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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

|  |  |
| --- | --- |
| Name of the company / organisation | Department of Social Insurance, Warsaw School of Economics |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Poland |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_ESG\_1>

We believe that the proposed solutions go in the right direction, but we have some general remarks.

This regulation focuses on disclosure, however indirectly touches governance of almost all financial institutions and not only. In our opinion, the logic of regulation suggest a different approach, governance of reporting and governance of ESG should go first, or at least together with disclosure.

There is also a very limited number of researches on the perception of ESG data. That is why we need to encourage researches in this area, before issuing regulations on pre-contractual information. In our opinion, together with European taxonomy the "European ESG benchmark" should be proposed to help to find the reference point and scale for disclosed information.

In practice, the most difficult aspect may be – in our opinion - data collection and data availability. Therefore, it seems to us that the "principle of proportionality" is missing here. There is a need to specify by which moment the company should try to obtain information. Maybe if data were unavailable, the company should just describe the attempts to get it. This is particularly difficult in the context of suppliers analysis, especially when companies invest outside the European Union, where different legislation is in force and many international documents (e.g. ILO conventions) have not been adopted by states.

There is also a need of the benchmark, we start from disclosures but do not clearly know what will be disclosed.

Moreover, the calculation of the proposed indicators seems impossible for smaller companies, which will also be subjected to the reporting obligation. Such companies may not have enough power to obtain such data.

It is important that based on the reported data, appropriate conclusions can be drawn, thanks to which it will be possible to make changes. Another issue is to take consequences against companies that will not adapt to the changes taking place. What is more, it is not certain that the introduced complicated information requirements will not cause a decrease in the number of green products offered on the market.<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>

At least for the transitional period, while the accessibility of new information will be very difficult, the option opt-in seems to be a good solution

<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>

The proposed climate and other environment-related indicators in Annex I are mostly based on the "weighted average" approach which seems to be correct and considering the size of the business <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>

An attempt to create a benchmark may facilitate reporting, the proposed indicators are quite vaguely defined at this stage, it is not clear what we are aiming for. There is a need for more precise transition from ESG targets to ESG indicators.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

The reporting template is transparent

<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>

Forward-looking indicators are helpful, but together with information on success in achieving previous forward-looking indicators. As far social and employee, respect for human rights and anti-corruption and anti-bribery matters: the indicators sometimes seem too broad. There is a bunch of different statistics, including EUROSTAT or OECD, that could be the kind of benchmark at the beginning. Not all the states in which companies are investing has implemented core 8 ILO conventions, but with such a benchmark, it could be easier to report.

How one can measure the existing policy? (like anti-bribery, human rights, and other policies?) Should it be just stated that it exists or described what kind of solutions and regulations are in such a policy?

Maybe the animals' treatment - according to Council Directive 98/58/EC on the minimum standards for the protection of all farmed animals - should be operationalised and taken into account in reports on investee companies

Gender pay gap - the proposed index seems to simplify this issue greatly and ignores many factors that make up the wage differences. Instead, we can propose an index constructed as an average weighted with working hours of the differences in earnings between men and women in positions, e.g. specialists, experts, board member etc. It seems that the current databases make it possible to calculate the indicator constructed in this way.

Excessive CEO pay ratio - the calculated value itself does not say much, maybe it is worth adding an indicator relating it to the company's results in a given year, whether the year-on-year change of this indicator follows or not the change in the company's results year-on-year

Board gender diversity - an indicator as problematic as the gender pay gap and does not take into account many factors, e.g. experience or qualifications. Can be considered this indicator - the difference in the average length of work experience before getting a position on the board of men and women as a percentage of the average for men

indicators no. from 21 to 23 and 25 and 30 - indicators correct, but they do not check practice. An interesting indicator could be a share of incidents reported under a given policy

indicator no. 27 - "significant risk of incidents" may give rise to some interpretation freedom and this should be carefully explained

indicator 28 - does not show the scale of the phenomenon, maybe better to apply share of incidents reported under a human rights policy

indicator no. 31 - "insufficiencies in action taken" may give rise to some interpretation freedom and this should be carefully explained

indicator 32 - does not show the scale of the phenomenon, it is worth creating an indicator that considers a national scale, e.g. the use of CPI or using the TRACE bribery risk matrix methodology

<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>

TYPE YOUR TEXT HERE

<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>

The approach is good, but missing the indicator on the basis of which it will be possible to assess the actual practice of the company

<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>

TYPE YOUR TEXT HERE

<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>

Yes, sustainable development is not only the environment but also the conditions of work and human rights. Because social and human rights issues are measured and reported from at least 50 years (

E.g. because of International Covenant on Economic, Social and Cultural Rights) it should be easier for companies to report referring to indicators existing from years.

<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>

Historical comparison could help to assess a change (even though the company still faces ESG problems one can see the attempts to improve it. 10 years seem to be a good period, not too short, because the change needs time

<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>

The benchmark and the very clearly prepared indicators (with an opt-in option during the first period) are the best way to try to avoid "window dressing" and – for the investor - to compare offered financial products.

It will probably be inevitable to ask companies to provide additional explanations, e.g. internal documentation.

<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>

Yes. However, it is possible that this will affect the length of business processes in companies. Does this apply to the company's overall offer or also to individual offers?

<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>

They should be clear and easy to understand to consumer and private, non-institutional investor and have references to predefined ESG benchmarks.

<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>

We agree with always disclosing exposure to solid fossil-fuel sectors. Within other sectors, we proposed: weapons sector - in terms of human rights issues. Nuclear energy should be treated with caution as for now it is probably the only real alternative for a stable supply of energy. At the same time, we should ensure that green energy will be also always disclosure.

<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>

Governance should be regulated at least together with disclosure. The order of regulations is opaque.

<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>

Financial product, according to the regulation should be "fair" and its information not misleading. We think that the first step in this area should be the ESA's guideline. Regarding different strategies, it is always good to confront them with external benchmarks.

<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>

<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>

a) website (too general for pre-contractual) b)pre-contractual – detailed c)website – detailed information but needed for general public d) pre-contractual - detailed

<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)