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| 23 April 2020 |

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| Response form for the Joint Consultation Paper concerning ESG disclosures |
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| Date: 23 April 2020  ESMA 34-45-904 |

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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. 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.
3. 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.
4. 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.
5. 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](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 1 September 2020.
6. 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[[1]](#footnote-2). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

|  |  |
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| Name of the company / organisation | Business & Science Poland (BSP) |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

Business and Science Poland (BSP) connects the experience of leading Polish enterprises with the EU agenda. We represent the knowledge and interests of successful entities, which employ over 100 000 workers in Poland, EU and globally. We are committed to advancing the values of EU Common Market in sync with the needs to transform it responsibly and effectively. In particular, BSP represents leading entities from the Polish energy-intensive industries, air transport companies, financial markets. We are also in the strategic partnership with the Polish research and innovation community and SMEs’ organisations. Due to the fact that BSP members operate in many regions of Poland and the Central and East Europe (CEE) region, we have the insight into the specific economic, social and historical context of the region which we believe is valuable for the Platform. All of the members are active on the issue of decarbonisation. We take active part in the European Commission consultations (e.g. EU Classification System for Green Investments and Renewed Sustainable Finance Strategy).

<ESA\_COMMENT\_ESG\_1>

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

<ESA\_QUESTION\_ESG\_1>

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>

As highlighted in our response to the Renewed Sustainable Finance Strategy input on the financial tools developed to increase sustainable investment flows and management of climate and environmental risks, even though we have a common goal, the starting point of each Member State is different and one-size-fits-all approach is not possible. This aspect applies to the EU financial framework which should provide for the fact that the re-arrangement of the existing installations in order to better match new specifications often leads to their depreciation while shareholders and other investors expect their returns on the initial investments. However, also this approach translates into the sustainability-related disclosures in the financial services sector. The overarching idea of the harmonisation can be justified, however the approach chosen with a very extensive compilation of the sustainability adverse impacts for non-financial risks to be taken into account across much diversified sectors subject to a variety of frameworks can give grounds to doubt as to their effectiveness and purposefulness.

<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>

BSP sees in burdened with the high investment in Research & Development (R&D) low-carbon transition and in mitigating the incremental climate conditions affecting the daily operations, the approach which would enable certain level of adjustment possibility. It seems that within the framework of sustainable finance strategy and its major legislative acts, there are many parallel and overlapping work paths oriented toward the differentiation of disclosure key indicators. These sort of work streams are driven by the investors combining various reporting initiatives and are extremely dynamic. We believe that these practises should be accounted for as to prevent the multitude of sophisticated coinciding disclosure obligations with questionable added value. A set of environmental, social and governance (ESG) disclosure requirements need to be comprehensive enough to accommodate the ESG data that are provided by the companies. Further, the voluntary aspect of publishing the data remains crucial. Any disclosure should relate to the appropriate and material information so that it could lead to a sound sustainable decision and analysis. It should be noted at this point that this type of information is dependent on such parameters as the operational base, size, financial reporting obligations, and many more. Thus, companies should be able to conclude the specific material issues to their own investor base in the field of sustainability and non-financial reporting so that the appropriate decisions are taken on the grounds of the appropriate information for particular assets portfolio.

<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>

Mindful of the need to act in order to reach ambitious goal of the increased emissions reduction, we need to acknowledge that in a web of global or simply international companies, the national and regional borders are no longer the only indicator of the limits of the company’s operations. Thus, any local, geographically-driven policies have potential of becoming a driver of an extra administrative and organisational obligation instead of a reliable and coherent progress indicator. The inclusion of the measure of carbon emissions relative to the EU 2030 climate and energy framework target which as its name suggests is related to particular timeline and is subject to change may fail to be adequately reflected in the disclosure requirements and unintentionally introduce an element of misunderstanding or outdated data. Thus, we do not consider this addition to the proposed indicators on carbon emissions in Annex I to bring neither immediate nor long-term benefits. We see however the window of possibility to include voluntary opportunity which would provide the information on a more general level such as undertakings curbing greenhouse gas emissions.

As per the EU 2030 climate and energy goals, BSP members are committed to contribute to this challenging task without exception, and we trust in the European Union to provide the level-playing ground and appropriate conditions for such a transition to greener products and processes.

<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>

Given the complexity of the value chains and a wide spectrum of industry sectors, including any generic advanced indicators or metrics may jeopardise the process and overall efforts of the sustainable finance. Currently, the European sustainable finance package including comprehensive taxonomy, non-financial reporting and sustainability disclosures which altogether create a very comprehensive metrics and indicators base. Potential considerations should take into account technological neutrality, adjustment possibility as indicated above, opportunity for all market participants to deploy carbon abating technologies in the economically viable fashion. We do not see merit in applying the more advanced indicators and metrics without a comprehensive impact assessment beforehand. <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>

On the note of the sectoral approach, it should be indicated that nowadays it is not always possible to describe exhaustively a particular sector due to the fact that the line of business of companies often stretch across a variety of sectors which may result in the overlapping requirements and multiplications of the disclosure conditions. In other words, there are companies which are operating in one or more sectors, but there also exist companies which core business is contained within one sector, hence the rationale behind such a classification becomes questionable and may result in disproportionate picture of the market and its participants. We realise that finding a silver bullet in this context is not so easy however as it is crucial that investors and end-investors comprehend the specificities and the needs of particular sectors. It may require a joint collaboration of different market participants to arrive to the structured, synchronised metric system. One way to address this could be sector-specific reporting based on non-compulsory approach. This would enable every company and the sector to progressively learn from each other and enhance the quality of the presented data in a thorough and non-hasty manner. BSP members actively participate in the research and development and innovation (R&D&I), as well as introduction of the cutting-edge environmental and low-carbon technologies for the sustainable biofuels, liquefied natural gas (LNG), and more. Irrespective of the sector, the common denominator for the present multitude of challenges is the access to the dedicated funding and proper regulatory background which would include the regional specifications, multiannual cycle of investments, as well as the availability of the emerging/break-through technologies.

<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>

We fear that the inclusion of “good governance practices” in the RTS may lead to the element of confusion and may cloud the governance message present in the NFRD, thus we find this idea expendable.

<ESA\_QUESTION\_ESG\_21>

* : What are your views on the preliminary proposals on “do not significantly harm” principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?

<ESA\_QUESTION\_ESG\_22>

We find the prerequisite to define the “do not significantly harm” principle absolutely inevitable for all market participants and in particular the industry to enable crucial investment and deployment of all technologies and solutions contribute to curbing the greenhouse gas emissions. In light of the Taxonomy Regulation, the reporting for companies will need to take a new form for their processes and a development of the new system frameworks for that. This is related with significant alterations to their current status quo collection of data, processing, as well as assurance.

Even though, it is not completely certain when the technical screening criteria with regard to disclosure will be available, we foresee very limited time between the publication of the delegated acts and their publication. It seems like there will be a certain overlap in the reporting obligations and the adaptations that companies will be faced with. Hence, we believe that European operators would benefit from a thought-through enforcement and transition time with particular focus on the disclosure requirements. There may be also a good planning of the of the level 2 final technical measures and the date of entering into force of the delegated acts. We would welcome technological neutrality to be ensured in the “do not significantly harm” principle.

<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>

TYPE YOUR TEXT HERE

<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>

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. [↑](#footnote-ref-2)