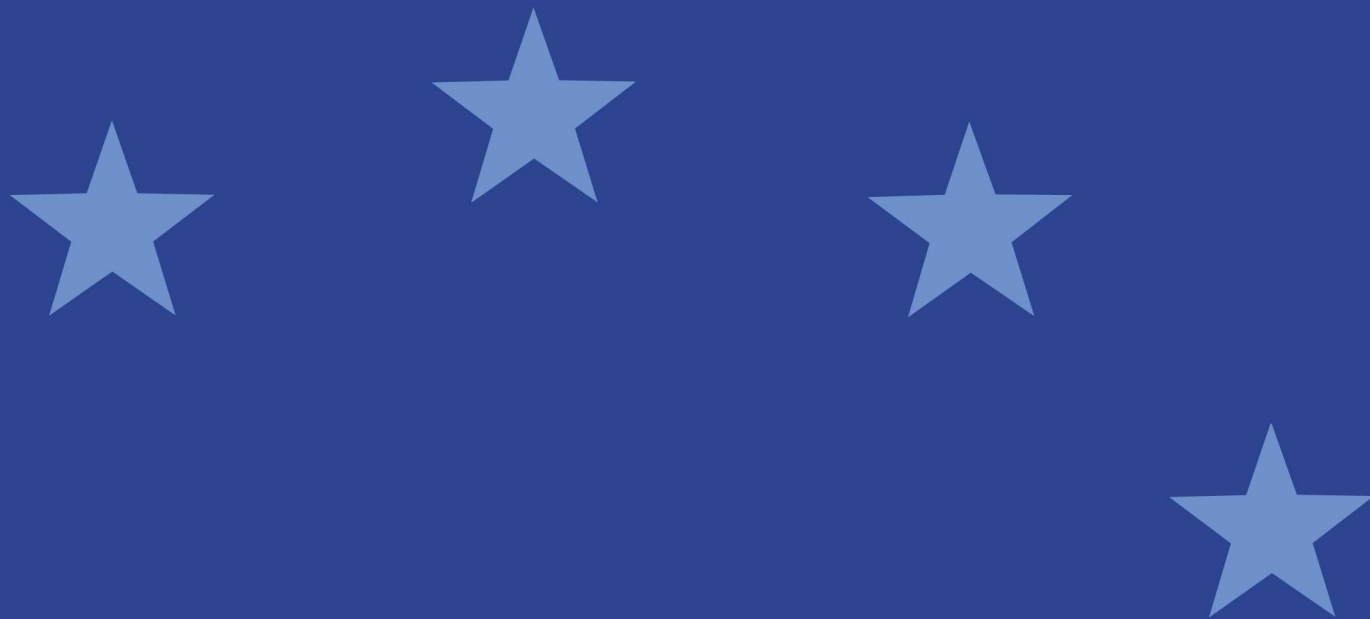


Response form for the Joint Consultation Paper concerning ESG disclosures





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:

- 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	European Structured Investment Products Association (EUSIPA)
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>

EUSIPA, the European Structured Investment Products Association bundling the voice of issuers of structured products active in the European Union and originating from the EU, UK and Switzerland, takes the opportunity of this consultation to voice its pressing concerns with regard to the emergence of a level playing field for ESG financial products.

As such level playing field necessitates the adequate and full consideration of all products which enhance, support or implement ESG investment strategies, the absence of some asset classes/product formats from upcoming regulatory rules, such as the SFDR and its Regulatory Technical Standards, is highly worrisome. This applies in particular to **the absence of Structured Products from the regulatory inclusion in before rulesets for which there is no political or technical justification.**

To avoid any misunderstanding, EUSIPA wishes to clarify that we are aware of the current consultation dealing (only) with the implementation (RTS) level of the SFDR. Nonetheless we would like to mark up our concerns linked to the limited scope of the SFDR on the legislative level (1) which has a perpetuating effect through its RTS. Given that the SFDR's regulatory subject (disclosure of ESG product aspects and investment policies) is of paramount importance to the dynamically growing ESG landscape, the potentially highly negative impact of an incomplete ruleset, such as the SFDR in its current format, on the emergence of a level playing field cannot be overstated. This effect hits in particular the ESG product distribution to retail investors. As we demonstrate below, products which are out of scope of the SFDR run the danger not to be offered anymore to retail investors, thus impacting the landscape of available investment solutions in a way that ESG-focused retail investors in the EU are put a competitive disadvantage compared to their peers in highly developed neighbouring capital markets as Switzerland and the UK, as well as on the global level.

Structured Products belong to the type of products financial market participants frequently make available for ESG investment purposes. Their components can be evaluated on their ESG quality and the result, assessing the ESG qualification of the Structured Product as such, could theoretically be disclosed in line with the SFDR (RTS) requirements. Their exclusion from the SFDR's scope is thus neither politically nor technically justified and should be reconsidered and changed.

1. General comments on Structured Products

Structured Products have become an important part of the global investment landscape for the last decades. They are issued by financial institutions and exist in various formats (mostly notes, funds, insurance

products). In terms of assets held by retail investors, the market is clearly dominated by Structured Investment Products. These are essentially bond-based and also embed a derivative. A huge part of them functions in a way that they provide a fixed regular pay-out (interest) until maturity while the repayment level of the principal amount depends on the condition of certain market events (not) occurring (e.g. a certain share price level must not be undercut during the lifetime of a product). Structured Investment Products often come along in a fully or partially capital-protected format. Very importantly, they are passive investment products, so in contrast to a UCITS fund for example, there is no active management of the assets invested in them. The pay-off conditions of a Structured Investment Product are defined in advance and remain unchanged during its lifetime. Structured Investment Products exist for all sorts of market expectations the choice of which lies with the investor who can buy them at issuance or on the secondary markets, where they can also be sold before maturity.

Their packaged setup (the combination of bond and derivative/option) makes Structured Investment Products more sophisticated. This setup however is necessary to create their specific features (regular annual interest pay-off and principal repayment on certain conditions as well as additional features such as capital protection, for example).

The size of both components, the derivative and the bond/funding part, may vary within a Structured Investment Product in terms of assets allocated to them. It should be understood that in the landscape of Structured Investment Products sold in Europe, fully or partially capital-protected structures take up an overwhelmingly large proportion (of an estimated 60-65 per cent in terms of “open interest”/assets invested). In these capital-protected products the amount invested in a derivative usually is rather small (e.g. an estimated 10-15 per cent of the total investment) while the bond/funding part, held by the issuing bank or insurance on its balance sheet or further invested in a specific asset, makes for the largest part of the asset allocation.

Structured Investment Products have become, as said earlier, an established component of the investment product landscape in the global and European asset management and retail financial industry.

2. ESG evaluation of a Structured Investment Product

As for ESG evaluation of a Structured Investment Product, EUSIPA wishes to underline that **all components of a Structured Investment Product can be evaluated on their ESG quality, allowing as a result for a judgement of the ESG quality of the Structured Investment Product as such. The details of the components’ ESG evaluation could, as demonstrated below, be disclosed in line with the requirements of the SFDR articles 8 and 9.**

a) Principles

In general the following principles would apply to the ESG evaluation of a Structured Investment Product:

- As for the **derivative component**, the underlying reference value of the derivative (e.g. share, bond, basket of the before, indices) will be judged following the rules of the EU Taxonomy Regulation.
- As for the **non-derivative (bond or funding) component**, the ESG quality will be judged either by its investment purpose in case the bond/funding part serves the financing of an asset (e.g. in the format of a green bond or a part of a ringfenced ESG asset pool) considered to be sustainable under the EU Taxonomy Regulation or by the proven ESG quality of the issuing financial institution which holds the bond/funding part as a position on its general balance sheet.

b) Details of ESG evaluation

When looking at things in more detail, the below aspects should in our view be considered:

(1) Derivative component

As for the derivative part, EUSIPA does clearly support the view that derivatives as such can contribute to ESG purposes. Recourse is taken on the commonly known facts that derivatives demonstrably raise the liquidity of stock markets, ultimately not being different from other “direct” secondary market investments in bonds and shares. As recent studies (e.g. by Lannoo and Thomadakis of CEPS, 2020) have underlined again, derivatives play a major role in enhancing transparency, in terms of better and more timely information on the underlying, thus facilitating price discovery and ultimately raising market efficiency. This function could be seen already as contributing by itself to long-term sustainability objectives (of global financial markets) and does so, of course, in particular with respect to ESG reference assets underlying a derivative.

(2) Bond/funding component

(a) Bond/funding held on general balance sheet

As for the bond/funding component, an ESG evaluation would entail a judgement of the overall business activity of the issuing financial institution if the latter holds the bond proceeds on its general balance sheet. This approach would be the same for other deposit-/balance sheet-linked financial products, such as savings accounts or (non-unit linked) insurance contracts. The alternative situation where the bond/funding part is specifically invested in an ESG asset, such as a green bond, is looked at below under (b).

The mentioned balance sheet anchorage (of deposit and balance sheet-linked financial products, as Structured Investment Products) actually represents a somewhat underestimated but actually very effective tool in **enhancing the transitioning of the financial sector to a higher ESG quality** of its business conduct in general. Such effect, to state the obvious, is in line with both, the political goals of almost all OECD countries and also the managerial long-term strategies of all major financial industry participants operating within these.

It should be noted that, unless they are specifically focused on the financial services industry, off-balance sheet financial products such as UCITS funds do **not** have this same significance for the financial sector transition towards ESG goals at large, despite their broad proliferation in retail markets.

While there are no agreed global or EU standards yet on how to evaluate the balance sheet of a financial institution on its ESG quality, things constantly evolve through the application of broadly used ESG ratings and an dynamic ESG label landscape (which includes labels, such as the Belgian “Towards Sustainability” label, that already consider the ESG quality of an institution’s balance sheet in product-specific applications). A positive evaluation of bond/funding component in above sense, if coupled with a positive ESG evaluation of the underlying reference value accessed through the derivative part, **could place the Structured Investment Product into the category of article 8 SFDR**.

(b) Funding/bond part invested in green bond/ringfenced asset

Should the funding/bond part of a Structured Investment Product however not be held on the general balance sheet but rather be invested in a green bond (or a ringfenced ESG asset pool), the ESG impact of the Structured Investment Product is also easily understandable. It should be noted that Structured Investment Products with such a composition can play a significant and also still somewhat underestimated role in alleviating the access of retail investors to green bonds (or ringfenced ESG asset pools held on balance of a financial institution). Both are otherwise rather difficult to invest in by non-professionals.

A positive evaluation of bond/funding component in above sense, again coupled with a positive ESG evaluation of the underlying reference value accessed through the derivative part, **could place the Structured Investment Product into the category of article 9 SFDR.**

As demonstrated, the components of a Structured Investment Product can easily be judged on their ESG quality making it perfectly possible to include these products into the regulatory scope of ESG eligible financial products and the disclosure framework of the SFDR.

3. Methodological considerations (SFDR and MIFID2)

Beyond these asset class-specific considerations, EUSIPA wishes to draw attention to the need for absolute consistency between the various EU rule-works that regulate the financial product distribution in general with those that deal specifically with ESG issues. Such a consistency does currently not exist. By way of example, the application of ESG-related criteria to the target market indication requirement under MIFID2 illustrates the consequences of inconsistent rulesets and is of particular concern in terms of its relation to SFDR (RTS) rules.

Insofar as SFDR provisions are either directly referred to by MIFID2 (delegated acts and related RTS) or as, alternatively, SFDR principles are being loosely referenced under MIFID2 to determine ESG aspects of financial products for the target market indication, the exclusion of specific asset classes (under SFDR) collides with a fundamental principle of the MIFID2/MIFIR framework which does at no end prefer or rank a specific financial product type (or asset class) over the other.

Ignoring this correlation runs the danger that ESG financial products which the SFDR does not, not clearly or only insufficiently deal with, are simply not offered anymore to investors interested in an ESG investment, **as financial market participants will worry about the MIFID2 compliance of their business activities.**

(We also hint in this context at the joint letter sent by major EU associations on 23 July 2020 to the EU Commission addressing MIFID draft RTS references made in an inconsistent way to specific SFDR definitions / [link](#).)

Beyond the unjustified exclusion of Structured Investment Products from the SFDR's scope, above legal inconsistency would thus further substantially hinder the emergence of a level-playing field for ESG products in the EU.

4. Conclusion

Following these arguments, EUSIPA wishes to conclude that Structured Investment Products should be strictly made part of the asset landscape potentially eligible for a positive sustainability assessment under the various EU regulatory frameworks, which for the reasons outlined above must also extend to the SFDR (and its RTS).

Finally, we understand that the final RTS will not be ready by end 2020. This makes the timing of March 2021 for the SFDR to come into effect particularly ambitious given the issues of data availability and the time needed by financial market participants to adapt. Also for this reason we would encourage the institutions to reconsider the scope of the SFDR, amending it probably by way of a quick-fix to be initiated, it being understood, by the EU Commission but probably recommended and supported by the European Supervisory Authorities.

Should the ESAs and EU Commission not be in a position to initiate or support a quick-fix of the SFDR, we would suggest to follow already today an “open architecture” principle by which the SFDR RTS are being kept open to new legislative developments at Level 1, in particular with regard to the scope of the SFDR and the inclusion of further asset classes. This would deprive the ESAs of the need to recalibrate the RTS at a later point through cumbersome redrafting of specific rules and give the SFDR a forward-looking character rendering the ruleset in itself more “sustainable”. The highly dynamic ESG landscape will surely bring about in the short term a number of change requests to legal provisions including the SFDR which are likely to result in the inclusion of not yet covered products/asset classes. For this reason any advance consideration of such changes caters for a clear future need and thus brings a tremendous added value to the quality of ESG-related regulation and relevant markets.

<ESA_COMMENT_ESG_1>

1. : Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an “opt-in” regime for disclosure??

<ESA_QUESTION_ESG_1>
<ESA_QUESTION_ESG_1>

2. : 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.

EUSIPA wishes to stress that the materiality of indicators should be taken clearer into account. While some indicators may indeed be considered to always lead to principal adverse impacts, not all indicators are relevant to all financial market participants or products. Mandatory reporting on non-material or relevant indicators could present an unintended unfavourable picture of an entity or product. (e.g. having a deforestation policy is not necessarily relevant for all companies investors look at for ESG purposes or, phrased differently, not having such a policy is not necessarily an indication of an unmanaged adverse impact.)

EUSIPA further is of the view that the proposed number and complexity of many of the proposed indicators may not contribute to the objective of providing clear information on the ESG impact of a product, but could on the other hand overwhelm and confuse retail investors.

Special care should thus be taken on the usefulness and comprehensibility of the disclosures for the intended target audience. Disclosures that are not read or, if read, misinterpreted are not useful.

Given the ongoing evolution of ESG criteria especially outside environmental aspects (in the areas of social and governance issues) the above seems to win an even higher relevance, going forward.

<ESA_QUESTION_ESG_2>

3. : 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>
<ESA_QUESTION_ESG_3>

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

<ESA_QUESTION_ESG_4>
<ESA_QUESTION_ESG_4>

5. : 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>

<ESA_QUESTION_ESG_5>

6. : 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>

<ESA_QUESTION_ESG_6>

7. : 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>

<ESA_QUESTION_ESG_7>

8. : 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>

<ESA_QUESTION_ESG_8>

9. : 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>

<ESA_QUESTION_ESG_9>

10. : 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>

<ESA_QUESTION_ESG_10>

11. : 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>

<ESA_QUESTION_ESG_11>

12. : Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?

<ESA_QUESTION_ESG_12>

<ESA_QUESTION_ESG_12>

- 13. : 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>

<ESA_QUESTION_ESG_13>

- 14. : 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>

- 15. : 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>

<ESA_QUESTION_ESG_15>

- 16. : 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>

<ESA_QUESTION_ESG_16>

- 17. : 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>

- 18. : 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>

<ESA_QUESTION_ESG_18>

- 19. : 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>

<ESA_QUESTION_ESG_19>

20. : 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>

EUSIPA makes reference to the before introductory comments (see above under 1) on the potential impact that the insufficient scope of the SFDR has on the wider distribution landscape for ESG financial products, in particular those available to retail investors. Our emphasis is put on the necessary inclusion of Structured Investment Products into the scope of the SFDR.

<ESA_QUESTION_ESG_20>

21. : 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>

<ESA_QUESTION_ESG_21>

22. : 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>

<ESA_QUESTION_ESG_22>

23. : 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>

<ESA_QUESTION_ESG_23>

24. : 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>

<ESA_QUESTION_ESG_24>

25. : 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>

All technical and more detailed information should be provided on the website where there it is possible to present these elements in a comprehensible way. Pre-contractual information should be limited to the essential and more high-level ESG characteristics of the product and refer to the website for more in-depth information.

<ESA_QUESTION_ESG_25>

26. : 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>

EUSIPA is of the opinion that in case of a Structured Investment Product for example, where only a minor proportion of customer assets is used to invest in the derivative component (so to access the underlying reference value performance) a disclosure of this proportion and the description of the expected indirect effects could easily be made part of the regular graphical and narrative description(s) of the product. (See our comments in above introduction section for more details on the components, functioning and role of Structured Investment Product in the asset management and retail financial industry and the consequence of their non-consideration under the SFDR.)

<ESA_QUESTION_ESG_26>

27. : 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>