

Question 40: In your view, should there be a mandatory share of variable remuneration linked to non-financial performance for corporates and financial institutions?

	Yes
X	No
	Don't know / no opinion / not relevant

Box added by Consob

We agree that only through a concrete involvement of the top management it is possible to foster a real integration of sustainability factors into the company activities. Linking the variable remuneration of directors and top management to non-financial objectives may be a very important tool to ensure their involvement in the process of a genuine ESG integration, especially in the area of company's strategies and risk management system. However, taking into account the diversity between listed issuers in terms of size and type of business, we are against a mandatory share of the variable remuneration linked to ESG criteria be fixed in legislation, irrespective of the different characteristics of corporates in terms of size, sector and business model and of the level of integration of ESG factors into the corporate strategies.

In our view a flexible approach (comply-or-explain) would be preferable i.e. providing that a share of the variable remuneration is linked to ESG objectives based on the materiality analysis carried out by each corporate.

In so doing, we would allow corporates to design the variable remuneration structure consistently with the ESG factors and objectives that are considered material to the company in light of its specific characteristics (sector, size, location, stakeholders).

We suggest adopting the same flexible approach based on materiality assessment also with reference to the inclusion of carbon emission reductions in the lists of ESG factors affecting companies directors' variable remuneration (question 41).

Question 42: Beyond the Shareholder Rights Directive II, do you think that EU action would be necessary to further enhance long-term engagement between investors and their investee companies?

	Yes
X	No
	Don't know / no opinion / not relevant

Box added by Consob

We deem it premature at this stage to assert whether or not additional EU action would be necessary beyond the Shareholder Rights Directive II to further enhance long-term engagement between investors and their investee companies. We believe it important, before considering new regulatory actions in this field, to ensure an adequate period of implementation of the Shareholder Rights Directive II and to collect evidence regarding the impacts of measures transposing said Directive in national legislations, so as to understand their effectiveness in improving such long-term engagement.

Question 43: Do you think voting frameworks across the EU should be further harmonised at EU level to facilitate shareholder engagement and votes on ESG issues?

	Yes
X	No
	Don't know / no opinion / not relevant

Box added by Consob

At this stage we are against further harmonizing at EU level voting framework across the EU in order to facilitate shareholder engagement and votes on ESG issues.

As for the voting chain framework, we believe it necessary to preliminarily conduct a thorough monitoring of the application of the Shareholders' Right Directive II as well as of the effects of Commission Implementing Regulation (EU) 2018/1212, which will become applicable only from September 3, 2020 and which could significantly contribute to facilitating remote and cross-border voting, at least within the EEA. In this respect, while sharing the importance of a progressive harmonization of definitions of company law- such as the definition of shareholder - preliminarily it seems necessary to carry out an in-depth analysis on the need and purpose of such an intervention, also taking into account the specificities of the different corporate legal systems and market contexts of the Member States in which the different concepts are developed and applied, as well as the impacts of the transposition and application of SHRD II and the aforementioned Regulation. In other words, it is difficult to identify areas of harmonization in the absence of operating practices of the above-mentioned rules.

With regard to the voting rights framework, recent experience in Italy shows that the introduction of loyalty shares or asymmetric distribution of voting rights is negatively assessed by ESG rating providers, with a lowering in the ESG rating assigned to the companies in question, and even by institutional investors, who have expressed a contrary vote in the shareholders' meeting called to introduce these incentives on voting rights. Although they were introduced with the aim of encouraging long-term engagement of institutional investors, in practice increased voting shares have been used essentially by controlling shareholders. We consider it useful at EU level to firstly analyze the impacts of national measures that have introduced additional incentives to facilitate shareholders' votes on ESG issues as suggested also by ESMA in its "*Report on undue short-termism*" (2019). Amendments of EU legislation in that area should be based on a thorough balance of all the different interests at stake and also of potential negative externalities stemming from a non-proportionate distribution of risks and powers in the management of a company (such as increased voting rights via loyalty shares or increased dividend rights).

That said, we suggest analyzing at EU level how such instruments of asymmetric distribution of voting rights are used and regulated to assess which measures are the most suitable to encourage long-term investments while allowing adequate protection of minorities.

Question 45: Do you think that passive index investing, if it does not take into account ESG factors, could have an impact on the interests of long-term shareholders?

	Yes
	No
X	Don't know / no opinion / not relevant

We have no direct experience of the potential effects, on the interests of long-term shareholders, of funds that do not take into account ESG factors.

However, a few researches are available on the issue; for instance, the IMF Global Financial Stability Report of October 2019. According to it: *“Indices that track assets based on ESG criteria have opened the market to passive investors, but further fund and asset standardization may be needed to match investor expectations regarding ESG compliance. Prima facie, passive investing is not conducive to sustainable investing, given the need for greater engagement with issuers and higher analytical burden and cost, and may prove less effective in generating impact”*.

In any case, we would like to flag that the inclusion of ESG factors in the investment strategy of a fund in itself does not represent a mandatory requirement.

Question 46: Due regard for a range of 'stakeholder interests', such as the interests of employees, customers, etc., has long been a social expectation vis-a-vis companies. In recent years, the number of such interests have expanded to include issues such as human rights violations, environmental pollution and climate change.

Do you think companies and their directors should take account of these interests in corporate decisions alongside financial interests of shareholders, beyond what is currently required by EU law?

	Yes, a more holistic approach should favour the maximisation of social, environmental, as well as economic/financial performance
x	Yes, as these issues are relevant to the financial performance of the company in the long term
	No, companies and their directors should not take account of these sorts of interests
	Don't know / no opinion / not relevant

Box added by Consob

We believe that companies and their directors should take account of relevant stakeholders' interests (such as local communities and workers) in corporate decisions alongside financial interests of shareholders, as long as these issues can be relevant to the financial performance of the company in the long term. Consequently, we support the second option suggested among the possible answers which appears at this stage the most appropriate for different reasons.

Instead, the holistic approach suggested in the first option of the consultation document does not specify if and how a holistic approach may lead to an extended notion of "social interest" binding for directors; for instance – it would generate a lack of clarity in the directors' management discretion and accountability regime which could lead to a less effective governance model.

The integration of sustainable objectives into the company's strategy and business models leads toward a more correct identification and a better management of corporate risks (including reputation, liability and other operational risks that may have a material impact on financial performance) and contributes to shareholder value maximization in the medium-long term. Furthermore, it helps to strengthen confidence among consumers and investors, also taking into account that institutional investors are increasingly focusing on ESG considerations in their investment decisions.

Finally, we wish to flag that the second option implies a clear corporate governance paradigm. It allows to be more easily introduced in domestic corporate governance legislations and appears to be more consistent with EU rules (that could be integrated at a later stage) already intended to foster long-term shareholders' engagement. The social interest continues to be defined as common shareholders' interest and the company's success as well as its efficiency and market attractiveness continue to be assessed on the basis of the share value increase, even if under a medium-long term perspective which takes account of social and environmental implications of the corporate production and of the interests of other relevant internal and external stakeholders.

In addition, we would like to underline that our preferred option is already embedded in the French legislation through the regulatory reform of the definition of social interest and also in the Corporate Governance Code approved by the Italian Corporate Governance Committee in January 2020 (on a comply-or-explain basis).

In this respect, it seems to be more efficient to increase the potential of this new governance paradigm, with the necessary clarifications on its operational implications in the relations between directors, shareholders and other stakeholders, than to radically depart from the large companies' management principles.

Question 50. Do you think that retail investors should be systematically offered sustainable investment products as one of the default options, when the provider has them available, at a comparable cost and if those products meet the suitability test?

	Yes
	No
X	Don't know / no opinion / not relevant

Box added by Consob

First of all, we would like to flag that the issue is still under discussion within the Intermediaries and Investor Protection Standing Committee of ESMA, for the purpose of updating its product governance and suitability guidelines, as a result of the changes to MIFID II delegated regulation to take into account the sustainability perspective.

The likely impacts or effects of a mandatory requirement to systematically offer sustainable investment products as one of the default options in terms of portfolio reallocation would need to be assessed as part of a more general cost-benefit analysis covering the complex set of measures envisaged under the renewed sustainable finance strategy.

With specific regard to the situation where the provider makes available sustainable options, at a comparable cost and the client has expressed ESG preferences, it seems reasonable that the client is presented with sustainable products within the range of available options provided, however, that they are consistent with the target market and are appropriate/suitable at the time of the investment.

In other words, we deem it very important to apply investor protection safeguards to mitigate the risk of mis-selling and in particular, as highlighted, product governance measures aimed at ensuring an adequate "upstream" assessment of the range of sustainable investments based on the information available on the products (including the related costs) and the target market, as well as "downstream" checks of suitability / appropriateness of individual client transactions. In the end, the preference of investors in directing its investments shall not be precluded.