-discrimination legislation**[[2]](#footnote-3) including the **European Accessibility Act**, the **European Disability Strategy** and the **European Pillar of Social Rights,** among others, lead us to consider that disability and accessibility need to be present in the coming developments and regulations related to ESG disclosure developed by ESAs.
* The renewed **EU Strategy 2011-14 for Corporate Social Responsibility** explicitly recognized, for the first time, disability as part of the CSR agenda. The disability dimension in CSR has been further reinforced in the **European Parliament resolutions** of 6 February 2013 on CSR.
* **2030 Agenda for Sustainable Development** explicitly recognized people with disabilities as a vulnerable group. Different SDGs also refer to people with disabilities, such as SDG 8 on Decent Work and Economic Growth, SDG 10 on Reduced inequalities or SDG 11 on Sustainable Cities and Communities (with a specific mention of accessibility). Also, SDG 4 on Quality Education and SDG 17 on Partnerships for the Goals refer to people with disabilities.
* In the context of **business and human rights**, the Guiding Principles on Business and Human Rights implementing the UN ‘Protect, Respect and Remedy’ Framework (UNGPs) or the OECD Guidelines for Multinational Enterprises include disability and so do other Commission instruments[[3]](#footnote-4). Other reference institutions have underlined the link between business, human rights and disability, as is the case of the 2017 “Guide for business on the rights of persons with disabilities” by ILO and Global Compact.
* Regarding current **Directive 2014/95/EU**, the **EC guidelines on non-financial reporting adopted in June 2017 do contain specific and various references to people with disabilities** in relation to employee and board diversity, accessibility of products and services, and human rights, including examples of key performance indicators[[4]](#footnote-5)[[5]](#footnote-6).
* Indeed, international frameworks such as **Global Reporting Initiative-GRI** have highlighted the importance of the **disability dimension** in non-financial and sustainability reporting. An example is the Guide on “[Disability in Sustainability Reporting](http://disabilityhub.eu/sites/disabilitybub/files/gri_disability_reporting_0.pdf)” (published by GRI and Fundación with the co-funding of the European Social Fund, with specific guidance and indicators related to business and disability).
* Finally, Fundación ONCE recognizes **disability** as an element of **diversity**, and people with disabilities as a source of **talent, growth, innovation and market opportunities**. The potential of inclusive businesses is being increasingly identified by companies, institutions and thematic initiatives around the world[[6]](#footnote-7). Fundación ONCE underlines the potential of the **360º approach to business and disability**, where people with disabilities are seen as stakeholders from a wide perspective, valuing their roles as employees, consumers (including their families seeking for accessible products and services), providers, employers, investors and part of the community in which a company operates.

Considering the relevance that disability is taking in sustainability, CSR, human rights, non-financial reporting agendas, Fundación ONCE proposes to **include an additional indicator within the Table 1, as explained in question 5.**

<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>

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>

Considering the argument above, Fundación ONCE proposes to include the following indicator within the Table 1, under the “Adverse sustainability Indicator” column, section “SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS”, within the category “social and employee”:

Indicator # 23: Commitment to persons with disabilities and universal accessibility

Metric 1: Share of investments in investee companies with no disclosure on number of employees with disabilities

Metric 2: Share of investments in investee companies with no measures of universal accessibility of products and services.

<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>

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<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>

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, Fundación ONCE does. Considering that the 2030 Agenda and the SDGs have not only an environmental dimension but have also a social dimension, social and employee matters and respect for human rights related indicators should be delivered at the same time as the environmental indicators. If special attention to social targets included in the 2030 Agenda is not given, the SDGs will not be achieved. More specifically, and as stated above, the 2030 Agenda for Sustainable Developmentexplicitly recognized people with disabilities (1 billion people in the world) as a vulnerable group. Different SDGs also refer to people with disabilities.

.<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>

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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>

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.
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>

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<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)
2. Disability is one of the discrimination grounds addressed by EU’s non-discrimination legislation (Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation) and it is also recognized by the EU Treaty together with age, gender, racial or ethnic origin, religion or belief, or sexual orientation (article 10), as well as in the EU Charter of Fundamental Rights (article 21 and 26). [↑](#footnote-ref-3)
3. 3 Such as the Sector Guides for implementing the UNGPs as well as in the Guide for SME “My business and human rights”, and various references to disability are included in the 2015 EC staff working document on implementing the UNGPs. In addition, the recent EU Action Plan on Human Rights and Democracy 2020-2024 refers specifically to people with disabilities, in relation to many areas, including accessibility to infrastructure, transport and ICT as well and employment. [↑](#footnote-ref-4)
4. References are included in the EC guidelines’ sections 4.6 Thematic aspects: b) social employee matters and c) respect to human rights; and 6 Board diversity disclosure – footnote. Examples of indicators included are: the number of people with disabilities employed or how accessible companies’ facilities, documents and websites are to people with disabilities [↑](#footnote-ref-5)
5. An interesting example can be found in the case of Spain where Directive 2014/95/EU transposition, by means of the Law 11/2018, did include specific reference to disability and accessibility. [2019 Guide on Disability, SDG and non-financial reporting](https://www.cermi.es/sites/default/files/docs/colecciones/gu%C3%ADa%20ODS%20II%20def.pdf) (in Spanish only), by the Spanish Committee of Representatives of People with Disabilities, Fundación ONCE and Fundación Bequal, analyses this milestone from a disability perspective [↑](#footnote-ref-6)
6. Relevant international examples are the *ILO Global Business and Disability Network (ILO GBDN), the Valuable 500 initiative and* [*Disability Hub Europe*](http://disabilityhub.eu/)*, led by Fundación ONCE with the co-funding of the ESF in the EU.* At national level, there are other examples, such as the *Inserta Responsible Forum in Spain,* the *UK Business and Disability Forum*, the *Austrian Disability Business Forum*, The *UnternehmensForum* in Germany, or the *Come CloSeR to Disability Task Force* in Poland. [↑](#footnote-ref-7)