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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 2020  ESMA 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:

* contain a clear rationale; and
* describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESA\_QUESTION\_ESG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESA\_ESG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA\_ESG\_ABCD\_RESPONSEFORM.
* The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 1 September 2020.
* Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[[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

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| --- | --- |
| Name of the company / organisation | RWE AG |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

TYPE YOUR TEXT HERE

<ESA\_COMMENT\_ESG\_1>

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>

RWE welcomes the sustainable finance approach, as there is certainly a need for transparent information in order to be able to steer financial flows appropriately in sustainable investments.

In particular, we see the energy sector as fundamental to a sustainable future, but other sectors must follow suit. Similarly, sustainability is a global concern that cannot be successfully managed by any country alone. Therefore, we are also clearly in favour of EU-wide (not national) regulation, which should define the criteria of sustainability. This would also prevent competitive disadvantages. Ideally, the EU-wide approach would then be applied globally.

In order to provide planning security for companies subject to reporting requirements, it would be reasonable to harmonise the ESG disclosures with other developments such as the revision of the Non-Financial Reporting Directive. In this course, the "social and environmental indicators" that have not yet been defined could be established within the framework of the desired EU standard. Finally, the data listed in Table 1 in particular must be critically examined to determine whether they are meaningful. On the one hand, the number of necessary details could lead to an overambitious and not very target-oriented detailing, on the other hand, some details are not uniformly defined, especially with regard to a preferably EU-wide reporting (e.g. "hazardous waste" is not uniformly regulated in national regulations and this cannot therefore be reported correctly via a single indicator in an internationally operating company).<ESA\_QUESTION\_ESG\_1>

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>

See reply to Q1. In view of the wide range of information asked for in the report, we see the need to focus on less details which are especially relevant for investors.

Investors and companies need planning security for their investment decisions. The ESG path of a company is mainly defined by its investments. The key figure for investments is capex, thus this indicator must be anchored in the reporting obligation. In order to minimise further additional effort, capex should be used as a KPI wherever possible. <ESA\_QUESTION\_ESG\_2>

1. : 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>

See reply to Q1. In view of the wide range of information asked for in the report, we see the need to focus on less details which are especially relevant for investors. In addition, reporting companies should of course also fulfil their responsibilities under transparent reporting. This could usefully be done by means of sector-specific standards, so that there is better comparability between sectors.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

See replies to Q1 and Q3.

<ESA\_QUESTION\_ESG\_4>

1. : 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>

See reply to Q1. In view of the wide range of information asked for in the report, we see the need to focus on less details which are especially relevant for investors. In our view, the KPIs listed in the table are too detailed to be used as a basis for "general" investment decisions. Instead, the number of KPIs queried should be within a reasonable and manageable range. More detailed KPIs could be integrated in a sector-specific questionnaire. In addition, provisions on future reporting obligations should also be laid down with regard to the added value of reporting without causing disproportionate additional work for the reporting companies. Forward-looking indicators, based on the investments of a company are the most relevant information for investment decisions. As the aim of the whole sustainable finance agenda is, to steer investments into the projects which contribute most to decarbonisation, forward-looking indicators are very valuable for investors.

<ESA\_QUESTION\_ESG\_5>

1. : 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>

In principle, relative measures could possibly be a part of the ESG disclosures. However, a lot of questions remain open at this point. Generally, a transparent, scientific and harmonized framework would be needed in order to implement such indicators.

<ESA\_QUESTION\_ESG\_6>

1. : 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>

1. : **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>

Investors, analysts and other stakeholders consider RWE's current reporting to be very balanced and transparent based on the received feedback. We therefore consider the current reporting requirements to be sufficient. Supplementing them with information from Sustainable Finance will also be useful. In our view, no further additions/detailing is currently necessary.

<ESA\_QUESTION\_ESG\_8>

1. : 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>

The current prioritisation of environmental indicators resulted from the understanding of climate change as the most urgent global challenge (measures derived on the basis of indicators). Since environmental indicators are already well covered in reporting, human rights are currently the focus of future reporting. It seems sensible to establish suitable indicators, on the basis of which appropriate measures can then be derived. However, the first step is to define which indicators should be collected and reported. Furthermore, we believe that good reporting standards have already been established for anti-corruption and anti-bribery, so that no acute need for action is currently seen in this field.

<ESA\_QUESTION\_ESG\_9>

1. : 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>

It seems reasonable to start with an up-to-date report of the current situation. This could be expanded over time to a time frame of several years. However, it would not make sense to require a retrospective period of 10 years in the first year of reporting, since, as a rule, it is almost impossible to collect key figures retrospectively, which would be highly error-prone and not very meaningful.<ESA\_QUESTION\_ESG\_10>

1. : 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>

Harmonising the different reporting requirements deriving from the Taxonomy Regulation and the NFRD is very reasonable In general, .

<ESA\_QUESTION\_ESG\_11>

1. : 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>

1. : 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>

1. : 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>

1. : 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>

1. : 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>

1. : 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>

1. : 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>

The highest aim must be simplicity and comparability. The risk for using the same or similar graphical design for different content is very high. A description in concrete and clear terms – maybe in clusters or categories – would be more useful rather than graphic representation.

<ESA\_QUESTION\_ESG\_18>

1. : 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>

We think that focusing only on solid fossil-fuels is very problematic. This discriminates against specific technologies instead of giving a technology-neutral picture of CO2 emissions and especially the emissions reduction path of a company. Why other fossil fuels aren’t covered remains unclear.

<ESA\_QUESTION\_ESG\_19>

1. : 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>

See reply to Q19

<ESA\_QUESTION\_ESG\_20>

1. : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_21>

1. : 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>

1. : 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>

We are hesitant whether definitions like best-in-class are helpful and what is more important, really comparable even within the sector. Thus we can’t give advice how to define these strategies

<ESA\_QUESTION\_ESG\_23>

1. : 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>

See reply on Q23

<ESA\_QUESTION\_ESG\_24>

1. : 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.
2. 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);
3. 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);
4. 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
5. 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>

1. : 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>

1. : 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)