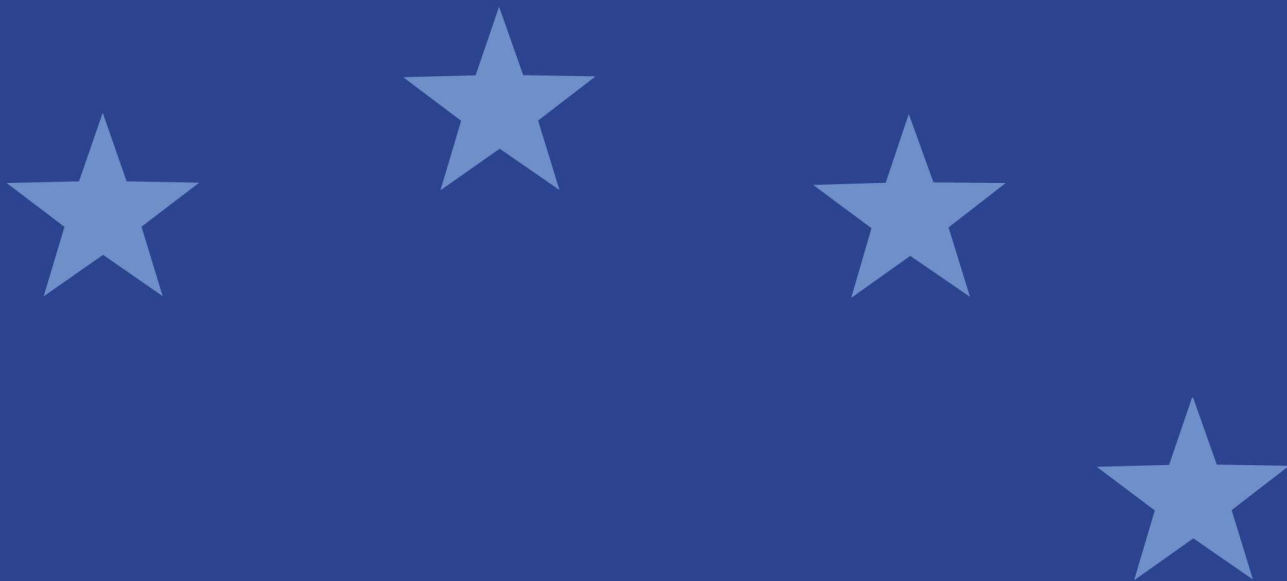


Response form for the Joint Consultation Paper concerning ESG disclosures





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) 2018/1725¹. 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.

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.

General information about respondent

Name of the company / organisation	U.S. Chamber of Commerce, Center for Capital Markets Competitiveness
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	North-America

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (CCMC) appreciates the opportunity to comment on the European Supervisory Authorities (ESAs) joint consultation paper on ESG disclosures.

The U.S. Chamber of Commerce (Chamber) is a longtime advocate for strong commercial ties between the United States and the European Union. CCMC's members, many of whom are heavily invested in Europe and maintain global operations, represent a key stakeholder base as the European Commission considers its ambitious Green Deal agenda. As a supporter of U.S. participation in the Paris Agreement, the Chamber has followed with interest the EU's implementation efforts, including *inter alia* the 2018 Sustainable Finance Action Plan, EU Taxonomy, Non-Financial Reporting Directive, and the International Platform on Sustainable Finance.

In July 2020 Comments to the European Commission² the Chamber highlighted several core principles regarding sustainability and sustainable finance polices:

- Focus on functioning markets and creation of deep, sound, and liquid markets. Economic return must be an important factor for investors.
- Balance market demand for sustainable finance solutions with the primary objectives of unhampered market functioning, value creation, and financial stability.
- Consider ways to minimize market fragmentation and where possible, work toward enhanced international cooperation to minimize compliance challenges arising from varying requirements in different countries.
- Allow companies to disclose relevant information regarding environmental, social, and governance ("ESG") issues in a voluntary format. Each company should maintain flexibility to determine which ESG factors and related metrics are relevant and what disclosure is meaningful for its stakeholders. Policymakers should enable the development of market-led standards and guidelines to meet the need of companies and their stakeholders, allowing flexibility in the delivery of relevant ESG disclosures and related metrics.
- ESG disclosures should discuss a company's approach to risk management, making the connection between the ESG factors on which it reports and the company's long-term value creation strategy. Any mandated disclosures should always be guided by the principle of materiality to ensure that investors receive decision-useful information and are not harmed by information overload.

² U.S. Chamber of Commerce, [Comments on the European Commission's Consultation on the Renewed Sustainable Finance Strategy](#)

ESG Disclosure

We understand the ESAs believe “it is necessary to start demanding data from financial market participants and financial advisers to achieve the objectives of”³ the EU regulation on Sustainability-Related Disclosures. As a result, the proposed Regulatory Technical Standards will obligate financial market participants and financial advisers to make several extensive disclosures, including pre-contractual information and a mandatory reporting template with required reporting items for a statement on considering principal adverse impacts of investment decisions on sustainability factors.

CCMC understands that views on ESG disclosure are diverse. We strongly believe that materiality is the bedrock of corporate reporting, setting the threshold for what public companies are mandated to disclose, while realizing that firms can always choose to disclose more voluntarily. Disclosure should focus on what investors most need to know about an investment, which could include a discussion about environmental, social or governance factors.

We encourage the ESAs to avoid a one-size-fits-all approach to ESG disclosure that risks becoming more of a “check the box” exercise rather than focusing on material information. What is material for one company or sector may not be material for another. As a result, companies, and by extension financial market professionals and financial advisers, should be allowed to maintain flexibility in determining which ESG factors and related metrics are most relevant to their stakeholders.

In fact, companies are already leading the way on how to approach ESG reporting and in a way that provides the most relevant data to investors without overloading them with immaterial information. To cite one example: the Edison Electric Institute and the American Gas Association worked with issuers and investors to develop an ESG reporting template to help electric and gas companies provide more uniform and consistent sustainability data to the financial sector. In addition, asset managers already are conducting analyses and reporting on material risks and negative externalities to investors as a result of particular environmental, social, or governance issues. These private sector-led solutions are already working in practice and should not be stifled by a one-size-fits-all mandate.

We thank the ESAs for the opportunity to provide these comments and look forward to continued dialogue as the EU develops its sustainability initiatives.

<ESA_COMMENT_ESG_1>

³ European Supervisory Authorities, [Joint Consultation Paper on ESG Disclosures](#), page 8.

- : **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>
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>
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>
TYPE YOUR TEXT HERE
<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>
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<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>