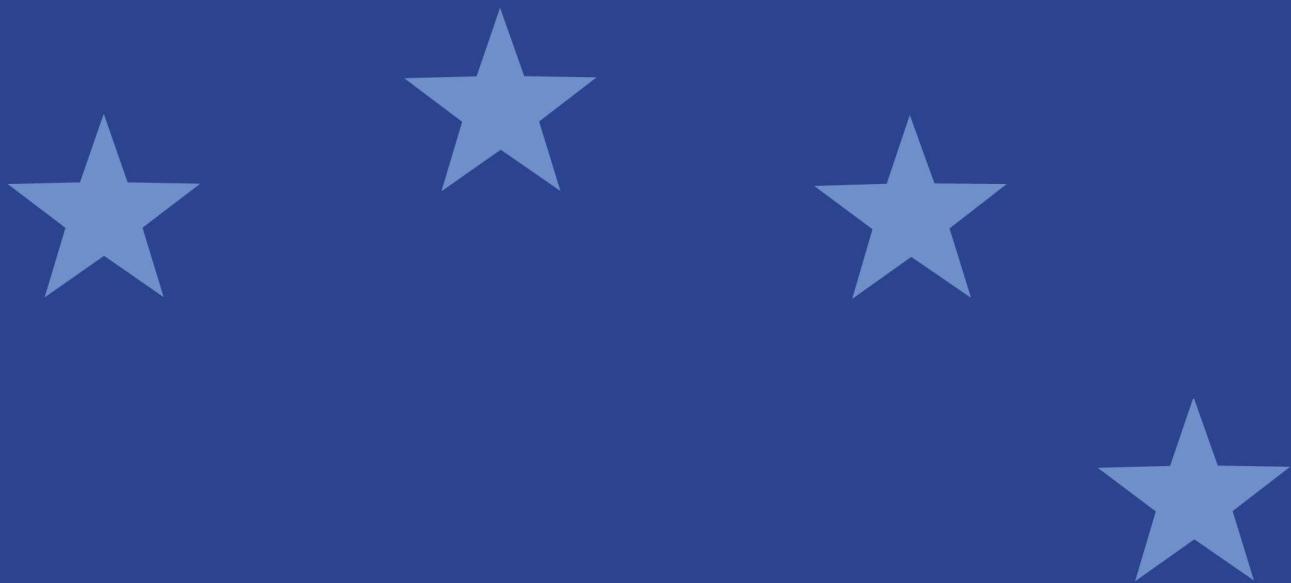


## Response form for the Joint Consultation Paper concerning ESG disclosures





JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

## 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](#) 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<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	MSCI Ltd.
Activity	Other Financial service providers
Are you representing an association?	<input type="checkbox"/>
Country/Region	UK

### Introduction

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

<ESA\_COMMENT\_ESG\_1>

MSCI appreciates the opportunity to comment on the Joint Consultation Paper – ESG Disclosures.

### MSCI Equity Indexes

MSCI is a leading provider of investment decision support tools to institutional investors globally, including asset managers, banks, hedge funds and pension funds. MSCI products and services include indexes, ESG research and tools, and portfolio risk and performance analytics. MSCI is headquartered in New York, with research and commercial offices around the world.

MSCI has been calculating indexes for more than 45 years. The MSCI equity indexes include country and regional indexes, size indexes (large cap, small cap, and micro-cap), sector indexes, style (value/growth) indexes, strategy indexes, thematic indexes and ESG indexes.

MSCI also calculates custom indexes at the request of clients, by applying client screens and constraints to MSCI equity indexes.

MSCI equity indexes are used worldwide by:

- assets owners to help them with their mandate decisions and with reviewing their managers' performance;
- active asset managers so that they can actively manage their funds against an index and report performance;
- passive fund managers to issue passive funds and ETFs based on the indexes;
- broker dealers for providing trading execution services, creating OTC and non-OTC derivative financial products and writing research more generally;
- stock exchanges to create equity index linked futures and options contracts; and
- CCPs to calculate the risks of its positions for index linked futures and options contracts.

During 2013 and 2014, MSCI implemented the IOSCO Principles for Financial Benchmarks, was externally audited during each of 2014, 2015 and 2016 for the MSCI equity indexes and select MSCI private real estate indexes, and posted the adherence statements and audit reports on the Index Regulation page of [www.msci.com](http://www.msci.com). During 2017, 2018 and 2019, MSCI devoted those resources to implementing the EU benchmark regulation ("BMR"), and MSCI posted the IOSCO adherence statements on the Index Regulation page of [www.msci.com](http://www.msci.com).

On 5 March 2018, MSCI Limited, which is a UK subsidiary of MSCI Inc., was granted authorization by the UK FCA as a UK administrator under the BMR for the MSCI equity indexes. MSCI was the first major global equity index provider to become authorized under the BMR. On 13 June 2019, MSCI notified the FCA in relation to specific UK MSCI Private Real Estate Indexes used as regulated benchmarks under the BMR. On 16 December 2019, MSCI notified the FCA in relation to the MSCI fixed income indexes.

### MSCI ESG Research

For over 40 years, MSCI ESG Research has measured and modelled Environmental, Social and Governance (ESG) risk<sup>a</sup>. MSCI is a leading provider of ESG ratings, indexes and analytical tools. We aim to help investors integrate ESG across their entire investment process; powering better investment decisions.

Our solutions:

\*First ESG provider to assess companies based on industry financial materiality, dating back to 1999. Only dataset with live history (12+ years) demonstrating economic relevance<sup>b</sup>. For over 11 years, we have rated companies on their exposure to, and management of, industry-specific ESG risks. We rate nearly 14,000 issuers representing more than 680,000 securities, with 90% of equity and fixed income market value. Our research is used by over 1,400 clients globally. Clients can use ESG ratings to support fundamental and quant analyses, portfolio construction and risk management and thought leadership and engagement.

\* MSCI ESG Indexes: MSCI is the world's largest provider of ESG indexes with over 1,500 ESG equity and fixed Income Indexes leveraging MSCI ESG Research data to support ESG integration, screening and impact approaches. Several global asset owners have selected MSCI ESG Indexes, with over \$180 billion allocated in recent years<sup>c</sup>. The indexes can also be used as the basis for exchange-traded-funds and other index-based products.

\* MSCI ESG Analytics: Our ESG research, data and indexes are available within MSCI's analytics systems. MSCI Analytics clients can explore ESG exposures on 680,000 securities and 8 million derivatives to support security selection, portfolio construction, stress testing, and risk and performance attribution analysis.

MSCI ESG Research products and services are provided by MSCI ESG Research LLC, and are designed to provide in-depth research, ratings and analysis of environmental, social and governance-related business practices to companies worldwide. ESG ratings, data and analysis from MSCI ESG Research LLC. are also used in the construction of the MSCI ESG Indexes.

For the purposes of the ESG metrics for the ESG benchmarks disclosures, the ESG metrics are provided by MSCI ESG Research LLC. MSCI ESG Indexes are provided by MSCI Inc. and utilize information from, but are not provided by, MSCI ESG Research LLC. MSCI Limited is the benchmark administrator for the MSCI Indexes under the EU Benchmark Regulation. ESG ratings, data and analysis from MSCI ESG Research LLC. are also used in the construction of the MSCI ESG Indexes.

MSCI ESG Research LLC is a Registered Investment Adviser under the Investment Advisers Act of 1940 and a subsidiary of MSCI Inc.

a. Through MSCI ESG Research and its legacy companies KLD, Innovest, IRRC, and GMI Ratings

b. Origins of MSCI ESG Ratings established in 1999. Produced time series data since 2007

c. Based on publicly available information in press releases published from 2014 to date

<ESA\_COMMENT\_ESG\_1>

**Q1 : 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>

MSCI supports the ESAs effort to provide increased transparency around ESG disclosures. However, we are concerned that the approach proposed in Chapter II and Annex I creates a number of potential challenges and impediments to the ESAs' overall goals:

**1. Not including materiality/economic relevance may provide investors with too much data, creating complexity that could lead to potential investor confusion.**

(a) Issue:

- The lack of materiality /economic relevance may create emphasis around indicators that are not material or are less relevant for certain sectors. It is not clear what conclusions are expected to be drawn from a lack of disclosure by companies for issues that are not relevant to their sector, e.g., lack of commitments to forest preservation, which is not relevant for a software technology company.
- Further, there is legal precedent within the European Union against relying on non-material disclosures. In a recent German court case, ISRA Vision v ISS ESG Az. 39O8981/19, the Regional Court of Munich granted a preliminary injunction against ISS ESG to prevent it from issuing a poor ESG rating of the company ISRA Vision. According to press reports, the court stated in its reasons for a preliminary injunction that the mere unavailability of certain information could not justify giving a company a poor rating. In addition, the press reported the court's view that analysis criteria must be closely aligned with the business operations.<sup>2</sup>
- In addition, requiring indicators in absolute measurements may result in metrics that are not intuitive and lack context, and because of that investors may not be able to discern the meaning behind the indicator. For example, a year-on-year change may look positive, but if the starting point is low/bad or low/bad compared to sector peers, then the presentation of the data is misleading.

(b) Recommendation:

Materiality/economic relevance based on exposure to each indicator should be included as part of the disclosures. It may be useful to consider also adding a column in the template to include exposure to the indicator and permitting the usage of ESG scores at the portfolio or index level to help investors better understand the data.

**2. Relying solely on corporate disclosures may lead to corporate greenwashing (in cases where there is no publicly disclosed data behind reported metrics) and there may be bias if used as the only assessment of a company.**

(a) Issue:

Metrics that rely solely on corporate disclosures, without using “supplemental metrics” from other sources, may result in company bias. For example, policies may be disclosed, but what is more important is whether those policies are being followed, which can be cross referenced with public data about fines, enforcement actions, legal proceedings, news articles, etc.

<sup>2</sup> <https://www.lexology.com/library/detail.aspx?g=eca58c28-832a-4887-9039-87b77cc256cf>

### (b) Recommendation

It may be useful to consider permitting the usage of ESG scores (which use “supplemental metrics” as part of the scoring and rating process) at the portfolio or index level to help investors better understand the data.

## 3. Comparability is at risk.

### (a) Issue:

While the goal of consistent disclosure is laudable, the indicators/metrics risk jeopardizing that goal because:

- Some data points are currently not available so proxies/explanations will need to be provided, which will lead to the data not being comparable. We have provided some examples below, and if the ESAs would find it helpful, we can provide the full list to the ESAs on request.
  - **Metric:** Share of securities not certified as green  
**MSCI Comment:** It is unclear what ‘certified’ means for securities as there is no commonly used certification for ‘green’ securities. Without further clarification, financial market participants would be forced to use their own methodologies for what constitutes as a ‘green’ security and would create inconsistencies in the disclosures for this metric. Is this intended to be a metric which will be linked to an EU-based certification?
  - **Metric:** Share of securities not certified as social  
**MSCI Comment:** It is unclear what ‘certified’ means for securities as there is no commonly used certification for what ‘social’ securities. Without further clarification, this would force financial market participants to use their own methodologies for what constitutes as a ‘social’ security and would create inconsistencies in the disclosures for this metric. Is this intended to be a metric which will be linked to an EU-based certification?
- Data aggregation rules are not defined, which may result in different approaches and may lead to the incomparability of data at the entity or product level. We have provided some examples below, and if the ESAs would find it helpful, we can provide the full list to the ESAs on request.
  - **Metric:** Share of investments in entities/investee companies without a deforestation policy  
**MSCI Comment:** Those companies where there is no or limited geographic or operational exposure to deforestation e.g. software company, would be counted as contributing to this for not having a policy in place.
  - **Metric:** Emissions of inorganic pollutants  
**MSCI Comment:** Examining the aggregation of multiple inorganic pollutants into one metric does not provide a meaningful measurement for examining inorganic pollutants as each pollutant has different measurements and thresholds as to what is significant enough to cause harm.
  - **Metric:** Share of investee companies/investments in investee companies without land/forestry/agriculture practices policies  
**MSCI Comment:** Those companies with no or limited exposure to these areas e.g. financial services company, would be counted as contributing to this metric for not having a policy. Additionally, providing an aggregated metric for sustainable land, forestry and agriculture creates confusion as to what constitutes lacking policies, e.g. a company does not have a policy relating to all three of these areas or at least one of these areas?

- Many metrics do not have comprehensive definitions and are not based on international standards, which means they are subject to interpretation and may not be comparable in practice. We have provided some examples below, and if the ESAs would find it helpful, we can provide the full list to the ESAs on request.
  - **Metric:** Number and nature of cases of severe human rights issues and incidents connected to investee companies.  
**MSCI Comment:** There is no definition as to what constitutes a ‘severe’ human rights issue or incident. This would result in varying assessments of severity.
  - **Metric:** Total amount in cubic meters of untreated waste water discharged by companies expressed as a weighted average.  
**MSCI Comment:** Water discharge is typically reported by total or by destination. Untreated discharge water when reported may vary based on local regulations and treatment levels determined by the company. This would result in aggregating inconsistent metrics.
  - **Metric:** Numbers of convictions and amount of fines for violations of anti - corruption and anti - bribery laws by investee companies  
**MSCI Comment:** It is unclear whether the number of convictions and amount of fines refer to accumulated values across the entire life of an investee company or for a defined period of time. This may also vary depending on when cases have been initiated vs. when fines have been finalized. In addition, it is unclear whether the number of convictions refer to the individual lawsuits for the same case or should be counted by event, since there is possibility for fines to be imposed by agencies in different jurisdictions. Cross-jurisdiction cases may also mean that currency conversion is required. For this to be meaningful, a standard methodology needs to be taken into consideration.
  - **Metric:** Average gender pay gap of investee companies where ‘gender pay gap’ means the difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings  
**MSCI Comment:** Computing for gender pay data requires a comprehensive methodology that takes into consideration the pay standards across different markets, job functions and positions, and scope of compensation (base salary, bonus/incentives, etc.). Aggregating this data into one metric would also provide the potential for a market bias, which would make it irrelevant for the objective of examining the extent of a gender pay gap.
- Including opt-in indicators in Tables 2 and 3 seem to, by their nature, go against the concept of comparability because different indicators can be chosen.

(b) Recommendation:

- Given that benchmark administrators will already be required to publish approximately ~20 ESG metrics (depending on asset class) under the Benchmarks ESG Disclosures amendments to the EU Benchmark Regulation, and given the short deadlines for implementation of the SFDR disclosures, we would recommend that the ESG metrics required under the Benchmarks ESG Disclosures amendment be used in the short term for the SFDR disclosures for the relevant asset classes. These metrics were agreed upon by a group of industry experts (members of the Commission’s Technical Expert Group) that included investors. These experts aimed to ensure that the metrics were relevant and available to appropriately assess broad equity and fixed income portfolios, and that the definitions were precise enough to be calculated consistently by market participants. These metrics were also subject to several rounds of consultation.

- The proposed SFDR indicators/metrics could be disclosed on reasonable endeavors/voluntary basis if/as relevant for the asset class, and/or revised indicators/metrics could be added after robust input from and consultations with the industry and experts on achievable disclosures. using indicators that are commonly used and based on data that is readily available.

#### 4. Using metrics that are abstract and not intuitive may not be understood by investors

##### (a) Issue:

- Metrics in their absolute form, without thresholds or scoring to indicate what is good or bad on a relative basis, are not intuitive and are unlikely to be helpful for investors. MSCI has recently undertaken an independent survey of over 5,000 consumers/retail investors located in Germany, France, Italy, Sweden and Belgium, where 57% of respondents indicated that an overall sustainability score or rating was more useful in understanding the sustainability performance of a mutual fund than a set of metrics alone. See our response to Question 5 for more information on this survey.
- Further, because a number of the metrics are highly technical and not intuitive, they may not be easily understood or interpreted unless read by a suitably qualified person.

##### (b) Recommendation:

Widely used ESG scorings or ratings should be permitted to be included as part of the disclosures.

Additionally, at the product level, we agree that the data should be compared with a benchmark so that relative comparisons against the broad market index can be made.

#### 5. Large number of indicators

Beginning with the BMR on average ~20 metrics are required to be reported (depending on asset class). Then additionally SFDR reporting would add up to ~50 potential indicators (depending on the product), with only approximately 30% or 7 ESG metrics from the BMR that match between these two sets of requirements. Such little harmonization appears not to support the ESAs stated goal to align with the transparency requirements for administrators<sup>3</sup>.

	Benchmark Disclosure	SFDR
No. of metrics	~20	~50
Topics covered	Identifies a <b>few, crucial metrics</b> under each pillar, such as carbon intensity, board diversity, etc., but is generally broader or takes a more holistic view	Identifies <b>numerous, specific metrics</b> with a skew towards environmental issues. Examples include metrics on specific performance (e.g., carbon intensity, energy consumption) and practices (e.g., deforestation policy, preservation policy).
Relation to EU Taxonomy	No reference	Metrics represent re-interpretation of Do No Significant Harm and Minimum Safeguards

Instead, requiring a smaller cohesive set of metrics across the EU Sustainable Finance streams (SFDR, EU Benchmarks, NFRD, Taxonomy) may increase feasibility for those reporting metrics,

<sup>3</sup> European Supervisory Authorities Joint Consultation Paper ESG Disclosures page 14.

and more importantly, may increase the ability for investors to understand and become familiar with these metrics.

**6. Indicators and metrics are not available across asset classes**

Some of the proposed indicators/metrics are not universal for asset classes outside of equities.

- Specific indicators/metrics for sovereigns will need to be stipulated (e.g. carbon intensity, severe human rights violations). As an example, the “number of severe human rights violations” cannot be applied to sovereign issuers as there is no common, universally applied standard for identifying countries violating human rights or measuring severity of violations. In the absence of recognized multilateral agreements and/or international bodies that make such a determination, neither investment institutions nor data and research providers would be in position to make such statements.
- Performance indicators such as water emissions, inorganic pollutants, hazardous waste, and injury rates, etc., cannot be used for fixed income security or real estate property portfolios.

**7. Some indicators/metrics are not consistently reported by companies which does not allow for comparability.**

- Company level disclosures for emissions of ozone depleting substances is typically reported by a small subset of industries as many of these substances have been banned in the EU and other countries party to the Montreal Protocol.
- Water consumption is commonly reported in the agriculture, energy and industrials sectors at total water consumption level, not broken down by water recycled, reused and reclaimed.

**8. Firms (entities) (e.g. asset managers) manage strategies on behalf of their clients, for example through segregated mandates. An entity level disclosure will reflect these investors' views, and not necessarily the entity/firm view, and so these entity level indicators/metrics may not be helpful to investors.**

**9. The points above are compounded in the case of investee companies based outside of the EU who are not subject to NFRD and as such are less likely to disclose the required indicators/metrics.**

<ESA\_QUESTION\_ESG\_1>

**Q2 : 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>

There are a number of challenges with the proposed approach.

Given the timeframes and the number of indicators (which includes data that is not readily available and metrics/definitions that are not commonly used):

- large Financial Market Participants may not have enough time to implement this at the entity level or product level, and
- it may disincentivize small FMPs to voluntarily provide disclosures.

Additionally, in Item 9 (p. 20) of the consultation paper, for multinational FMPs the distinction between requirements for entity level reporting at the parent level vs. subsidiary level is unclear. Aggregating reporting

for multiple entities does not provide an accurate representation of those entities that are impacted by the RTS. For example, an FMP may have one entity which is impacted by SFDR requirements which is less than 5% of its products and reporting at the parent level risks not be representative for those products sold and marketed in the EU.

On top, this proposal is asking FMPs and ESG data providers to engage in projects and incur costs to implement solutions in a short timeframe that may change in the final draft and possibly again to align with the Taxonomy. This risks creating inefficiency and confusion, and may result in high costs for the industry to implement. Aligning with a smaller set of common indicators and then building on a consistent set of indicators/metrics that are aligned to other EU Sustainable Finance streams (NFRD, Taxonomy, Benchmarks, etc.), as agreed by experts through a series of robust industry consultations, may be more effective to ensure disclosures are actually achievable, relevant, intuitive and consistent.

Finally, direct company outreach by FMPs to investee companies for the indicators may be costly and require additional operational investment for FMPs. Firstly, companies may not be currently disclosing all indicators to the exact requirements in the Annexes I -III. Secondly, requiring the disclosure of all these indicators in a short timeframe may not be feasible for indicators/metrics that may not be publicly disclosed within existing mechanisms of disclosures. This will be disruptive to both companies and FMPs. Requiring disclosure outside of existing mechanisms may also dilute the reliability of the data as it may not provide enough time required to validate and clean the data.

Alternatives to mitigate these challenges include:

- using the metrics that are disclosed by index providers pursuant to the metrics under the Benchmarks ESG Disclosures amendments to the EU Benchmark Regulation for the relevant asset classes, and increase them over time with fuller consultations/expert and industry input,
- making the proposed SFDR indicators/metrics voluntary for a reasonable time period until the NFRD and Taxonomy are finalized and to allow for further consultation on the indicators/metrics, and
- allowing FMPs to access the data initially and directly from third party data providers instead of asking FMPs to source the data from investee companies.

As an aside, there are different industry interpretations for the start date of Annex 1 disclosures. It would be helpful to clarify the (i) start date of the disclosure obligations and (ii) the disclosure starting period (i.e., not being for years prior to commencement of these requirements).

<ESA\_QUESTION\_ESG\_2>

**Q3 : 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>

Another way to address disclosure in the short-term for FMP disclosures may be to use the approximately ~20 ESG metrics under the Benchmarks ESG Disclosures amendments to the EU Benchmark Regulation for the relevant asset classes. Over time, additional indicators/metrics can be added after consultations with the industry and experts on appropriate and achievable disclosures. This may also avoid the potential confusion around different metrics between the approximately ~20 benchmarks ESG disclosures and the up to 50 SFDR disclosures, which only have 7 overlapping metrics.

<ESA\_QUESTION\_ESG\_3>

**Q4 : 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>

**Q5 : 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>

The approach taken in the consultation paper may create challenges and impediments to the ESAs overall goals. We propose to consider commonly held investor approaches, investment constraints and commonly used integration investment strategies which can be gained through further consultation with experts and the industry.

Challenges and impediments of the 50 indicators include:

- **Metrics may not be intuitive for investors and metrics are not fully aligned across the other EU legislative streams (BMR, Taxonomy, etc.) which may lead to investor confusion**
  - Metrics in their absolute form, without thresholds or scoring to indicate what is good or bad on a relative basis, are not intuitive and will not be helpful for investors. With the goal of gaining insight about consumers' understanding of sustainability performance of funds, in August 2020, MSCI worked with a market research agency who administered a survey to over 5,000 consumers/retail investors across five European Union countries: Germany, France, Italy, Sweden and Belgium. We aimed for approximately 1,000 responses per country, surveying a mix of respondents between ~20 – 70 years of age, equally split between male and female. The focus of this survey was on consumers/retail investors not high net worth individuals.
  - The survey presented respondents with a set of metrics and sustainability ratings for 3 mutual funds, and asked them to indicate which mutual funds they thought were the most and least sustainable, based on (i) a set of metrics alone (choosing carbon footprint, fossil fuel exposure, gender diversity, controversial weapons exposure and human right violations as a representative sample), and (ii) based on these metrics PLUS a sustainability rating(score). 63% of respondents selected the correct fund as the MOST sustainable based on metrics alone, while 72% selected the correct fund as the MOST sustainable when presented with both metrics AND a rating. Notably, 57% of respondents indicated that an overall sustainability score or rating was more useful in understanding the sustainability performance of a mutual fund than a set of metrics alone.
- **Reliance on company disclosure alone may risk corporate 'greenwashing'**
  - Company reported data should not be relied upon alone. Supplemental metrics such as widely used ESG scores and ratings are necessary to independently verify the data (e.g., regulatory fines, cases, infringements, etc.), otherwise the result is corporate greenwashing. This is especially true for data points such as the existence of policies.
  - It would be useful to include alternate measurements where there may not be a local equivalence of a policy or certain social or environmental theme. There should also be a distinction between those metrics that may be sector specific and not applicable to all sectors.
- **Limited availability of data:** 38 out of 50 metrics are based on the data requirements not commonly provided in public corporate disclosures, including 15 metrics with minimal or no supporting data (e.g., breakdown of energy consumption by fuel type, metrics on water emissions, ozone depleting substances ). Guidance on the treatment of non-disclosure from companies has not been provided. It may be useful to supplement reporting metrics with reference to the extent of disclosure, e.g., what percentage of underlying investee companies disclose these data?

- **Limited relevance:** 20 out of 50 metrics have limited relevance for broader securities coverage and are sector or operations specific. Guidance on the treatment of non-disclosure for companies for which reporting metrics are not relevant has not been provided. For example:
  - A deforestation policy for a software company would not be relevant as there is no direct significant risk exposure from its operations. It may be useful to supplement these metrics with estimation of relevance, e.g. what share of underlying investments may be involved in operations with significant impact on forest cover.
  - Hazardous waste generated is specific to a subset of industries that have direct exposure through their operations. If presented as a total this metric does not provide context to specific thresholds that may be set for each sector. Additionally, thresholds may vary based on local regulations outside of the EU.
- **Lack of definitions:** 13 out of 50 metrics do not have comprehensive definitions or standard references to ensure consistent disclosure, e.g. metrics that require reporting of “severe” violations of norms without providing any guidance for assessing severity, metrics that require reporting of companies’ exposure to locations prone to forced labor without providing reference to established a list of locations at risk. Ambiguity in reporting metrics may result in inconsistent and incomparable disclosures from companies and/or estimations from data and research providers.
  - Examining the aggregation of multiple inorganic pollutants into one metric does not provide value as each pollutant has different measurements and thresholds as to what is significant enough to cause harm.
  - Land degradation, desertification and soil sealing affects both rural and urban land. Requiring an aggregate metric does not reflect the operational exposure risks for companies (e.g. a professional service company located in a geography with high risk of desertification)
- **Use of prescribed climate benchmarks:** The recital 29 of the draft RTS proposes to restrict usage of financial products to those pursuing low-carbon investment objectives by only using the new EU climate-related benchmarks (Climate Transition or EU Paris-Aligned benchmarks), which are currently voluntary. Restricting the types of climate or low carbon benchmarks would 1) prevent and/or discourage healthy competition, 2) discredit or invalidate other existing, robust low-carbon strategies, and/or 3) preclude other low carbon strategies from consideration. As such, recital 29 should be deleted.

<ESA\_QUESTION\_ESG\_5>

**Q6 : 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, some measure of future adverse impact may be useful as the current set of indicators utilize past performance and current policies, not forward-looking actions to minimize adverse impact. Without additional context and data, carbon reduction targets may not provide a relevant comparison between industries or countries, and do not translate to a meaningful assessment of adverse impact avoided. Possible metrics for measuring future adverse impact may include companies' warming potential.

<ESA\_QUESTION\_ESG\_6>

**Q7 : 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>

No

<ESA\_QUESTION\_ESG\_7>

**Q8 : 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>

No

<ESA\_QUESTION\_ESG\_8>

**Q9 : 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>

Conceptually this is agreed. However, we propose using common, well-understood definitions/metrics that take into consideration local context outside of the EU. This should be subject to input/consultation with experts and the industry to provide comparability across companies.

<ESA\_QUESTION\_ESG\_9>

**Q10 : 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, from the required disclosure starting period, and not for years prior to commencement of these requirements. This would ensure consistency and comparability of data.

<ESA\_QUESTION\_ESG\_10>

**Q11 : 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>

Consideration of materiality and inclusion of a scoring mechanism (where supplemental metrics can be used to verify the company data) would allow investors to better understand the relevance of the data.

<ESA\_QUESTION\_ESG\_11>

**Q12 : 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>

**Q13 : 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>

Templates and data should be synchronized and harmonized as much as possible across the sets of disclosures.

<ESA\_QUESTION\_ESG\_13>

**Q14 : 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>

**Q15 : 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>

**Q16 : 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>

No. The definition and scope of what constitutes as Article 8 products vs. Article 9 products is not sufficiently defined or distinguished. Moreover, the additional disclosures/obligations in Article 9 products may disincentivize FMPs to identify a product as an Article 9 product. Further guidance in the form of examples of products that qualify as Article 8 vs. 9 (and why) would be helpful, as well as rules that clarify the parameters for which products can be classified with clear distinctions between the two. Specifically, clear definitions of the below may provide the distinction needed in classifying products:

- Article 8: “promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices”
- Article 9: “sustainable investment as its objective”

Considering that many financial products combine different approaches (exclusion, selection, etc.) and different issues (climate, overall ESG, specific ESG themes, impact investing, etc.) in varying degrees of restriction and/or conviction, it is difficult to classify products under Article 8 or 9 unless there are established minimum thresholds, minimum impact (vs. an established reference), e.g. percentage reduction/ improvement, and/or any other measure that would qualify whether a product “promotes ESG” or “has a sustainable investment objective”.

In addition, it is unclear whether other strategies such as thematic, factor, etc. that incorporate some ESG considerations are included in the scope of Article 8, especially since hybrids may extend outside the sustainability space. For example, a thematic index that includes some environmental and social exclusions.

<ESA\_QUESTION\_ESG\_16>

**Q17 : 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>

**Q18 : 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>

**Q19 : 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>

**Q20 : 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>

No. The difference between Article 8 and Article 9 products is not clear. The risk is that different FMPs use the same index to designate their products differently between Article 8 vs. Article 9 products.

Further, Article 2(17) of SFDR defined “sustainable investments” without reference to the Taxonomy regulation, which also makes the distinctions confusing and disjointed.

<ESA\_QUESTION\_ESG\_20>

**Q21 : 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>

This may complicate or convolute the distinctions between Article 8 and Article 9 products.

<ESA\_QUESTION\_ESG\_21>

**Q22 : 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>

The DNSH approach should align with the Taxonomy by using the same sector specific criteria and thresholds to not cause significant harm to the six environmental objectives of the Taxonomy. The Taxonomy does not address social and governance issues except for minimum safeguards which is not part of the meaning of DNSH for purposes of the Taxonomy.

Specifically, the 50 indicators are not representative of DNSH because they do not incorporate sector relevance to each indicator and do not set thresholds as to what qualifies as significant.

<ESA\_QUESTION\_ESG\_22>

**Q23 : 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>

Yes. A technical expert group with diverse expertise and stakeholders (FMPs) may be useful to define these strategies for reports that are subject to industry consultations to ensure the definitions are appropriate and achievable.

<ESA\_QUESTION\_ESG\_23>

**Q24 : 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>

**Q25 : 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.**

- a) 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);
- b) 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);
- c) 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

- d) 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>

**Q26 : 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>

**Q27 : 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>  
The logistics of the policy implementation may pose challenges to FMPs, ESG data providers and investee companies. To be effective, data needs to be gathered for all 50 indicators to comprehensively assess due diligence. This means that ESG data providers will need to map, fill gaps, obtain data from third parties, and build systems to import/consume/calculate/report the data for clients. Additionally, FMPs will have to map, fill gaps, obtain data from third parties, and build workflows/systems import/consume/calculate/report the data across dozens of entities and hundreds if not thousands of securities and financial products.

Given that the final requirements will not be published until the end of December 2020 and compliance is entered into force on March 10, 2021, the industry may need to start building out data requirements, workflows and systems without the final requirements. Implementation of unique reporting requirements is typically a 1-2 year project, compressing it into 3 months, will be costly and require significant resources, in a time where budgets are constrained due to the COVID pandemic.

Further, these disclosures are expected to change in the near future to align with the Taxonomy, which adds to the levels of cost, uncertainty and resources required to implement.

Finally, these disclosures may lead to changes in existing ESG financial products as they need to align to the new set of SFDR indicators which did not exist at the time of product launch. The cost resulting from those changes should be considered.

<ESA\_QUESTION\_ESG\_27>