European Securities and Markets Authority

EBA EUROPEAN BANKING AUTHORITY

EIOPA EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

Date: 23 April 2020
ESMA 34-45-904

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:

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:

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) 2018/1725[1]. 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	IOGP – International Association of Oil & Gas Producers
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>
The International Association of Oil & Gas Producers' (IOGP) member companies account for approximately 90% of the oil and gas produced in Europe. IOGP shares the world's ambition to reach the Paris Agreement's goals and supports the EU's objective of climate neutrality by 2050 upon the implementation of enabling measures. There are many challenges on the road to meet this objective, as the energy transition will require significant investments, new and innovative technologies, effective policies and substantial behavioural changes.

In this context, our industry supports meaningful corporate reporting policies relating to disclosure of non-financial information pertaining to sustainability issues. IOGP members have contributed to the development of the Task Force on Climate-related Financial Disclosures (TCFD) recommendations and many members are using them already. We are convinced that effective non-financial reporting is in the interest of the industry's shareholders as much as in the interest of society. We welcome the opportunity to provide our feedback to the joint ESAs consultation paper on ESG disclosure since the SFDR disclosure obligations for financial market participants might influence IOGP member companies' non-financial reporting.

It is of great importance to ensure alignment between the disclosure obligations under different pieces of legislation (e.g. Taxonomy Regulation, NFRD, SFDR) to avoid any overlap or duplication of reporting obligations. The development of the Regulatory Technical Standards (RTSs) stemming from the SFDR should be developed in line with the review of the NFRD. The non-financial information companies are required to publish according to the NFRD should be sufficient for investors' and other stakeholders' purposes, including the disclosure obligation of financial market players under the SFDR.

As far as the review of the NFRD is concerned, IOGP supports a flexible approach, allowing companies to decide on what is material for their businesses. Finding a balance between principle-based and prescriptive disclosure with a set of pre-defined KPIs would continue to support meaningful disclosure and also help avoid reporting to becoming a "tick-box" exercise and help investors to better understand metrics in a certain context. It should also be noted that over time the KPIs may likely become less relevant compared to information investors are seeking. Therefore, it would be better to have the KPIs focused on a small core set that will be considered relevant in the mid-long term and address changes on a regular basis (e.g. 5 years).

For this reason, we are concerned that an overly prescriptive and detailed sets of KPIs in this RTS will impact the review of the NFRD by undermining the much needed flexibility of the upcoming revised NFRD. Therefore, IOGP believes the RTS should be based on current EU legislation on non-financial reporting and remain flexible to guarantee future alignment with the revised NFRD. It is important that the NFRD review process will follow the ordinary legislative procedure (COD) with the involvement of a range of stakeholders as wide as possible, without being affected by this RTS which is being developed according a different procedure from the COD.
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
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<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>
The financial market players manage assets which are often owned/operated by companies that have operations at a global level. Introducing this requirement may increase the administrative burden for corporates. Furthermore, the EU policy and regulatory frameworks can be dynamic and the companies’ obligations may change. For these reasons, we do not recommend introducing measures relative to the EU 2030 climate and energy framework targets. We would be more in favour of a flexible system asking companies to explain their contributions e.g. in the form of technologies/actions that drive GHG emissions reductions.

<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>
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<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>
As a representative of investee companies, IOGP believes there is a need for a flexible approach, particularly for multinational companies operating across multiple jurisdictions. We would recommend to carefully impact-assess expanding the range of metrics across sectors with consideration of sector specifics and the interdependency of sectors. E.g. the energy sector in relation to other producing sectors. Companies need to identify their particular opportunities for reduction of GHG emissions depending on their business models. It is also not clear what is meant by "more advanced indicators or metrics". In any event to the extent reporting is required in relation to a greater range of indicators or metrics, the more this will have a competitive impact relative to other regions with less onerous reporting.
Our industry focuses its reporting on what it considers to be the most significant issues for the industry in according to the existing rules/legislation and via engagement with a wide range of stakeholders. As a result, reporting indicators/metrics should be flexible enough to adapt to market needs and specific operational circumstances.
Our sector supports a reporting framework which enables companies to continue to provide information relevant to decision making without becoming a "tick-box" exercise and to illustrate their contributions to matters of importance in a flexible way.

For the oil and gas industry, since 2005, the IPIECA-IOGP-API Guidance on Sustainability Reporting (a guidance document for voluntary reporting) provides practical advice for companies in this context. This Guidance aims for continuous improvement of sustainability reporting and performance across the sector as it provides a robust, industry-developed framework to help companies shape the structure and content of their sustainability reporting that reflects current expectations on non-financial reporting by investors and civil society. It supports companies across the oil & gas industry globally to improve the quality and consistency of their sustainability reporting, providing better comparability of information. The IPIECA-IOGP-API Guidance on Sustainability Reporting is available here: https://www.ipieca.org/our-work/sustainability-reporting/sustainability-reporting-guidance/
<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>
The oil and gas industry has been actively working for many years to align metrics for a range of indicators, e.g. through IOGP or IPIECA Working Groups. The IPIECA-IOGP-API Guidance on Sustainability Reporting outlines the governance indicators : https://www.ipieca.org/our-work/sustainability-reporting/sustainability-reporting-guidance/

IOGP and its members support transparency and believe that the indicators referenced in the NFRD are sufficient at this stage and will be revised in due course.

<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>
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<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>
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<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>
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<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>
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<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>

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<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>
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<ESA_QUESTION_ESG_16>

- **: Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?**

<ESA_QUESTION_ESG_17>
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<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>
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<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>
Disclosures should focus on 'material' and relevant information, in order to enable investors to make responsible investment analyses and sustainable investment decisions. 'Material issues' vary greatly based upon a company's size, legal financial reporting obligations, operating locations and customer base, among other factors. Beyond existing legal requirements, corporates must continue to be able to make good faith judgements about what is 'material' to their investors and creditors in terms of non-financial issues. This will allow companies to provide decision-relevant information for a specific portfolio of assets and operations and allow audiences to better understand the rationale and governance around which issues are deemed 'material', rather than providing reporting for reporting's sake. Therefore, IOGP believes that mandatory indicators or metrics which could lead to a bureaucratic box-ticking approach and a significant additional reporting burden for investees companies without added value should be avoided.

IOGP supports the definition of 'fossil fuel sectors' given in Chapter 1, Article 1 and agrees with disclosing exposure to solid fossil-fuel sector. We believe that it is of utmost importance to make a clear distinction between coal and other less carbon-intensive fossil fuels like natural gas. This distinction is clearly highlighted in Article 19 of the EU Taxonomy Regulation which states that "power generation activities that use solid fossil fuels do not qualify as environmentally sustainable economic activities".

The distinction between coal and natural gas is particularly important for the role gas is playing in replacing coal in Europe and in the world. In their NECPs, many Member States[2] refer to a transition to natural gas as one of the solutions to reach their 2030 emission reduction targets across different sectors of the economy.

In the short term, switching from coal to natural gas in power generation would reduce up to 60% CO_2 emissions (in the power sector).[3] Coal-to-gas switching has already helped to deliver significant reductions in EU GHG missions. Coal-to-renewables and coal-to-gas switching each contributed from about half to 24% reduction of coal in power generation in 2019 versus 2018 and were the main drivers behind the 120 MT CO_2 savings in the EU power sector.[4] In Germany, fossil fuel power plants emitted 33% less CO_2 in June 2019 compared to the same month in 2018 due to a market-driven fuel switch from coal to gas.[5,6] Furthermore, because natural gas is a flexible fuel, it can enhance energy security, make a low-emission but intermittent electricity generation system resilient and facilitate the use of low-carbon gases, including hydrogen.

Natural gas combined heat and power (CHP) can lower the carbon footprint of electricity and heat in a very cost-efficient manner and have additional environmental co-benefits. Energy-efficient gas boilers can replace other appliances to reduce CO_2, NOx, SOx and PM emissions from heating and have a low-carbon future, considering low-carbon gases. Heating accounts for a third of EU GHG emissions and half of final energy demand.[7] For example, in Poland, half of the housing stock is still heated with coal, while the renovation rate needs to be improved to reach the desired 2.5% of floor area p.a.[8] EU Member States face different challenges with reducing emissions from heating; therefore, it is important to offer realistic, affordable heating alternatives.[9] For example, replacing inefficient and carbon-intensive heating technologies with condensing gas boilers is one solution that can immediately reduce CO_2, NOx, SOx and PM emissions, improve air quality and increase efficiency at a significantly lower cost than alternatives.

Moreover, natural gas can contribute to the EU's efforts in reducing emissions from the transport sector. In the shipping industry, LNG offers an available solution for short and long-distance large vessels in the short- and medium-term, as does clean hydrogen (including ammonia, methanol) in the longer term. This quality advantages LNG relative to other technologies, such as batteries, which currently constitute a supplement to traditional ship engines rather than an alternative. Also in other transport sectors, in particular heavy road transport and public transport, natural gas (LNG and CNG) provide a readily available option for emission reduction, whereas electric options are still under development.

Last but not least, in the long-term natural gas can be decarbonised. In fact, the main source of hydrogen production in the world today is natural gas reforming, a process which produces hydrogen and CO_2, while hydrogen from renewable electricity is produced in smaller volumes (ca. 1% - green hydrogen)[10]. Gas reformers can be fitted with Carbon Capture and Storage (CCS) technology to capture and store CO2 emissions from this process. Available CO_2 capture technologies for hydrogen production from natural gas can achieve capture rates of over 90%. Meeting the EU carbon neutrality objective by 2050 will require large

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[2] Twenty-three draft NECPs are positive towards natural gas approaching 2030 in one or several sectors. http://www.oil-andgaseurope.org/wp-content/uploads/2020/02/NECPs_factsheetinfographic.pdf

[3] https://gasnaturally.eu/wp-content/uploads/2018/12/long-term-vision-of-the-european-gas-industry.pdf.

[4] 2020 Agora/Sandbag report: https://www.agora-energiewende.de/fileadmin2/Projekte/2019/Jahresauswertung_EU_2019/172_A-EW_EU-Annual-Report-2019_Web.pdf

[5] See Fraunhofer ISE – Energy Charts (2019): https://www.ise.fraunhofer.de/de/presse-und-medien/news/2019/33-prozent-weniger-co2-emissionen-durch-brennstoffwechsel-von-kohle-auf-gas.html.

[6] In the United States, power sector emissions have fallen 25% since 2008, in large part due to coal-to-gas fuel switching: https://poweringpastcoal.org/insights/energy-security/coal-to-gas-switch-slashes-us-power-sector-co2/.

[7] European Commission (2019).

[8] BPIE (2018) Financing Renovation of Buildings in Poland − An Overview of Public Funding Allocation for the Renovation of Buildings in Poland.

[9] Sedigas, 2014; CEGIBAT, 2019.

[10] https://www.oilandgaseurope.org/wp-content/uploads/2020/06/Hydrogen-Strategy-paper.pdf

volumes of hydrogen with a low CO_2 footprint and, for this reason, clean hydrogen from natural gas with CCS will play an important role.
<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>
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<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>
"Good governance practices" are already included in the NFRD (e.g. the 2017 Guidelines accompanying NFRD explain that companies may explain the governance arrangements and processes used to perform their materiality assessment). We, therefore, discourage inclusion of "good governance practices" requirements in the RTS that would be inconsistent with the existing NFRD obligations.
<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 have taken a note of the references to the "do not significantly harm" principle in the EU Taxonomy Regulation, which is also mentioned in other policy and regulatory tools of the European Commission like the Hydrogen and Energy System Integration Strategies as well as the EU Recovery Package, and the EIB Climate Roadmap. All these documents state that the funds should be guided by the principle of "do not significantly harm". For these reasons, the definition of this principle will be of tremendous importance and should be carefully impact-assessed as the narrower definition is, the fewer financial products and services will be able to label themselves as "sustainable". "Do not significantly harm" principle should also take into account the importance of transitional and enabling activities as they will help the EU to reach its objective of climate neutrality by 2050 while providing a wide range of technology neutral opportunities for the energy transitions across Europe.

<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>
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<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>
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<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>
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<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>
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<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>
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<ESA_QUESTION_ESG_27>