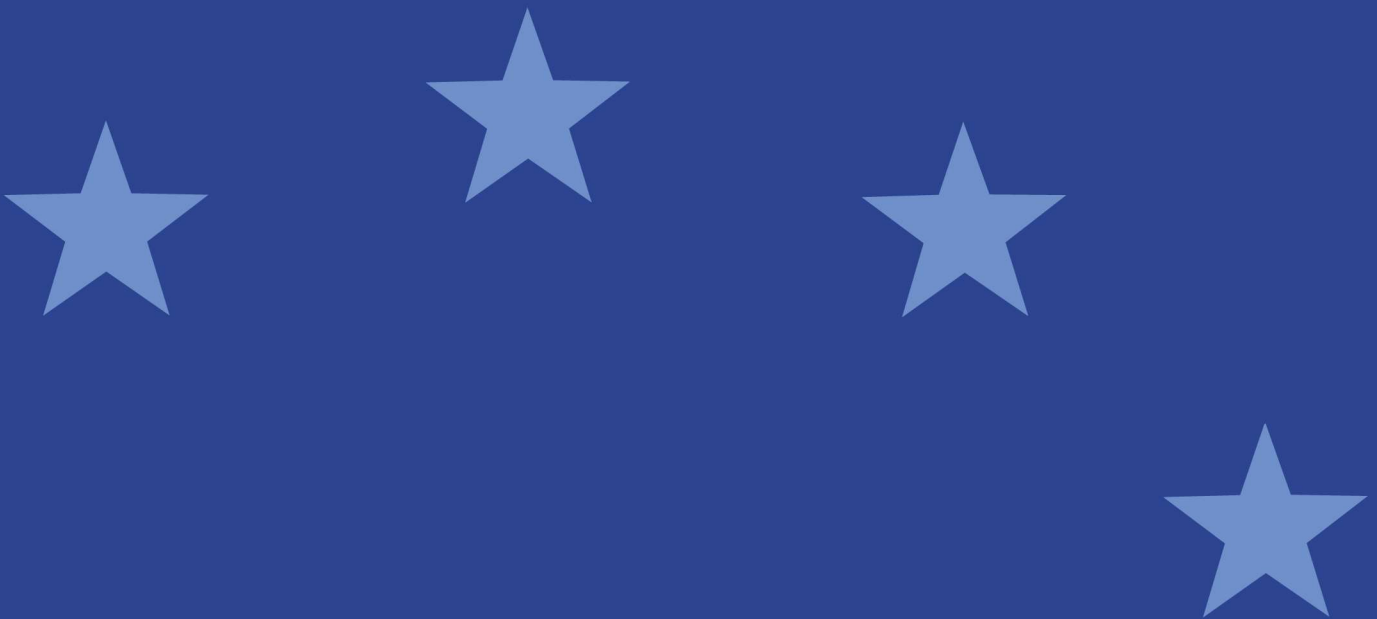


# Response form for the Joint Consultation Paper concerning ESG disclosures





## 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	German Association of Insured (BdV)
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

## Introduction

**Please make your introductory comments below, if any:**

<ESA\_COMMENT\_ESG\_1>

As Germany's most important NGO of consumer protection related to private insurances (with about 45.000 members) we would like to thank the ESAs for the opportunity to publish comments on this consultation. Our organization – by its statutes – is focused on private insurances and on private pension products. Therefore we primarily comment on questions linked to insurance-based investment products.

We strongly welcome ESA's overarching objective of facilitating informed decisions by retail clients with special regard to ESG criteria. We consider these new standardized disclosures outlined by this additional RTS being fully aligned with EIOPA's "Technical Advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD" of 30 April 2019.

We additionally stress that from our point of view it is fully aligned as well with the recommendations for product providers on the national level published by the German NCA (BaFin) in 2019: "Merkblatt zum Umgang mit Nachhaltigkeitsrisiken", Dezember 2019 ("Information Sheet on Handling of Sustainability Risks"), based on the former publication "BaFin-Perspektiven", Ausgabe 2-2019: "Nachhaltigkeit" ("Sustainability").

<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>

Yes, we agree. The chosen approach implements the general objectives outlined in the Recitals 4 to 8 of the draft RTS. If necessary the chosen indicators have to be adopted following to the forthcoming Taxonomy Regulation and the Review of the Non-Financial Reporting Directive (NFRD).

<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, we do not agree.

The exemption regulations for financial advisors following to recitals 6 and article 17 of SFDR (EU 2019/2088) have additionally been completed – as we understand – for product providers not exceeding the number of 500 employees (following to recital 9 of draft RTS).

This exemption stipulation is based on the NFRD. It seems to be appropriate for non-finance service providers and “real” industry companies. But referring to the number of employees is very unusual with regard to financial market participants. Usually any ranking of the size of insurers is based either on the total amount of gross premiums or on capital assets or at least on the number of contracts etc. (cf. Statistical Annex of Annual Reports of BaFin).

[https://www.bafin.de/EN/PublikationenDaten/Statistiken/statistiken\\_node\\_en.html](https://www.bafin.de/EN/PublikationenDaten/Statistiken/statistiken_node_en.html)

The application of this stipulation would entail in an EU member state like Germany, where a lot of small and medium sized insurers acting on a local or regional level still exist that these companies will thus be exempted. In consequence this exemption rule would create a strongly uneven level of consumer information and consumer protection. That is why we ask for a complete deletion of this additional exemption provision.

<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>

Though we agree with the chosen approach, nevertheless we would like draw attention to the following issue often emphasized by industry representatives: there is a concern that the data providers and ratings agencies may have achieved oligopolistic pricing power, which could materially impact fees and hence customer costs.

We support any approach not only aiming at reducing costs of manufacturing these indicators, but also at enhancing their comparability and the level playing field between product providers. Therefore we encourage the ESAs to support the ongoing development of these key indicators on EU level by broadly including those indicators which are already available from the European Environment Agency (EEA) and/or Joint Research Centre (JRC) of the European Commission.

<https://www.eea.europa.eu/data-and-maps/indicators/>

Especially SMEs should be enabled to rely on these common basic indicators for free.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

We agree with this template, because it seems to be very comprehensive. Nevertheless financial market participants should be enabled to identify the most relevant indicators based on materiality assessment and a risk-based prioritisation. If this identification leads to the conclusion that an indicator is not relevant, this should be outlined by clearly writing “not relevant” (under the heading “explanation”). Of course this assessment will have to be documented.

<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>

Yes, we agree. Additional indicators should be taken into consideration, if they are aligned with the other relevant ESG regulations (cf. comment on Q 1).

<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>

Yes, we agree as these measurements are explicit targets on EU level. If necessary the chosen indicators have to be adopted following to the forthcoming Taxonomy Regulation and the Review of the Non-Financial Reporting Directive (NFRD).

<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>

Yes, we agree. Nevertheless ESAs should take into consideration that financial market participants like insurers usually have a very diversified investment portfolio including many types of assets (government bonds, unlisted equity, bonds, loans, infrastructure, etc). This makes the calculations less straightforward compared to an equity portfolio of listed companies. That is why the proportionality principle should be applied for this reporting requirement as well.

<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>

Yes, we agree, but regulatory requirements related to such a classification should remain voluntary until all aspects of the taxonomy are sufficiently developed, especially those related to enabling transitional activities (cf. our comments on Q1 ans Q3).

<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, we fully agree.

<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>

Yes, we agree, but regulatory requirements related to such a classification should remain voluntary until all aspects of the taxonomy are sufficiently developed, especially those related to enabling transitional activities (cf. our comments on Q1 and Q3).

<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>

“Window dressing” is a severe illegitimate, if not illegal act, which must be prohibited. That is why we think that the best way to discourage potential “window dressing” techniques in the principal adverse impact reporting is through regulation, establishing a clear framework by harmonizing methodology of reporting, and standardizing the way, how the information required is collected and processed.

<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>

Yes, we agree. It is important that these mandatory pre-contractual and periodic templates for financial products will have a standardised format and content, in order to make financial products more easily to understand and to enable comparability by the potential investors/consumers

<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>

These templates should be aligned as much as possible with the reporting templates provided in Table 1 of Annex I. In order to avoid information overload and double work for financial market participants these templates should be published on the website (with a relevant hint in the KID and PBS to the website). On request of the end-investors these templates should be given or sent via e-mail in a PDF-format.

<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>  
Yes, we agree.  
<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>

We think that the distinction between “sustainable investment products” and “products that promote environmental or social characteristics” is not clear. Is it the difference between direct investments like shares and bonds and more complex investment products like mutual funds and structured products?

More guidance at level 2 is needed to determine when a product will qualify for either product category (for example by establishing an open list of exemplary financial products). This will facilitate compliance by financial market participants. Unless more guidance is given, national supervision might end up having substantially different interpretations.

<ESA\_QUESTION\_ESG\_16>

- : **Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?**

<ESA\_QUESTION\_ESG\_17>

Yes, they do. Though probably more burdensome for product providers, we stress that especially pre-contractual information given to the customers should be standardized as much as possible.

<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>

No, we do not think so. Though probably more burdensome for product providers, we stress that especially pre-contractual information given to the customers should be as standardized as possible (cf. our comment on Q 17).

<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>

We suggest that sectorial disclosures are developed in line with the taxonomy regulation and based on the classification at activity level as provided by investee companies. Power generation activities that use solid fossil fuels are clearly excluded by the Taxonomy regulation. Guidance on more detailed disclosures should be investigated at a later stage in the context of the empowerment under Article 25 of the draft taxonomy regulation.

<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>

We agree with the assessment in Recital 36 of draft RTS that overall disclosures for MOPs “may be lengthy”. Therefore MOPs manufacturers should predominantly comply with articles 22 and 32 of the draft RTS.

<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>

The requirements in the RTS for good governance practices for Article 8 products should capture these elements only, if these products actually undertake sustainable investments.

<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>

We agree with the arguments pointed out in Recital 33 of draft RTS that „in the absence of a yet fully functional framework to define environmentally sustainable investment, financial market participants should be transparent with regard to the criteria used, including any potential thresholds set, in order to assess that the investments qualifying as sustainable do actually not significantly harm environmental nor social objectives.“

So in short term these two concepts may coexist (as outlined in articles 16, 25 and 38 of draft RTS), but in long term consistency of these regulations should be achieved. The forthcoming taxonomy regulation should either fix the necessary specifications for the DNSH principle or overrule it by comprehensive definitions of the „principal adverse impacts“.

<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>

These investment strategies which are already used by financial market participants should only be defined widely (for reasons of information standardisation), if they are not overruled in the future by any other forthcoming ESG regulation (taxonomy, NFRD etc.; cf. our comments on Q1 and Q3).

<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>

Yes, we agree.

<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>

Even without any information on the ESG investment strategy of the product provider the PRIIPs KID is already a rather "full" document and - under current conditions - not comprehensively understandable for consumers (especially with regard to cost disclosures and performance scenarios). Therefore and in order to avoid the risk of additional information overload these four elements should be put on the website of the product providers.

<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>

Focusing on the insurance sector, the usage of derivatives is already covered under the prudent person principle following to article 132 (4) of the Solvency II Directive which stipulates that “the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management”.

That is why we do not think, a separate section of information on the use of derivatives might be necessary. The use of derivatives / structured products should be documented separately only, if they directly contribute to the achievement of ESG investment objectives.

<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>

As we are not a product provider or distributor, we are not able to provide any granular examples of costs linked with the policy options. But we stress that from our perspective the various options outlined in the Preliminary Impacts Assessment (part 5 of the Consultation Paper) have meticulously been elaborated and therefore we agree with the choices of policy options proposed by the ESAs.

#### **Impact assessment for entity level principal adverse impact reporting (Article 4 SFDR)**

- Option 1.2: Common minimum standards on website product disclosure
- Option 2.2: A common summary format with a pre-determined maximum length

#### **Impact assessment for pre-contractual product disclosure (Articles 8 and 9 SFDR)**

- Option 1.2: Common minimum standards on disclosure
- Option 2.3: Mandatory template

#### **Impact assessment for website product disclosure (Articles 10 SFDR)**

- Option 1.2: Common minimum standards on website product disclosure
- Option 2.3: A standardised disclosure template

#### **Impact assessment for periodic product disclosure (Articles 11 SFDR)**

- Option 1.3: Mandatory template for periodic product disclosures
- Option 2.2: Mid-range approach for periodic disclosures

#### **Impact assessment for “do not significantly harm” (DNSH) principle RTS**

- Option 1.2: Include principal adverse impact indicators in Table 1 of Annex I and environmental objectives
- Option 1.2: Details on the assessment made of significant harm of investments including any own thresholds set

<ESA\_QUESTION\_ESG\_27>