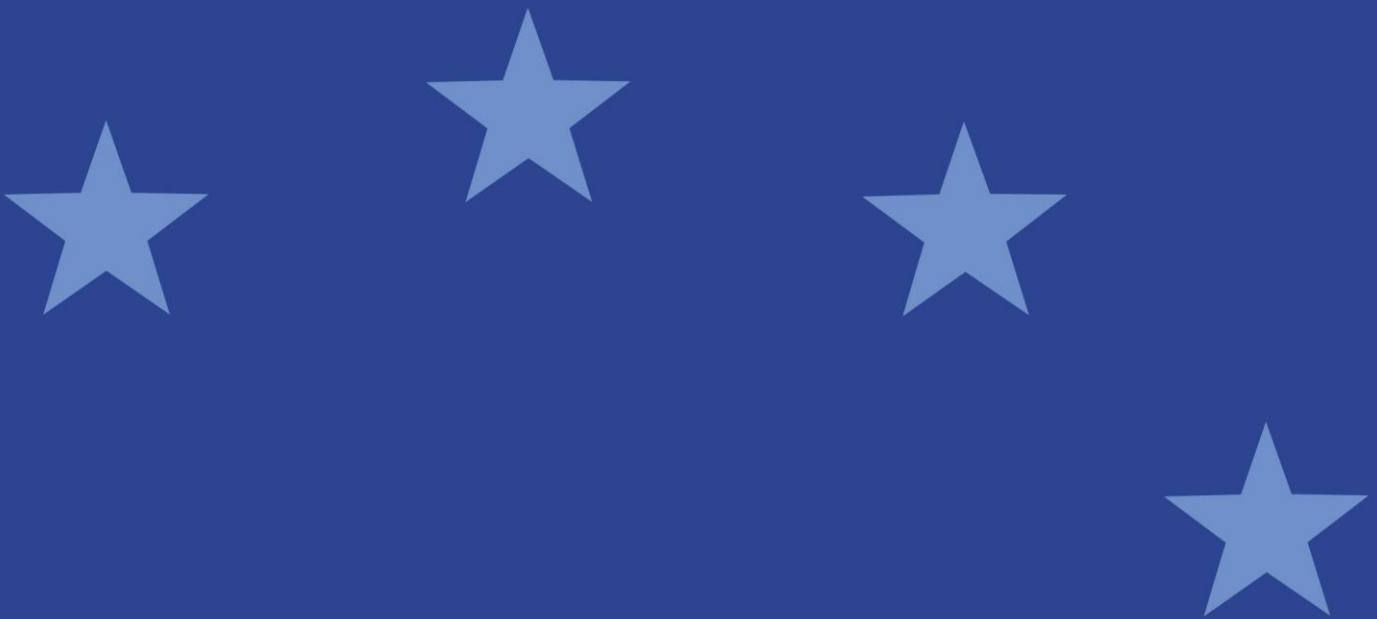


# Response form for the Joint Consultation Paper concerning ESG disclosures





## Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter “SFDR”) and in particular on the specific questions summarised in Section 3 of the consultation paper under “Questions to stakeholders”.

Comments are most helpful if they:

- 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	Związek Banków Polskich/Polish Bank Association
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Poland

## Introduction

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

<ESA\_COMMENT\_ESG\_1>

First of all, we would like to emphasize that, at the same time, at the EU level, legal acts are being created that are closely related to each other and exert mutual influence in the area of sustainable finance. A comprehensive assessment of the solutions and effectiveness of the law on sustainable finance will be possible when we get to know the level 2 acts for the taxonomy regulation and disclosure regulation and after introducing changes to the Non-financial Reporting Directive (NFRD). So, from a purely practical point of view the RTS should be published after the Taxonomy-Regulation and NFRD. Disclosures made by financial market participants (FMPs) will only be possible if they obtain appropriate contributions from non-financial companies/clients. Therefore, we believe that the development of a very extensive table without a complete assessment of the level of availability of such information and without introducing changes to the NFRD will be ineffective. The comparability of these data, referred to in Annex I, will be possible, if all FMPs handle information of the same quality and according to the same definitions and if this information is easily accessible to them. Currently, we imagine a situation where different FMPs will ask non-financial companies to provide in different formats, at different times and in different forms of information needed to prepare information in accordance with Annex I. This can generate great frustration in the market and lack of good quality of data.

We certainly see a problem in the transparent and comparable presentation of information related to carbon emissions in the scope 3. Majority companies are not able to gather data to count carbon emissions in the scope 3. In our opinion, we should strive to disclose information on carbon emissions in the scope 1 and 2 widely, and on this basis work out the possibility of counting carbon emissions in the scope 3. However, it should be a progressive approach. First, we will work out a high level and quality of scope 1 and 2 and the widespread availability of this data from non-financial enterprises, and then we expect mandatory scope 3 counting. The preparation of reliable information by FPMs depends on the data they obtain from their clients and non-financial companies. Therefore, requiring disclosures from FMPs should be preceded by an analysis of the availability of the required data and its quality. Finally, it should be noted that requiring such disclosures from FMPs will lead to additional disclosure obligations imposed on non-financial enterprises that will seek financing on the capital market. Therefore, one should not create a large number of indicators, but rather focus on creating a minimum list of indicators that will be of high quality, based on reliable and available information and will constitute reliable information for investors. Also the comparability of the particular indicators (e. g. from the social area) should be assured by the new legislation.

As a result of a very brief assessment of the data disclosed in last years by Polish public companies we identified few categories in which we know that today information is completely not available or is available only in a very limited scope, e.g. solid fossil fuel exposure, total energy consumption from non-renewable sources and share of non-renewable energy consumption, breakdown of energy consumption by type of non-renewable sources of energy, energy consumption intensity, energy consumption per sector, natural species and protected areas, untreated discharged waste water, non-recycled waste ratio, gender pay gap, operations and suppliers at significant risk of incidents of child labor or forced or compulsory labor, exposure to controversial weapons. Our brief assessment was made in the cooperation with The Polish Association of Listed Companies. According to those analyses only some big companies, which currently have the obligation to public non-financial reports are able to gather and to share with the FMPs some information needed to count indicators from Annex I. We can assess that in Poland there are only 60-80 big,

listed companies which create non-financial reports according to the global standards or regional standards (GRI or SIN). Other 70-90 listed companies located in Poland are preparing non-financial reports required by NFRD but with their own methodology. Still, there are a lot of companies which do not have an obligation to publish non-financial reports, therefore they collect some data about ESG but in a different way. Taking into account those numbers we do not have a lot of companies selecting data which would be useful by making disclosures required in Annex I. Moreover, taking into account the currently published non-financial reports, FMPs will have difficulties to disclose e.g. biodiversity and ecosystem preservation practices (only 20% of the biggest companies reporting with the GRI standard collect and publish information in this area). Only 5% of the biggest companies publish information about the deforestation, therefore disclosure of this information first of all will generate huge costs and secondly will generate a risk the data selected in this area won't be standardised and comparable. When it comes to e.g. gender gap pay or excessive CEO pay ratio even if some companies would have this type of data we are afraid that they won't be comparable.

We also notice the lack of proportionality between the role of environmental (they are the most complex) and social and governance indicators. We recommend rather to create a few key benchmarks in each field so as to keep a balance between environmental, social and governance factors.

In our opinion, some of the indicators proposed in Annex I address similar issues and there is no need to separate them, e.g. indicators 17, 21 and 22. Regarding the issue of data availability, our analysis shows that most of the data that FMPs can use is published in non-financial reports. Today, it is one of the basic data sources for disclosure. However, it should be noted that non-financial reports are very often prepared according to various patterns, and prepared according to different standards (although the most popular is the GRI standard) and are of different quality. As a result it can be difficult to find a particular needed information in them. Finally, non-financial enterprises that are not currently required to prepare non-financial reports do not publish on their websites (and often do not aggregate) the information that is necessary to meet the expectations in Annex I. Thus, the preparation by a non-financial enterprise of the data necessary for FMPs to complete Annex I will be time-consuming and costly.

Therefore, we recommend to reduce the list of indicators in such a way as to respect the proportionality principle and not to impose it on small enterprises. Likewise, we have different sizes of FMPs on the market and for smaller FMPs it will be a big challenge to fulfill the obligation of 32 indicators set out in Annex I. Therefore, one of our biggest concerns is the availability and quality of the data on which the disclosures will be made.

Besides, we have doubts about the usefulness of the data presented according to the formula in Annex I for investors, especially retail investors. The information presented will be a series of numbers and in order to properly analyze and understand their meaning, you should have at least basic economic knowledge. Moreover, such an overloaded list of indicators may discourage investors from in-depth analysis of the presented materials. Taking the above into account, we propose to reduce the list of indicators. Limiting the indicators should be preceded by an analysis of the availability of good-quality data in a given area as well as their usefulness and relevance for investors.

It may also be worth considering targeted consultation of investors with questions about the information they expect from FMPs in the context of principle adverse impact on sustainability.

<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>

We have got some doubts if the approach presented in Chapter II and Annex I will achieve the principal adverse impact. We see lot of indicators presented in Annex I but we are not sure if it be efficient and adequate.

First of all, we would like to point out that a lot of figures disclosed by the pattern showed in Annex I won't be proper information for the retail clients. To make some assessment and interpretation of this information one needs sophisticated knowledge and a lot of time.

The indicator 1 is created in a wrong way: the bigger company the greater showed emissions. In our opinion indicator 1 should be related with the invested capital. Also some indicators are very important for some type of companies but not for all of companies and it is connected with the profile of company's activities.

It is also a surprise for us, that the presented indicators do not reflect the engagement of the invested capital to the transition activities. In our opinion the sustainable finance should also promote the change to the more ecological energy sources and reduction of emissions over the time.

When it comes to the “opt-in” regime it could only lead to chaos of information, which won't be comparable. We suggest to focus on creating the proper set of information disclosed by the pattern from Annex I, not to create additional and not mandatory indicators (established in Annex 2 and 3). Disclosing the new information to the investors and it should lead to the comparability of information and better information for the investor, therefore it is better to reduce the number of indicators but work on the quality of disclosure information.

<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>

As we mentioned above we have got some doubts if presented indicators will be useful for the investors and help them make the investment decision.

Presented indicators look like very comparable but in practice some of the figures will be incomparable between particular products (and their volumes) .

<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>

We suggest to reduce drastically the number of indicators in Annex I. The table of disclosing information should be developed in time and should be progressive. At the first step, it should be a shorter list of the most important indicators and with the most accessible data. ESA's should consider the accessibility of the data for disclosing from the third countries companies or data providers controlled by non- EU -capital.

<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>

We suggest to reduce the number of indicators in Annex I. The table of disclosing information should be developed in time and should be progressive. At the first step, it should be a shorter list of the most important indicators and with the most accessible data. Currently, the financial market participants (further FMP) are able to present and aggregate some information in an efficient and comparable way. Moreover, the FMPs will have more information after the changes in Non-financial Reporting Directive (NFRD). Therefore, until the changes in NFRD are not delivered, the number of indicators should be minimalised to the most important indicators and with the most accessible data and common standards of counting them (e.g. GHG Protocol for the scope 1 and 2). The second important issue is that as long as we have developed taxonomy on environmental objectives (but we are still waiting for the level 2 texts) we do not have developed taxonomy on social reasons. Therefore, there is a risk of inconsistency of the standard established in taxonomy and disclosure regulation. Maybe there should be a direct link with those two acts by establishing the rule that the product in the line with the taxonomy is by default excluded from the adverse impact assessment.

<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>

Definitely, we do not see any additional indicators to add. Actually, we strongly recommend to remove some indicators already established in Annex I. We suggest to delete those indicators for which currently data and market standards are not available. We pointed out further this issue in the introduction comments above.

<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>

The phrase "measures relative to the prevailing carbon price" definitely needs an explanation.

<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>

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<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>

Please see comments to question 3.

<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>

It is important to deliver information about the policies and activities in this area, we are not sure if it is crucial to deliver indicators for social and employee matters (S and E matters). As far as for now they are based on some general and vague definitions and numbers might be misleading.

<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>

First of all, we think that the beginning date should be March 2021. Requiring any historical data before March 2021 could violate the rule "lex retro non agit". Second of all before regulation 2019/2088 there wasn't a clearly obligation for FMPs to aggregate this type of data, therefore such information would be incomplete and not comparable. Moreover selecting the historical data would be a huge effort for FMPs but won't give satisfactory advantage/benefit for the investors.

<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>

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<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>

We suggest to developed already existing templates (e.g. PRIIPs, UCITS KID) with the potential EGS information, not to create additional document for the investors. One should keep in mind that particular financial products are different and it is not easy task to create a suitable template. In some cases it is better to establish the common standards and to leave some issues in the discretion of the FMPs.

<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>

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<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>  
We would like to underline that the current EU law required already lot of information given to the investors, therefore multiplying additional information provided to the clients could be burden for them. One should keep in mind that investors are already overloaded with mandatory data delivered by financial institutions, before they are entitled to invest.  
<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>  
TYPE YOUR TEXT HERE  
<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>

We would prefer when the definitions would be identical with definitions used by Eurostat. Otherwise the contributions made by companies wouldn't be comparable with general statistics.  
<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>

As we mentioned above, the product disclosure do not take into account the differences between products. First of all the disclosures should be adjusted to the type of products and individual portfolio management.

<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>

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<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>

In our opinion the scope of “DNSH” from the regulation 2019/2088 is different than the scope of “DNSH” established in the taxonomy regulation. Therefore there is a risk of inconsistency and the need to assess the scope “DNSH” twice – for the taxonomy regulation and for regulation 2019/2088.

<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>

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<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>

In our opinion all the data should be presented on the website.

<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>

We believe that it would be necessary to clarify at regulatory level the conditions under which the use of derivatives can be considered sustainable.

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_ESG\_27>